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NAVIGATING LEGISLATIVE OVERRIDES: NON OBSTANTE CLAUSES AND THE INSOLVENCY & BANKRUPTCY CODE

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ABSTRACT

A non obstante clause refers to the phrase 'notwithstanding anything contained in this Act; or in some particular provision in the Act; or in some particular Act; or in any law for the time being in force'. These are generally used as a mechanism by the legislature to modify the ambit of the provision or law mentioned in the non obstante clause.

The Insolvency & Bankruptcy Code, 2016 was introduced by the legislature to override multiple overlapping statutes, viz. the Recovery Of Debts Due To Banks And Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Sick Industrial Companies Act, 1985, Company Law provisions on Winding Up and other legislations applicable in the insolvency domain. The aim of this paper is to understand the purpose of *non obstante* clauses and examine how they have been dealt by Courts, with a specific focus on their interpretation with regard to the area now generally covered by the Insolvency & Bankruptcy Code, 2016.

INTRODUCTION

Non obstante clauses refer to the phrase "notwithstanding anything contained in this Act; or in some particular provision in the Act; or in some particular Act; or in any law for the time being in force". These may be appended to the beginning of a provision, with a view to provide the enacting part of the section primacy and an overriding effect, in case of conflict with the Act or provision mentioned therein.[1] In other words, it can be said that in spite of the section or Act mentioned in the *non obstante* clause, the provision embraced therein will not be an impediment for the operation of the enactment or the enactment following it will have its full operation.[2] Thus, a *non obstante* clause is generally used as a mechanism by the legislature to modify the ambit of the provision or law mentioned in the *non obstante* clause.

[1] *Union of India v. G.M. Kokil,* AIR 1984 SC 1022.
[2] *South India Corporation (P) Ltd. v. Secy., Board of Revenue, Trivandrum,* AIR 1964 SC 207.

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However, it is imperative to distinguish between other similar phrases, such as 'subject to' which according to Justice G.P. Singh *"conveys the idea of a provision yielding place to another provision or provisions to which it is made subject".*[3] In *South India Corporation (P) Ltd. v. Secy., Board of Revenue, Trivandrum*[4] it was observed by the Supreme Court that:

> "15… (T)he words 'subject to other provisions of the Constitution' mean that if there is an irreconcilable conflict between the pre-existing law and a provision or provisions of the Constitution, the latter shall prevail to the extent of that inconsistency. An article of the Constitution by its express terms may come into conflict with a pre-Constitution law wholly or in part; the said article or articles may also, by necessary implication, come into direct conflict with the pre-existing law. It may also be that the combined operation of a series of articles may bring about a situation making the existence of the pre-existing law incongruous in that situation…
>
> 19… The expression "subject to" conveys the idea of a provision yielding place to another provision or other provisions to which it is made subject… The phrase "notwithstanding anything in the Constitution" is equivalent to saying that spite of the other articles of the Constitution, or that the other articles shall not be an impediment to the operation of Article (with the non obstante clause)."

Similarly, the inclusion of phrase 'without prejudice' in a provision, when referring to another does not lead to it *"affecting the operation of the other provision and any action taken under it must not be inconsistent with such other provision".*[5] Whereas, the expression "notwithstanding anything in any other law" refers to any law other than the Act in which that section occurs, that is, such a provision cannot be construed in such a manner to take away the effect of any provision of the Act in which that section is given.[6] On the other hand, the expression "notwithstanding anything contained in this Act" will most likely be construed to take away the effect of any other provision of the Act in which the section occurs only and cannot take away the effect of any other laws.[7]

[3] G.P. Singh, *Principles of Statutory Interpretation,* p. no. 368-9 (LexisNexis, India, 13th Edition)
[4] *supra* Note 2: *South India Corporation (P) Ltd. v. Secy., Board of Revenue, Trivandrum,* AIR 1964 SC 207.
[5] *ibid*
[6] *P. Virudhuchalam v. Management of Lotus Mills,* AIR 1998 SC 554
[7] *Sharda Devi v. State of Bihar,* AIR 2002 SC 1357

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The Supreme Court in *State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh,*[8] has attempted to clarify the meaning and object of *non obstante* clauses stating that:

> "45. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. It is equivalent to saying that in spite of the provisions of the Act mentioned in the non obstante clause, the provision following it will have its full operation or the provisions embraced in the non obstante clause will not be an impediment for the operation of the enactment or the provision in which the non obstante clause occurs…
>
> 47. Non obstante clauses are not always to be regarded as repealing clauses nor as clauses which expressly or completely supersede any other provision of the law, but merely as clauses which remove all obstructions which might arise out of the provisions of any other law in the way of the operation of the principal enacting provision to which the non obstante clause is attached."
>
> (emphasis supplied)

Thus, *non obstante* clauses have to be read as clarifying the position of the enacting clause and with the assumption that the Legislature, with abundant caution, decided to incorporate it in the enactment.[9]

CONSTRUING NON OBSTANTE CLAUSES

In olden times, the insertion of this clause had the effect of *non obstante aliquo statuto in contrarium* (notwithstanding any statute to the contrary). However, in contemporary times, *non obstante* clauses have been resigned to a more contextual and limited application. The impact of such a clause on the Act concerned must be measured by the legislative policy and it has to be limited to the extent it is intended by Parliament and not beyond that.[10]

The Supreme Court Advocates (Practice in High Courts) Act, 1951 contained a *non obstante* clause in Section 2 which stated: 'Notwithstanding anything contained in the Indian Bar Councils Act, 1926, or in any other law regulating the conditions subject to which a person not

[8] *State of Bihar v. Bihar Rajya M.S.E.S.K.K. Mahasangh,* (2005) 9 SCC 129
[9] *R.S. Raghunath v. State of Karnataka,* (1992) 1 SCC 335
[10] *JIK Industries v. Amarlal V. Jumani,* (2012) 3 SCC 255

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entered into the roll of Advocates at a High Court may be permitted to practice in that High Court.' The ambiguity regarding the enacting part of Section 2 was first brought to question before the Calcutta High Court, who in its learned opinion limited the enacting part of the clause and held that an advocate of the Supreme Court shall not act on the original side of the High Courts. The Supreme Court allowed the appeal, setting aside the impugned judgement with the following observations:

> "This is not, in our judgement, a correct approach to the construction of Section 2. It should first be ascertained what the enacting part of the section provides on a fair construction of the words used according to their natural and ordinary meaning, and the non obstante clause is to be understood as operating to set aside as no longer valid anything contained in relevant existing laws which is inconsistent with the new enactment… The enacting part of the statute must, where it is clear, be taken to control the non obstante clause where both cannot be read harmoniously".[11]

Bhagwati, J. in *Dominion of India v. Shrinbai A. Irani,*[12] made the following observation regarding construction of the *non obstante* clause:

> "The non obstante clause need not necessarily and always be co-extensive with the operative part so as to have the effect of cutting down the clear terms of an enactment. If the words of the enactment are clear and are capable of only one interpretation on a plain and grammatical construction of the words thereof a non obstante clause cannot cut down the construction and restrict the scope of its operation. In such cases the non obstante clause has to be read as clarifying the whole position and must be understood to have been incorporated in the enactment by the legislature by way of abundant caution and not by way of limiting the ambit and scope of the operative part of the enactment."

In *JIK Industries v. Amarlal V. Jumani*[13] the Supreme Court observed that the *non obstante* clause used in Section 147 of the Negotiable Instruments Act does not make references to a particular section of the Code of Criminal Procedure (hereinafter for brevity "**CrPC**"), but instead seeks to remove obstructions which may arise from any provision of the CrPC. In other words, Section 147 aims to provides a blanket coverage from the provisions of CrOC. The

[11] *Aswini Kumar Ghosh v. Arabinda Bose,* AIR 1952 SC 369
[12] *Dominion of India v. Shrinbai A. Irani,* AIR 1954 SC 596
[13] *JIK Industries v. Amarlal V. Jumani,* (2012) 3 SCC 255

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Supreme Court construed the scope of this provision in the following words:

> "64… (T)he non obstante clause used in Section 147 of the NI Act does not refer to any particular section of the Code of Criminal Procedure but refers to the entire Code. When non obstante clause is used in the aforesaid fashion the extent of its impact has to be found out on the basis of consideration of the intent and purpose of insertion of such a clause.
>
> 65. Reference in this connection may be made to the Constitution Bench decision of this Court in Madhav Rao Jivaji Rao Scindia v. Union of India, (1971) 1 SCC 85, Hidayatullah, C.J. delivering the majority opinion, while construing the provision of Article 363, which also uses non obstante clause without reference to any article in the Constitution, held that when non obstante clause is used in such a blanket fashion the Court has to determine the scope of its use very strictly."
>
> (emphasis supplied)

