IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 703 OF 2023

Hazel Mercantile Limited & others	…	Petitioners
vs.		
Insolvency and Bankruptcy Board of India & ors.	…	Respondents

WITH
WRIT PETITION NO. 243 OF 2024

Vineet Shrivastava	…	Petitioner
vs.		
Insolvency and Bankruptcy Board of India & anr.	…	Respondents

WITH
WRIT PETITION NO. 244 OF 2024

Yadubir Singh Sajwan	…	Petitioner
vs.		
Insolvency and Bankruptcy Board of India & anr.	…	Respondents

WITH
WRIT PETITION NO. 1560 OF 2025

Suraksha Realty Limited & another	…	Petitioners
vs.		
Insolvency and Bankruptcy Board of India & anr.	…	Respondents

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Mr. Vikram Nankani, Senior Advocate, a/w. Mr. Sumeet Nankani, Mr. Amir Arsiwala (through V.C.) and Ms. Vaishnavi Dhure for petitioners in WP/703/2023.

Ms. Khushboo D. Rohra for petitioner in WP/243/2024.

Ms. Meghna Talwar a/w. Ms. Princi Jaiswal and Ms. Janhavi Hirlekar, i/b. Mr. Kanishk Khetan for petitioner in WP/244/2024.

Mr. Ravi Kadam, Senior Advocate, a/w. Mr. Rohan Kelkar, Ms. Meghna Talwar, Ms. Princi Jaiswal and Ms. Janhavi Hirlekar, i/b. Ms. Sonal Verma for petitioners in WP/1560/2025.

Mr. Darius J. Khambata, Senior Advocate, a/w. Mr. Tushar Hathiramani and Mr. Ashish Mehta, i/b. Ethos Legal Alliance for respondent No.1 – IBBI in all petitions.

Mr. Ashok R. Varma a/w. Mr. Vinit Jain for respondent No.2 – UOI in WP/703/2023.

Mr. D. P. Singh for respondent No.2 – UOI in WP/1560/2025.

CORAM : MANISH PITALE &
SHREERAM V. SHIRSAT, JJ

Reserved on : JUNE 30, 2026
Pronounced on : AUGUST 19, 2026

JUDGMENT (*Per Manish Pitale, J.*) :

. These petitions seek a declaration for striking down of Regulation 31A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 [IBBI Regulations] as being *ultra vires* the parent statute i.e. The Insolvency and Bankruptcy Code, 2016 (IBC). The petitioners also claim that the said Regulation introducing 'regulatory fee', is beyond the powers and functions of the Insolvency and Bankruptcy Board of India (Board) under Section 196 of the IBC and that the said Regulation is arbitrary, thereby violating Article 14 of the Constitution of India.

2. Writ Petition Nos.703 of 2023 and 1560 of 2025 were filed in this Court, raising the aforesaid challenge. Writ Petition No.243 of 2024 was originally filed before the High Court of Madhya Pradesh, Bench at Indore and Writ Petition No.244 of 2024 was originally filed before the Delhi High Court. On 21.11.2023, the Supreme Court allowed Transfer Petition Nos.2124 – 2126 of 2023, transferring the aforementioned two writ petitions to this Court, to be heard along with Writ Petition No.703 of 2023. The Supreme Court observed that the said Writ Petition No.703 of 2023 was filed first in point of time. Hence, the records pertaining to the said writ petitions originally filed before the High Court at Madhya Pradesh at Indore and Delhi

High Court, were directed to be transferred to this Court. Accordingly, the records were received and the said two writ petitions were re-numbered as Writ Petition Nos.243 of 2024 and 244 of 2024.

3. The petitioners in Writ Petition Nos.703 of 2023 and 1560 of 2025 are successful resolution applicants. They are aggrieved by introduction of regulatory fee as per Regulation 31A introduced in the IBBI Regulations with effect from 01.10.2022. The said Regulation 31A of the IBBI Regulations specified that the regulatory fee would be calculated at 0.25% of the realisable value to creditors under the resolution plan approved under Section 31 of the IBC, which shall be payable to the Board, where such realisable value was more than the liquidation value. According to the petitioners, the said regulatory fee based on the aforesaid Regulation 31A introduced in the IBBI Regulations, is without authority of law on various grounds.

4. According to the petitioners these include:

(i) the said Regulation 31A of the IBBI Regulations is beyond the powers and functions of the Board under Section 196 of the IBC;

(ii) the said regulatory fee is *ultra vires* the provisions of the parent statute i.e. the IBC, particularly Sections 5(13) read with Section 30(2)(a), 31(1), 53(1)(a) and 240 of the IBC;

(iii) in actual terms, the regulatory fee is a tax and not a fee as per settled position of law and hence, it is rendered illegal and unsustainable;

(iv) the Board does not provide any service to the said petitioners, who are successful resolution applicants or even to the Committee of Creditors (CoC) during the Corporate Insolvency Resolution Process (CIRP), thereby showing that there is no *quid pro quo* at all;

(v) the proviso to Regulation 31A makes it retrospective in operation, thereby further rendering it illegal and unsustainable;

(vi) the amount charged as regulatory fee, in effect being a tax, is grossly disproportionate, and

(vii) imposition of regulatory fee by introduction of Regulation 31A in the IBBI Regulations, by way of amendment, is wholly arbitrary and hence, it violates Article 14 of the Constitution of India.

5. Apart from these, certain other issues were also raised on behalf of the petitioners, which will be adverted to during the course of dealing with the rival submissions.