All the same, Legislature's use of words with a wide import in the *non obstante* clause may be restricted by construction having regard to the intention of the Legislature gathered from the enacting clause or other provisions which are related to the *non obstante* clause. In particular, if the *non obstante* clause is non-specific and refers to provisions of a statute generally,[14] for example Section 147 of the Negotiable Instruments Act. However, the scope of the *non obstante* clause and the enacting words following it cannot be curtailed when the wide language is consistent with the object of the Act.[15]

CONFLICT OF NON OBSTANTE CLAUSES

Often two or more enactments, each with their own *non obstante* clause, operate with considerable overlap. One such a conflict was examined in depth by the Hon'ble Supreme Court in the landmark *KSL & Industries Ltd. v. Arihant Threads Ltd.,*[16] wherein the *non obstante clause* of the RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 ("**RDDB**") came into direct conflict with the *non obstante* clause of the Sick Industrial Companies Act, 1985 ("**SICA**"). It was *inter alia* held that the provisions of the RDDB Act should be given priority and primacy over SICA. The reasoning given by the Hon'ble Supreme Court is in part, reproduced below:

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[14] *A.G. Varadarajulu v. State of Tamil Nadu,* AIR 1998 SC 1388

[15] G.P. Singh, *Principles of Statutory Interpretation,* p. no. 368-9 (LexisNexis, India, 13th Edition). See also *Iridium India Telecom Telecom Ltd. v. Motorola Inc.,* (2005) 2 SCC 145

[16] *KSL & Industries Ltd. v. Arihant Threads Ltd.,* (2008) 9 SCC 763

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"69… (T)he learned counsel for the appellant is right in submitting that the the RDDB is a 'special law' and also a subsequent legislation i.e. later law. It is well settled that when any law has been enacted, the legislature must be presumed to be aware of all existing laws**.** When the RDDB Act was enacted in 1993, SICA was very much in force since it was enacted in 1985. In spite of that, Parliament was pleased to give 'overriding effect' to the latter Act by using non obstante clause in Section 34. Sub-section (1) expressly stated that the provisions of the Act 'shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force'.

70. I am thus at a point where two statutes employ non obstante clause having 'overriding effect'. Such a conflict, as laid down in several cases, may be resolved by judiciary on various considerations : such as the policy underlying the enactments, the language used, the object intended to be achieved, or mischief sought to be remedied, etc. One of the tests applied by courts is that normally a later enactment should prevail over the former. The courts would also try to reconcile both Acts by adopting harmonious interpretation and applying them in their respective fields so that both may operate without coming into conflict with each other. In resolving the clash, the court may further examine whether one of the two enactments is "special" and the other one is "general". There can also be a situation in law where one and the same statute may be held to be a "special" statute vis-à-vis one legislation and "general" statute vis-à-vis another legislation. On the basis of one or more tests, the court will try to salvage the situation by giving effect to non obstante clause in both the legislations.

89… A provision beginning with non obstante clause (notwithstanding anything inconsistent contained therein in any other law for the time being in force) must be enforced and implemented by giving effect to the provisions of the Act and by limiting the provisions of other laws. But, it cannot be gainsaid that sometimes one may come across two or more enactments containing similar non obstante clause operating in the same or similar direction. Obviously, in such cases, the court must attempt to find out the intention of the legislature by examining the nature of controversy, object of the Act, proceedings initiated, relief sought and several other relevant considerations."