6. In order to properly appreciate the rival submissions, it would be necessary to briefly refer to the chronology of events concerning these four writ petitions, leading to challenge to the validity of the aforesaid Regulation 31A of the IBBI Regulations.

BRIEF CHRONOLOGY OF EVENTS

Writ Petition No.703 of 2023
(*Hazel Mercantile Limited and others vs. IBBI and others*):

7. The petitioners in this petition are the successful resolution applicants. On 15.01.2020, the National Company Law Tribunal (NCLT), Ahmedabad Bench, passed an order admitting Company

Petition No.418 of 2018 filed by the IDBI Bank Limited, under Section 7 of the IBC, against the corporate debtor Reliance Naval and Engineering Limited. The CoC comprised of 22 financial creditors of the corporate debtor. On 05.05.2020, the NCLT, Ahmedabad Bench passed an order appointing respondent No.3 as resolution professional of the corporate debtor. Resolution plans were submitted by three prospective resolution applicants.

8. On 17.03.2022, the CoC approved the resolution plan of the petitioners by majority members of the CoC having 94.86% of the total voting share. On 24.03.2022, respondent No.3 - resolution professional filed an application under Section 31 of the IBC before the NCLT for sanction of the resolution plan submitted by the petitioners and approved by the CoC.

9. At this stage, on 20.09.2022, the respondent – Board published a notification in the gazette introducing the aforementioned Regulation 31A in the IBBI Regulations pertaining to regulatory fee, stating that it would come into force with effect from 01.10.2022. Thereafter, on 23.12.2022, the NCLT, Ahmedabad Bench passed an order allowing the application filed by the resolution professional, thereby approving the resolution plan submitted by the petitioners. On 30.12.2022, the respondent - Board sent an email to respondent No.3 – resolution professional, asking for compliance to be made with the said Regulation 31A of the IBBI Regulations and to make payment of regulatory fee. In this backdrop, the petitioners filed the said writ petition, wherein pleadings were completed.

Writ Petition No.243 of 2024
(*Vineet Shrivastava vs. IBBI and another*):

10. The petitioner filed this petition originally before the High

Court of Madhya Pradesh at Indore claiming to be a 67-year old person, having no other source of income, except interest on deposits with banks. By the aforesaid order passed by the Supreme Court, the said petition stood transferred before this Court.

11. The grievance of the petitioner appears to be that introduction of regulatory fee, as per Regulation 31A in the IBBI Regulations, effectively negates the object with which the IBC was enacted. It is claimed that the said regulatory fee would adversely affect the financial health of banks, in turn affecting the security of deposits kept by the petitioner in banks, thereby giving him the cause of action to challenge the said Regulation as being arbitrary. The petitioner claims that the said Regulation deserves to be struck down as violating Articles 14, 19 and 21 of the Constitution of India.

Writ Petition No.244 of 2024
(*Yadubir Singh Sajwan vs. IBBI and another*):

12. The petitioner had originally filed this petition before the Delhi High Court and by the aforesaid order of the Supreme Court, the petition stood transferred to this Court. The petitioner is one of the buyers/allottees of a unit from the corporate debtor Som Resorts Private Limited. The CIRP pertaining to the said corporate debtor commenced as per order dated 02.08.2022 passed by the NCLT, New Delhi on an application filed under Section 7 of the IBC by the petitioner and other buyers. In the said case, the CoC approved the resolution plan submitted by the association of such home buyers i.e. Casa Italia Social Welfare Association in a meeting held on 08.04.2023. The said resolution plan was approved by majority.

13. The resolution professional submitted the said resolution plan before the NCLT for approval. At this point in time, the said

notification dated 20.09.2022 was published by the Board, introducing regulatory fee as per Regulation 31A in the IBBI Regulations with effect from 01.10.2022. The petitioner is aggrieved by introduction of the regulatory fee, claiming the same to be arbitrary and illegal. The petitioner has also raised grounds pertaining to the said amendment in the IBBI Regulations, as being beyond the powers and functions of the Board under Section 196 of the IBC. It is alleged that such regulatory fee is *ultra vires* the IBC.

Writ Petition No.1560 of 2025
(*Suraksha Realty Limited and another vs. IBBI and another*):

14. The petitioners in this petition are the successful resolution applicants in the context of CIRP concerning a corporate debtor called Jaypee Infratech Limited. The CIRP was triggered in respect of the corporate debtor due to an application filed by the IDBI Bank Limited under Section 7 of the IBC before the NCLT, Allahabad Bench. On 09.08.2017, the NCLT, Allahabad Bench passed an order, admitting the said application filed by the IDBI Bank, thereby commencing the CIRP. Initially, the CIRP culminated in approval of resolution plan submitted by NBCC (India) Limited and the same was approved by the NCLT, Allahabad Bench on 03.03.2020.

15. However, on certain appeals filed against the said order, reaching the Supreme Court, the aforesaid order of the NCLT was set aside and the matter was remanded by the Supreme Court back to the CoC for reconsideration. Eventually, on 10.06.2021, the CoC approved the resolution plan of the petitioner by 98.66% voting share. The resolution professional of the corporate debtor filed an application before the NCLT, Allahabad Bench, for granting sanction to the said resolution plan of the petitioner as approved by the CoC.

16. During the pendency of the said proceeding before the NCLT, Allahabad Bench, by the aforesaid notification dated 20.09.2022, Regulation 31A was introduced in the IBBI Regulations pertaining to regulatory fee. On 07.03.2023, the NCLT, Allahabad Bench granted sanction to the resolution plan of the petitioner. Thereafter, by email dated 20.05.2024, the resolution professional informed the petitioner about the liability to pay further amounts towards CIRP costs, in the light of the aforesaid regulatory fee introduced in pursuance of Regulation 31A of the IBBI Regulations. Aggrieved by the said demand, the petitioner filed this writ petition, raising various grounds to challenge Regulation 31A of the IBBI Regulations.