(emphasis supplied)

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A conflict between two special Acts, both of which have *non obstante* clauses may also be resolved by identifying which is 'more special' than the other. For example, in *Bank of India v. Ketan Parekh,*[17] the Hon'ble Supreme Court dealt with the conflict between the Special Court (Trial of Offences Relating to Transactions in Securities) Act 1992 ("**1992 Act**") and the RDDB Act 1993. The origin of the conflict was based on the amendment of the 1992 Act in 1994 whereby Section 9A was inserted, conferring civil jurisdiction on the Special Court in relation to any property attached under the provision of this Act, and for transfer to the Special Court every suit, claim or other legal proceeding pending before any court in respect of such property and a *non obstante* clause. On the other hand, Section 13 of the RDDB Act provides for the constitution of Debt Recovery Tribunals ("**DRT**") for recovery of debts owed to Banks and Financial Institutions. Section 14 of the RDDB Act provides for the *non obstante* clause and gives overriding effect and primacy to the RDDB Act over anything to the contrary contained in any other law. Thus, a contention was raised before the Supreme Court as to which Act will have jurisdiction over a matter which could be taken cognisance of by both. The Court observed that:

> "28. In the present case, both the two Acts i.e. the Act of 1992 and the Act of 1993 start with the non obstante clause… But incidentally, in this case Section 9-A came subsequently i.e. it came on 25-1-1994. Therefore, it is a subsequent legislation which will have the overriding effect over the (RDDB) Act. But cases might arise where both the enactments have the non obstante clause then in that case, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by that contingencies, then notwithstanding that the Act might have come at a later point of time still the intention can be ascertained by looking to the objects and reasons. However, so far as the present case is concerned, it is more than clear that Section 9-A of the Act of 1992 was amended on 25-1-1994 whereas the (RDDB) Act came in 1993. Therefore, the Act of 1992 as amended to include Section 9-A in 1994 being subsequent legislation will prevail and not the provisions of the (RDDB) Act.
>
> 29. Apart from this, in the present case both the Acts can be read harmoniously. Whatever dues are due to the banks or the financial institutions can be claimed under Section 11(2) of the Act of 1992 which specially empowers that the liabilities

[17] *Bank of India v. Ketan Parekh,* (2008) 8 SCC 148

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> can be adjusted out of the securities of the person notified in the manner provided under Section 11(2)(b)…"

As such several tests are laid down which may be used to resolve the conflict that may take place between two or more Acts due to each having its own *non obstante* clause. These are merely illustrative and can be applied with regard to the facts and circumstances of each individual case:

- Consideration of purpose & policy underlying the enactments;
- The language employed by the Legislature;
- Object to be achieved or mischief sought to be remedied;
- Whether the Act is a subsequent legislation or not;
- Whether a specific reference is made to the *non obstante* clause in the former law;
- Whether the Act is "general" or "special".

Thus, harmonious construction came to be employed by the Supreme Court, in interpreting the jurisdiction of the conflicting Acts and to mark out a boundary for each. Further, heavy emphasis was given to the date of the enactment of the conflicting provisions, with the latest of them being understood as applicable over the rest, provided that the Court would satisfy itself as to the subject and the dominant purpose for each enactment.

INSOLVENCY & BANKRUPTCY CODE

The Insolvency & Bankruptcy Code, 2016 (hereinafter "**IBC**") was introduced as a very important reform by the Parliament. As previously referred to, India had varying laws which overlapped and conflicted with each other, viz. the RECOVERY OF DEBTS DUE TO BANKS AND FINANCIAL INSTITUTIONS ACT, 1993 ("**RDDB**"); the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("**SARFAESI**"); the Sick Industrial Companies Act, 1985 ("**SICA**"); Company Law provisions on Winding Up and other insolvency legislation that were applicable to individuals and partnerships. But what emerged over the years is that since the legislation was scattered and bound in so many different statutes, the system was evolving in a way that placed a huge burden on the authorities and relevant courts while at the same time delaying recovery proceedings.

Let us understand this problem of multiple fora with the help of an example — If a secured

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creditor filed an application before the DRT for debt recovery, another creditor filed a petition for winding up in the High Court ("**HC**"), another secured creditor entered into a Memorandum of Undertaking with the bank to sell the debtor's property and pay the secured creditor, then invoke arbitration; while at the very same time the secured creditor's sister concern initiates proceedings under SARFAESI; and another unsecured creditor files a civil suit for recovery. With respect to one company, multiple proceedings under various fora have been initiated. Thus, there are conflicts between SICA and DRT; between winding up proceedings in the HC and the SARFAESI Act; between SARFAESI and RDDB. To resolve all these conflicts and enhance the Ease of Doing Business, a single Code was introduced.

Kumari Sachdeva Dev, Member of Parliament during the discussion on the motion for consideration of the Insolvency and Bankruptcy Code, 2016 listed out some advantages of the new IBC and stated that *"More than 5,000 companies were undergoing the process of liquidation without reaching its logical conclusion. This Government has repeatedly spoken, or as a part of their public relations exercise spent a lot of time and effort talking, about start-ups. But for an economy and for a country that is looking for more start-ups, I feel for a viable business environment just like start-ups are important, smooth and efficient methods of exits are equally important… I think, the key word in this Code is 'speed'. I feel the Government has given a huge emphasis on timely resolution and timely liquidation. The reason is this. If liquidation as a process becomes time-bound and predictable we can expect that the entire trend in our country where lending by banks are generally concentrated amongst a few big companies who are asset rich is likely to change. This is because if my chances of recovering from a business fails improves, I become much bold when it comes to lending… Apart from that, what I think that this Code has taken a paradigm shift is that once a company enters into a process of liquidation, which was a huge danger in the past, its management used to be retained with the owners, promoters or the Board of Directors. In this case the moment the company applies for liquidation to the appropriate authority, what happens is that the management goes into the hands of the professionals, which I think is a very important step in the right direction because that is how we manage to keep the assets from straying of the company".*[18]

[18] Discussion on the motion for consideration of the Insolvency and Bankruptcy Code, 2016 (As Reported by Joint Committee). *Available at:* https://loksabha.nic.in/Members/result16.aspx?dbsl=6901

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In *Innovative Industries v. ICCI Bank Ltd.*,[19] one of the first cases to go to appeal to the Supreme Court under the new IBC regime, it was observed that the *"objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the object of speeding up of the insolvency process. As per the data available with the World Bank in 2016, insolvency resolution in India took 4.3 years on an average, which was much higher when compared with the United Kingdom (1 year), USA (1.5 years) and South Africa (2 years). The World Bank's Ease of Doing Business Index, 2015, ranked India as country number 135 out of 190 countries on the ease of resolving insolvency based on various indicia".*[20]

Previously companies, whose loan accounts had been classified as a Non Performing Asset for failure to repay debts owed had Winding Up proceedings in the HC as its best option to shut up shop. In comparison, the IBC has been drafted by the Legislature to ensure revival and continuation of corporate debtors by protecting them from its own management by liquidation or rehabilitation as a going concern, both of which have to be completed in a time bound manner.[21]

Two different Sections empower the IBC and its provisions to overrule other Legislations "notwithstanding anything inconsistent therewith contained in any other law for the time being in force". The first is Section 238, which is reproduced below:

> "238. Provisions of this Code to override other laws.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law".[22]

Secondly, Section 14 IBC provides the Adjudicating Authority with the power to declare - by order - moratorium which *inter alia* prohibits institution or continuation of pending suits or proceedings against the Corporate Debtor[23]. The Section is reproduced, in part, below:

> "14. Moratorium.—(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely—

[19] *Innovative Industries v. ICCI Bank Ltd.,* (2018) 1 SCC 407
[20] *ibid* para 13
[21] *Duncans Industries Ltd. v. AJ Agrochem*, (2019) 9 SCC 725.
[22] Section 238, Insolvency & Bankruptcy Code, 2016 (31 of 2016)
[23] Section 3(8) of IBC, 2016 - "corporate debtor" means a corporate person who owes a debt to any person.

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a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

To understand the scope of Section 14(1)(a), we will have to refer to Section 3(33), which defines a transaction to include any "*agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor"*. The Supreme Court has held that the definition of 'transaction' in is *"an inclusive one which is extremely wide in nature and would include a transaction evidencing a debt or liability."*[24]

Thus, the provisions of IBC will have primacy over other legislations by virtue of Section 238. But, if any proceeding under the SICA is continuing in the High Court and not before the National Company Law Tribunal ("**NCLT**"), then an application for its transfer can be filed under Section 434(1)(c)[25] of the Companies Act, 2013.[26]

Similarly, the Supreme Court, whilst upholding a HC judgement held that the provisions of the IBC shall have primacy even over the Income Tax Act, 1961 with the observation that *"income tax dues, being in the nature of Crown debts, do not take precedence over secured creditors, who are private persons… The moratorium under the Insolvency and Bankruptcy Code will apply to the order of Income Tax Appellate Tribunal. The Code will override anything inconsistent contained in any other enactment, including the Income Tax Act".*[27]