SUBMISSIONS

17. Mr. Nankani, learned senior counsel appearing for the petitioners in Writ Petition No.703 of 2023, made the following submissions:

(a) The impugned Regulation 31A of the IBBI Regulations, introducing regulatory fee, is beyond the regulation making power of the Board under Section 196 of the IBC. As per Section 196(1)(c) of the IBC, the Board can levy fee or other charges, essentially in the context of service providers. Introduction of certain words pertaining to the purposes of the IBC by way of amendment with effect from 06.06.2018, does not change the basic nature of power under the aforesaid provision. Since the Board provides service to and regulates only the insolvency professionals, insolvency professional agencies and information utilities, the Board could exercise power to levy regulatory fee only on the aforesaid entities. The petitioners, as successful resolution applicants, cannot be levied fee by recourse to the said power under Section 196(1)(c) of the IBC. During the course of CIRP, the Board does not regulate the petitioners as the successful resolution applicants, or for that matter, even the CoC, and it also does not provide any service to them, thereby demonstrating that Regulation 31A of the IBBI Regulations, deserves to be struck down.

(b) In this context, it is necessary to peruse the definition of Insolvency Resolution Process Costs under Section 5(13) of the IBC. This is because, by the very same notification dated 20.09.2022, clause (ba) was also illegally introduced in Regulation 31, thereby including regulatory fee under Regulation 31A of the IBBI Regulations into the insolvency resolution process costs. It was submitted that the such introduction of regulatory fee on successful resolution applicants like the petitioners herein, is rendered wholly arbitrary and illegal, apart from being beyond the authority of the Board under Section 196(1)(c) of the IBC.

(c) The impugned Regulation 31A of the IBBI Regulations is actually in the nature of a tax, although it is stated to be a fee. It was submitted that since the Board plays absolutely no role for the purposes of the IBC and since the process of inviting proposals, evaluation thereof and approval of the resolution plan is done by the resolution professional and the CoC, there is no corresponding service or even a general service provided by the Board in the CIRP to indicate *quid pro quo* in any form. Thus, the regulatory fee amounts to a tax masquerading as a fee. In this context, reliance was placed on judgment of the Supreme Court in the case of *Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt,* **(1954) 1 SCC 412**.

(d) On the true meaning of the expression 'Regulation', reliance was placed on judgment of nine-Judge Constitution Bench of the Supreme Court in the case of *Mineral Area Development Authority & Anr. vs. Steel Authority of India & Anr.,* **(2024) 10 SCC 1**. It was submitted that the Board does not perform any of the exercises or functions noted in the said judgment, which would justify the impugned levy as a regulation fee. It was further submitted that although the strict principle of *quid pro quo* has been diluted in various judgments of the Supreme Court over a period of time, nonetheless the distinguishing feature between a fee and a tax is that fee involves an element of service, which in the present case is completely missing on the part of the Board.

(e) It was further submitted that the regulatory fee under the impugned Regulation is a measure or a percentage of the resolution plan approved by the CoC, but the same has no relation whatsoever with the object and purpose of the regulatory fee. On this basis, it was submitted that the impugned levy is rendered unconstitutional. In support of the said proposition, reliance was placed on the judgment of the Supreme Court in the case of *State of Rajasthan & Anr. vs. Rajasthan Chemists Association,* **(2006) 6 SCC 773**.

(f) It was emphasized that the Board does not, in any manner, regulate the proposed resolution applicants and the successful resolution applicants, during the process of CIRP. The acceptance of the proposal of the successful resolution applicant is dependent entirely on the negotiations between the CoC and the resolution applicant. Ultimately, it is the commercial wisdom of the CoC that prevails and even the adjudicatory body in the form of NCLT has a marginal role to play in the matter. On this basis, it was submitted that the regulatory fee introduced by the impugned Regulation 31A of the IBBI Regulations, is wholly unsustainable. In support of the said proposition, reliance was placed on the judgments of the Supreme Court in the case of *Swiss Ribbons Private Limited & Anr. vs. Union of India & Ors.,* **(2019) 4 SCC 17** and *Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr.,* **(2022) 2 SCC 401**.

(g) It was submitted that the argument regarding financial self-sufficiency made on behalf of the Board to justify the impugned regulatory fee is wholly unsustainable. Since the Board does not provide any service to the successful resolution applicants like the petitioners or for that matter, even to the CoC, there is no question of extracting the aforesaid amount as a percentage of realisable value to the creditors under the resolution plan. The material placed on record on behalf of the Board does not justify extraction of such amount from a party to whom no service is provided by the Board. It was also submitted that the Board did not come clean with its actual annual expenses and projected expenses to justify the regulatory fee.

(h) The proviso to Regulation 31A of the IBBI Regulations, which specifies that regulatory fee is applicable where resolution plan is approved on or after 01.10.2022, retrospectively applies the aforesaid regulatory fee. In the present case, the CoC had approved the resolution plan proposed by the petitioners on 17.03.2022 and the application dated 24.03.2022 filed by the respondent-resolution professional under Section 31 of the IBC was pending before the adjudicatory authority i.e. NCLT. As per settled law, neither the petitioners as resolution applicants nor the CoC could have made any change in the resolution plan already approved by the CoC by overwhelming majority. In such a situation, merely because the application filed by the resolution professional for sanction from the NCLT to the said resolution plan approved by the CoC, was pending, it could not lead to a situation where the regulatory fee could be imposed as part of the insolvency resolution process costs. This had the effect of retrospectively applying Regulation 31A of the IBBI Regulations. It was submitted that as per the scheme of the IBC, the NCLT has to merely verify whether the approved resolution plan is in terms of the requirements and it can either reject the plan leading to liquidation process being initiated or the same has to be sanctioned. This clearly demonstrates the arbitrariness and unsustainable nature of the regulatory fee being made applicable with effect from 01.10.2022.

(i) The impugned regulatory fee, as per Regulation 31A of the IBBI Regulations, is wholly arbitrary for the reason stated above, as it is detrimental to all the stakeholders, particularly the successful resolution applicants like the petitioners. The amendment disturbs the sensitive financial equilibrium involved in a resolution plan, since the corporate debtor is to be revived as a going concern, in terms of the object of enactment of the IBC. Thus, the regulatory fee militates against the very object of the IBC. Hence, the writ petition deserves to be allowed and the impugned Regulation 31A of the IBBI Regulations deserves to be struck down as *ultra vires* the parent statue i.e. the IBC, apart from being unconstitutional and invalid, being in violation of Article 14 of the Constitution of India.

18. Mr. Kadam, learned Senior Counsel appearing for the petitioners in Writ Petition No. 1560 of 2025 made the following submissions :

(a) It was submitted that the impugned Regulation 31A introduced in the IBBI Regulations militates against the very object of the IBC. By placing reliance on the judgments of the Supreme Court in the case of *Chitra Sharma and others vs. Union of India and others,* **(2018) 18 SCC 575** and **Swiss Ribbons Private Limited and another vs. Union of India and others** (*supra*), it was submitted that under the IBC, primacy is given to the process of commercial decision and the whole process of CIRP is market driven. The object of the IBC is to maximize the value of asset of the corporate debtor, so that it is efficiently run as a going concern, which in turn promotes entrepreneurship. The primary focus of the IBC is to ensure revival and continuation of the corporate debtor and to protect it from debt by liquidation. It is submitted that if these objectives of the IBC are kept in focus, introduction of regulatory fee by way of the impugned Regulation 31A of the IBBI Regulations, can be demonstrated to be a regressive step aimed at extracting amounts from the successful resolution applicants, with no corresponding service being provided by the Board.

(b) The impugned regulatory fee is *ultra vires* the provisions of the parent statute i.e. the IBC. A proper reading of Sections 5(13), 30(2)(a), 31(1) and 53(1)(a) of the IBC, shows the intent of the IBC to prioritize costs and expenses incurred by the resolution professional during the CIRP. By inviting attention of this Court to clauses (a) to (d) of Section 5(13) of the IBC and then reading clause (e) thereof, it was emphasized that the concept of *ejusdem generis* applies and the Board cannot impose an arbitrary levy by resorting to clause (e) of Section 5(13) of the IBC. It was submitted that the levies under clauses (a) to (d) of Section 5(13) of the IBC represent a genus or class of which clause (e) must also become a part. In this context, reliance was placed on the judgment of the Supreme Court in the case of *Nirma Industries Limited & Anr. vs. Securities and Exchange Board of India,* **(2013) 8 SCC 20**.

(c) It was submitted that the introduction of Regulation 31A in the IBBI Regulations, specifying regulatory fee, amounts to colourable exercise of power as it results in a windfall for the Board, in priority to all other debts as the said fee is covered under CIRP costs, despite the fact that the Board plays absolutely no role in CIRP. In that sense, regulatory fee is rendered an artificial charge or fee payable to the Board, when it has nothing to do with CIRP.

(d) On this basis, it was submitted that the impugned regulatory fee is rendered unconstitutional, as it amounts to imposition of tax without authority of law. In support of the said proposition, the learned Senior Counsel placed reliance on judgments of the Supreme Court in the cases of *Hingir-Rampur Coal Co. Ltd. & Ors. vs. State of Orissa & Ors.,* **(1961) 2 SCR 537**, *Raja Jagannath Baksh Singh vs. State of Uttar Pradesh & Anr.,* **(1963) 1 SCR 220**, *Saurashtra Cement & Chemical Industries Ltd. & Anr. vs. Union of India & Ors.,* **(2001) 1 SCC 91** and *Indsil Hydro Power and Manganese Limited vs. State of Kerala & Ors.,* **(2021) 10 SCC 165**.

(e) It was submitted that since the Board had failed to demonstrate as to what service it was providing during the CIRP and as to in what manner it was either supervising or assisting the resolution applicants and the CoC, not even a broad *quid pro quo* was made out in the present case, leading to the only conclusion that the impugned levy amounts to a tax and not fee. It was submitted that the Board cannot claim that it is providing an 'ecosystem' for the CIRP, without specifying as to what service is even broadly provided during the CIRP, to justify the impugned regulatory fee. It was submitted that the Board supervises and assists only the three entities i.e. resolution professional, insolvency professional agencies and information utilities, for which it is already charging fee. Therefore, the introduction of impugned Regulation 31A of the IBBI Regulations for charging regulatory fee payable to the Board is wholly arbitrary, unconstitutional and hence, unsustainable.