[24] *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258
[25] Section 434(1)(c) of the Companies Act, indicates that proceedings under the Companies Act relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, that were pending before the District Court or the High Court, may now be transferred to the Tribunal.
[26] *Employees Organization v. Jaipur Metals & Electricals Ltd.*, (2019) 4 SCC 227
[27] *CIT v. Monnet Ispat & Energy Ltd.*, (2018) 18 SCC 786

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The Supreme Court has also held that IBC would have primacy over proceedings initiated under Section 138 of the Negotiable Instruments Act, 1881 with the moratorium suspending them since they are *"conducted before the courts mentioned in Section 6 CrPC".* Thus, *"it is clear that a Section 138 NI Act proceeding being conducted before a Magistrate would certainly be a proceeding in a court of law in respect of a transaction which relates to a debt owed by the corporate debtor."*[28]

The NCLT recently dealt with a matter wherein the *non obstante* clause of IBC was in conflict with the Prevention of Money Laundering Act, 2002 ("**PMLA**"). The NCLT delved deep into the object and applicability of both Acts and was of the considered view that:

> "(T)he overriding provisions of Section 238 of IBC which is the later legislation, when compared to the earlier legislation of PMLA, the provisions of IBC will prevail and hence considering the economic interest of the beneficiaries, the IBC will provide solution at the earliest to the Corporate Debtor as well as to the Creditors… Since, the attachment order passed by the PMLA court is hit by the provisions of Section 14 of the Code and considering the overriding effect of IBC under Section 238 of the Code, this Tribunal is of the considered view that the attachment order under PMLA Act is a nullity and non-est in law and hence it will not have any binding force".[29]

However, instances where the Corporate Debtor has some interest in public property or property owned by Municipal Corporations, the same cannot be divulged by the corporate debtor without complying with the provisions of applicable Municipal Corporation Act. The Supreme Court held that the *"Insolvency Code by virtue of Section 238 IBC, (cannot) override Corporation's right to control and regulate how its properties are to be dealt with. Section 238 IBC cannot be read as overriding Municipal Corporation's right, its public duty, to control and regulate how its properties are to be dealt with. Further, Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like Municipal Corporation of Greater Mumbai (MCGM) is involved."*[30]

(emphasis supplied)

[28] *supra* Note 25 - *P. Mohanraj v. Shah Bros. Ispat (P) Ltd.*, (2021) 6 SCC 258
[29] *SREI Infrastructure Finance Ltd. v. Sterling SEZ and Infrastructure Ltd.,* 2019 SCC OnLine NCLT 6878
[30] *Municipal Corporation of Greater Mumbai v. Abhilash Lal,* (2020) 13 SCC 234

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Likewise, the provisions of the IBC cannot be construed to override the provisions of the Limitation Act, 1963 as *"where periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. From this, it does not follow that the baby must be thrown out with the bathwater."*[31]

CONCLUSION

The IBC is "a complete code in itself"[32] that has altered the landscape of our country. It is a dynamic legislation which was enacted with the objective of eradicating the uncertainty in the law relating to insolvency and eliminating the unnecessary delay which was a prominent feature of the previous system. In order to effectuate this transformation, the IBC provides for a widely worded non-obstante clause which would override any other statute to the extent of its inconsistency. In some cases like the SICA, Section 238 of the IBC was utilised to override its provisions, in other cases, like the Limitation Act, its usage was held to be unjustified. However, this tool has to be used with caution and wherever possible the courts should follow the doctrine of harmonious construction and give effect to the provisions of both statutes.

In the years to follow, the Legislature may enact various other provisions or statutes that could be considered to be inconsistent with the IBC, but the Courts should continue to maintain a balance prioritising timely rehabilitation of the corporate debtor and recovery of debts owed by it, by maintaining a balance between IBC and other statutes. This would lead to clarity and improve Ease of Business, promoting India as a suitable destination for commerce and industry.

[31] *B. K. Educational Services Pvt Ltd v. Parag Gupta And Associates*, (2019) 11 SCC 633
[32] *Embassy Property Development Pvt. Ltd. v. State of Karnataka*, C.A. No. 9170 of 2019