(f) The impugned fee amounting to a tax is grossly disproportionate and this is evident from the facts and figures placed on record by the Board itself. By referring to the expenses incurred by the Board and the amounts extracted by way of regulatory fee, it was highlighted on behalf of the petitioners that the amount collected was wholly disproportionate to the expenses incurred by the Board. It was emphasized that since regulatory fee is made part of the CIRP costs, it has to be based on actual costs incurred during the CIRP and not under an imaginary blown up figure as sought to be done under the impugned Regulation 31A of the IBBI Regulations. By placing reliance on the admitted facts and figures, it was submitted that levy of the regulatory fee amounted to extraction of huge amounts by the Board without any justification at all. It was submitted that on this ground also the impugned Regulation 31A of the IBBI Regulations deserves to be struck down.

(g) In this context, the learned Senior Counsel for the petitioners placed reliance on the judgment of the Supreme Court in the case of *P. M. Ashwathanarayana Setty & Ors. vs. State of Karnataka & Ors.,* **1989 Supp (1) SCC 696**, wherein it was laid down that a fee would be justified, if there is a broad and general correlation between the amount realised by way of such fee and the expenses involved in providing services. It was held that a broad and general correlation would be sufficient, but the fee would lose its character, if it enriches the general revenues of the State to be applied to the general purposes of the Government.

(h) Reliance was also placed on the judgments of the Supreme Court in the cases of *State of U.P. & Ors. vs. VAM Organic Chemicals Ltd. & Ors.,* **(2004) 1 SCC 225**, *State of H.P. & Ors. vs. Shivalik Agro Poly Products & Ors.,* **(2004) 8 SCC 556**, *Delhi Race Club Limited vs. Union of India & Ors.,* **(2012) 8 SCC 680** and the judgment of this Court in case of *Vidarbha Chamber of Commerce and Industries, Akola vs. Commissioner, Municipal Corporate of Akola City & Anr.,* **2007 (5) Mh.L.J. 82**, to contend that a levy would be rendered unsustainable, if there is substantial discrepancy between the total amount of fee realised by the department and the total amount of expenditure incurred by the Government in maintaining and functioning of the department. There has to be at least a broad corelation between the two.

(i) The learned Senior Counsel for the petitioners further submitted that proviso to Regulation 31A of the IBBI Regulations renders imposition of regulatory fee retrospective in nature and on this ground, the said Regulation 31A of the IBBI Regulations or at least proviso thereto, deserves to be struck down. Much emphasis was placed on judgment of the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and another** (*supra*). It was submitted that as per the law laid down in the said judgment, the resolution applicants cannot withdraw the resolution plan once the CoC approves the same on the basis of its commercial wisdom. It was submitted that once the CoC approves the resolution plan submitted by the resolution applicants, it is 'cast in stone' and there cannot be any modification at all. It was submitted that the role of the NCLT under Section 31 of the IBC is very limited and there is a real threat of the resolution application itself being rejected due to failure to incorporate regulatory fee as part of the resolution plan, paving the way for the drastic consequence of liquidation of the corporate debtor. This militates against the object of the IBC.

(j) On this basis, it was submitted that since neither the petitioners as the resolution applicants nor the CoC could have contemplated the requirement of regulatory fee, as introduced only on 20.09.2022, w.e.f. 01.10.2022, there was no question of having incorporated the same in the proposed resolution plan. Hence, there was serious disservice being done to the resolution applicants like the petitioners as well as the CoC, as introduction of regulatory fee as part of costs of CIRP would force them to take a hit in their resolution plan that stood already approved and placed before the NCLT for sanction. In this regard, reliance was also placed on the judgment of the Supreme Court in the case of *Deccan Value Investors L.P. & Anr. vs. Dinkar Venkatasubramanian & Anr.*, **2024 SCC OnLine SC**

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(k) Much emphasis was placed on the judgment of the Supreme Court in the case of *Union of India & Ors. vs. G. S. Chatha Rice Mills & Anr.,* **(2021) 2 SCC 209**, to contend that since the impugned levy was clearly retrospective and the IBC did not empower the Board expressly or by way of necessary implication to make regulations with retrospective effect, the said impugned Regulation is rendered unconstitutional. It was again emphasized that the NCLT as the adjudicatory authority does not exercise power as a superior authority over and above the commercial wisdom of the CoC and that the resolution plan cannot go back and forth, during CIRP. In this regard, reliance was placed on the judgments of the Supreme Court in the cases of *RPS Infrastructure Limited vs. Mukul Kumar & Anr.,* **(2023) 10 SC 718** and *Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited & Ors.,* **2025 SC OnLine SC 690**. On this basis, it was submitted that the impugned regulation deserves to be set aside.

(l) The learned Senior Counsel appearing for the petitioners sought to distinguish the judgment of the Supreme Court in the case of *B.S.E. Brokers' Forum, Bombay & Ors. vs. Securities and Exchange Board of India & Ors.,* **(2001) 3 SCC 482** upon which reliance was placed on behalf of the Board. It was submitted that in the said case, the imposition of the fee was considered in the context of service provided by the SEBI directly to the entities it regulated i.e. stockbrokers and sub-brokers. In the present case, as emphasized hereinabove, it was submitted that the Board does not provide any service to the successful resolution applicants like the petitioners or even the CoC, during the CIRP. In this context, reliance was placed on the judgment of the Supreme Court in the case of *Calcutta Municipal Corporation & Ors. vs. Shrey Mercantile (P) Ltd. & Ors.*, **(2005) 4 SCC 245**. On this basis, it was submitted that the writ petition ought to be allowed and the impugned Regulation deserves to be struck down.

19. Ms. Khushboo D. Rohra, learned counsel appeared for the petitioner in Writ Petition No. 243 of 2024 and Ms. Meghna Talwar, learned counsel appeared for the petitioner in Writ Petition No. 244 of 2024. They supported and adopted the contentions raised by the learned Senior Counsel for the petitioners in Writ Petition No. 703 of 2023 and Writ Petition No. 1560 of 2025. On that basis, it was submitted that the said writ petitions also deserved to be allowed and the impugned Regulation deserved to be struck down.

20. On the other hand, Mr. Khambata, learned senior counsel appearing for the respondent Board in all the petitions submitted as follows:-

(a) The contentions raised on behalf of the petitioners are based on an erroneous understanding of the role of the Board under the scheme of the IBC. It was submitted that the petitioners were deliberately portraying the role of the Board as being limited to supervising and / or facilitating the activities of only three entities in the CIRP i.e. insolvency resolution professionals, insolvency professional agencies and information utilities. It was submitted that a proper appreciation of the provisions of the IBC, particularly the provisions pertaining to the powers and functions of the Board and the extent of power of the Board in making regulations shows that the role of supervising and / or assisting the aforesaid three entities, is only part of the functions of the Board. It was asserted that the Board is an integral part and it performs diverse functions in CIRP and helps to create an ecosystem that furthers the object of enactment of the IBC.

(b) In support of the said contention, the learned senior counsel for the respondent Board relied upon the Report of Bankruptcy Law Reforms Committee (BLRC). The said report referred to the crucial role performed by the Board in CIRP, the main object of which was to ensure that the corporate debtor is revived as a going concern while the dues of the creditors are appropriately satisfied.

(c) The learned senior counsel for the respondent Board referred to the specific provisions of the IBC to emphasize that the Board performs executive functions, quasi-legislative functions and quasi-judicial functions. In this context, reliance was placed on Sections 188, 196 and 240 of the IBC, apart from other provisions. Much emphasis was placed on the role of the Board in making available accurate information regarding the process of CIRP in a timely manner to ensure transparency, monitoring of insolvency professionals and information utilities, streamlining of the CIRP to avoid undue delays and ensuring that all the stakeholders were engaged in the process of framing insolvency policies. Reliance was placed on judgement of Delhi High Court in the case of *Kunwar Sachdev Vs. IDBI Bank* passed in **Writ Petition No.10599 of 2021**, wherein reference was made to the guidelines for CoC published by the Board. Reliance was also placed on judgement of the Supreme Court in the case of *State Bank of India and others Vs. Consortium of Murari Lal Jalan and Florian Fritsch and another*, **(2025) 4 SCC 354**, wherein the said guidelines for CoCs were approved.

(d) By placing reliance on judgement of the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and another** (*supra*), it was submitted that the Board is required to formulate regulations dynamically. Reliance was also placed on judgements of Delhi and Madras High Courts in the cases of *Insolvency and Bankruptcy Board of India Vs. State Bank of India*, **2022 SCC OnLine Del. 4200** and *CA Venkata Siva Kumar Vs. Insolvency and Bankruptcy Board of India*, **2020 SCC OnLine Mad. 22581**, on the significant role performed by the Board and its responsibilities for carrying out the functions of various entities and stakeholders under the IBC, particularly during CIRP. On this basis, it was submitted that the attempt on the part of the petitioners to limit the role of the Board only *qua* the aforesaid three entities, was fallacious and the same ought ought not to be accepted.

(e) A strong objection was raised on behalf of the respondent Board on the claim of the petitioners that the regulatory fee under the impugned Regulation 31A of the IBBI Regulations was levied without authority of law. It was submitted that a bare perusal of Section 196(1)(c) of the IBC shows that the Board is empowered to *levy fee or other charges for carrying out the purposes of the IBC*. Much emphasis was placed on the fact that the aforesaid words were added to Section 196(1)(c) of the IBC by amendment in 2018. It was submitted that the latest amendment further clarified that the Board was entitled to levy fee in relation to the processes under the IBC. On this basis, it was submitted that the aforesaid contention raised on behalf of the petitioners that the Board had limited power to levy fee or other charges only in respect of insolvency professionals, insolvency professional agencies and information utilities is not borne out by the provision itself. In support of the said contention, reliance was placed on judgements of the Supreme Court in the cases of *Umed Vs. Raj Singh*, **(1975) 1 SCC 76** and *V. Jagannadha Rao Vs. State of AP*, **(2001) 10 SCC 401**.

(f) The learned senior counsel for the respondent Board invited attention of this Court to Sections 5, 13, 196(1)(c) and 240(2)(d) of the IBC, while defending the impugned Regulation 31-A of the IBBI Regulations introduced with effect from 01.10.2022. Reference was also made to Regulation 31(ba) and (e) of the IBBI Regulations while making submissions to answer the assertions made on behalf of the petitioners. On the argument of the petitioners that clause (e) of Section 5(13) must be read *ejusdem generis* with clauses (a) to (d) thereof, it was submitted that the same was erroneous as it was based on the assumption that clauses (a) to (d) formed a particular class. By referring to each of the clauses, it was submitted that they do not form a single class or genus, and therefore, clause (e) cannot be read *ejusdem generis* with clauses (a) to (d) of Section 5(13) of the IBC. In support of the said contention, reliance was placed on the judgement of the Supreme Court in the case of *Pioneer Urban Land and Infrastructure Limited Vs. Union of India and others*, **(2019) 8 SCC 416**, wherein it was held that the principle of *ejusdem generis* does not apply to residuary clauses and in the present case, clause (e) to Section 5(13) of the IBC is clearly a residuary clause. In this regard, reliance was also placed on judgements of the Supreme Court in the cases of *Grasim Industries Limited Vs. Collector of Customs*, **(2002) 4 SCC 297** and *Rajasthan State Electricity Board Vs. Mohan Lal*, **1967 SCC OnLine SC 18**.

(g) It was further emphasized that even if it was assumed for the sake of argument that the principle of *ejusdem generis* applied, following the dictum laid down by the Supreme Court in the case of **Grasim Industries Limited vs. Collector of Stamps** (*supra*) when specific subjects of enumeration belong both to a broad-based genus and a narrower genus, there is no principle that the general words should be confined to the narrower genus. In this regard, reference was also made to Section 222 pertaining to the Board's Funds, particularly clauses (b) and (c) of Section 222(2) of the IBC, specifying expenses concerning objects and purposes authorized by the IBC.

(h) In answer to the contention raised on behalf of the petitioners that imposition of regulatory fee under the impugned Regulation 31A of the IBBI Regulations was a colourable exercise of power, reliance was placed on judgements of the Supreme Court in the cases of **Raja Jagannath Baksh Singh Vs. State of Uttar Pradesh and another** *(supra)* and **Saurashtra Cement & Chemical Industries Limited Vs. Union of India** *(supra)*. Reliance was also placed on judgements of the Supreme Court in the cases of *K. C. Gajapati Narayan Deo Vs. State of Orissa*, **(1953) 2 SCC 178** and Nine-Judge Constitution Bench judgement in the case of **Mineral Area Development Authority and another vs. Steel Authority of India and another** (*supra*). It was emphasized that the said doctrine of colourable exercise of power applies only if the Legislature lacks competence to enact a particular law. The same does not involve any question of *bona fide* or *mala fide* on the part of the Legislature as no motive can be imputed to the Legislature and it is required to be demonstrated that the subject levy is unjust, exorbitant or improper. In this context, it was submitted that the petitioners have not challenged the relevant provisions of IBC in this context.

(i) On the allegation that the impugned regulatory fee is actually a 'tax' and not a 'fee', it was submitted on behalf of the respondent Board that with passage of time and the evolution of law in a number of judgements of the Supreme Court, the distinction between 'tax' and 'fee' had been substantially diluted and it was now recognized as a very fine distinction. It was submitted that with position of law that has emerged over a period of time, the fee charged and the service rendered for such fee are not required to be directly proportional. The correlation is of general character and not of mathematical exactitude. It was submitted that availability of even indirect benefit and a general nexus between the persons bearing the burden of such fee and the services rendered from collection of the fee, is enough to uphold the validity of imposition of such fee. Reliance was placed on judgements of the Supreme Court in this regard in the cases of *Sreenivasa General Traders Vs. State of AP*, **(1983) 4 SCC 353**; *State of West Bengal Vs. Kesoram Industries Limited*, **(2004) 10 SCC 201**; *BSE Broker's Forum Vs. SEBI*, **(2001) 3 SCC 482**; *Delhi Race Club Limited Vs. Union of India*, **(2012) 8 SCC 680**; *Jalkal Vibhag Nagar Nigam and others Vs. Pradeshiya Industrial and Investment Corporation and another*, **(2021) 20 SCC 657**; and *Small Scale Entrepreneurs Association and others Vs. State of Maharashtra and others*, **2026 SC OnLine SC 972**.

(j) The learned senior counsel for the respondent Board made specific submissions with regard to the meaning and interpretation of the word 'regulate' as the impugned Regulation imposes a regulatory fee, which is treated as part of the CIRP cost. It was submitted that in terms of the settled position of law, when the subject fee is regulatory in nature, the element of *quid pro quo* is not strictly necessary and when the fee is charged for regulation, specific service being rendered need not be demonstrated. In this regard reliance was placed on the judgement of the Constitution Bench of the Supreme Court in the cases of *Corporation of Calcutta Vs. Liberty Cinema*, **AIR 1965 SC 1107** and the aforesaid judgement in the case of **Mineral Area Development Authority and another vs. Steel Authority of India and another** (*supra*). Much emphasis was placed on the judgement of the Supreme Court in the case of **BSE Broker's Forum vs. SEBI** *(supra)*, wherein it was held that where the fee is regulatory in nature then the requirement of *quid pro quo* recedes in the background and *quid pro quo* is not a condition precedent for levying a regulatory fee. Reliance was also placed on the judgement of this Court in the case of *Yog Advertising & Marketing Services and another Vs. Municipal Corporation of Greater Mumbai*, **2016 SCC OnLine Bom. 62**.

(k) The learned senior counsel appearing for the Board further submitted that considering the nature of activities performed by the Board under the provisions of the IBC and the Regulations framed thereunder, it was of utmost necessity that the Board achieves financial self-sufficiency. In this regard, reliance was placed on the report of the BLRC, wherein it was recorded that as a matter of good practice, the Board ought to fund itself from the fees collected and that government involvement in the financial matters of the Board should be minimal. Reference was made to report of the BLRC of November 2015, wherein it was emphasized that a regulatory body like the respondent

Board herein must have the capacity and resources to keep pace with the development in its sector. Reliance was also placed on report of the National Council of Applied Economic Research (NCAER), which evaluated the performance of the respondent Board. It was recorded by the NCAER that regulators like the respondent Board may fail to deliver if their activities are unduly influenced by the government, politicians or outside interest groups. Thus, financial self-sufficiency and independence is of utmost importance for the respondent Board.

(l) Reliance was also placed on judgement of the Supreme Court in the case of *IFB Agro Industries Limited Vs. SICGIL India Limited and others*, **(2023) 4 SCC 209**, to contend that independent regulatory bodies like the respondent Board herein are much more effective, transparent and accountable with regard to the concerned sector, when they are financially independent. On this basis, it was submitted that the impugned Regulation 31A of the IBBI Regulations introduced with effect from 01.10.2022, was a step in the direction of ensuring financial self-sufficiency and independence of the respondent Board. As regards the audited accounts of the respondent Board showing its expenditure and income, it was submitted that the said documents were being deliberately misread by the petitioners to show as if the respondent Board had achieved a financial windfall by imposition of the regulatory fee. It was emphasized that the said data on record shows how the respondent Board was substantially dependent upon the government for its finances and the manner in which it is on its way to achieve financial self-sufficiency in the light of the amounts generated by levy of the regulatory fee.

(m) As regards the attack launched on behalf of the petitioners on the *proviso* to impugned Regulation 31A of the IBBI Regulations, it was submitted that the petitioners were wrongly reading the *proviso* to claim that it amounted to retrospective applicability of the regulatory fee. It was submitted that a proper reading of the *proviso* would show that it is clearly prospective, with effect from 01.10.2022. In this context, it was submitted that the petitioners were wrongly reading the provisions of the IBC, particularly Section 31 thereof. If the contentions raised on behalf of the petitioners with regard to the role of the NCLT as an adjudicatory authority under Section 31 of the IBC are to be accepted, it would reduce the NCLT to being a body merely performing ministerial acts. The whole authority of the NCLT as an adjudicatory authority would stand jeopardized. It was submitted that the judgement of the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and another** (*supra*) was deliberately being misread and the observations of the Supreme Court in the case of *Essar Steel India Limited Committee of Creditors Vs. Satish Kumar Gupta*, **(2020) 8 SCC 531** were deliberately being ignored. In the said judgement, the Supreme Court categorically held that in a given case, the NCLT, as the adjudicatory authority, could send a resolution plan back to the CoC for re-submission, although the commercial wisdom of the CoC was recognized. It was submitted that the contention that the resolution plan is 'cast in stone' the moment it is approved by the CoC, and that it cannot be touched in any manner even by the NCLT as the adjudicatory authority, is fallacious and it is in the teeth of the provisions of the IBC. Thus, it was submitted that there is no question of retrospective operation of the impugned regulatory fee.

(n) By referring to the resolution plans of the petitioners in Writ Petition No.703 of 2023 (Hazel Mercantile Limited and others) and Writ Petition No.1560 of 2025 (Suraksha Realty Limited and another), it was submitted that the said petitioners themselves had agreed that they would bear CIRP Costs, on the basis of the provisions of the IBC, as amended from time to time. In this backdrop, it was submitted that the petitioners cannot be permitted to turn around and challenge the regulatory fee, which forms part of CIRP Costs. It was submitted that the petitioners themselves offered to bear this cost, while under the scheme of the IBC, it would be the financial creditors, who would share such costs. The financial creditors or members of the CoC in these cases have not raised any objection and therefore, the petitioners as the successful resolution applicants, who took it upon themselves to bear the CIRP Costs, cannot be permitted to challenge the regulatory fee.

(o) It was submitted that the petitioners cannot claim that the impugned regulatory fee is discriminatory or arbitrary in any manner. There is no basis to raise such a challenge as it applies with effect from 01.10.2022 to all resolution plans to be approved by the adjudicatory authority.

(p) The learned senior counsel for the respondent Board placed much emphasis on the object of enactment of IBC, the role of the respondent Board at every stage of the CIRP and the manner in which the adjudicatory authority also heavily relied upon the respondent Board for a smooth, transparent and accelerated conduct of CIRP. It was submitted that the petitioner (Hazel Mercantile Limited) surprisingly claimed that it had nothing to do with the CIRP and that the respondent Board did not provide any service to it. The said claim is obviously based on a complete misreading and misunderstanding of the entire scheme of the IBC.

(q) The learned senior counsel for the respondent Board proceeded to deal with and distinguish various judgements relied upon by the learned senior counsel appearing for the petitioners. He submitted that the position of law, if properly understood, inures to the benefit of the respondent Board and that therefore, all the petitions deserve to be dismissed.

CONSIDERATION & ANALYSIS

21. Having considered the rival submissions and in the light of the material brought to the notice of this Court, including a number of judgements, the findings thereon are being rendered under various headings, so that the contentions put forth by the parties are effectively dealt with under each heading.

Role of Insolvency and Bankruptcy Board:

22. The Insolvency and Bankruptcy Board, being referred to in this judgement as the Board, is the regulatory authority established under the provisions of the IBC. Part IV of the IBC concerns regulation of various entities and Chapter I refers to establishment and incorporation of the Board. Before referring to the relevant provisions concerning the Board, it would be appropriate to first take into consideration the observations made by the Bankruptcy Law Reforms Committee report of November, 2015 (hereinafter referred to as the BLRC report), which was a precursor to enactment of IBC. A perusal of the report shows that it referred to various aspects of law

sought to be introduced concerning insolvency and bankruptcy in India. Apart from referring to the adjudicatory authority and its role, the BLRC report also specifically concerned itself with the role expected of a regulator. In the report, the BLRC indicated that the regulator would ensure malleability and efficiency in working out the bankruptcy process and in that context, the role of the Board as the regulator would be crucial.

23. The BLRC report visualized that the Board would not only regulate the insolvency professionals, insolvency professional agencies and information utilities, but it would also specifically concern itself with regulation-making in specific areas about procedural detail in the insolvency and bankruptcy process, apart from performing the function of data collection, research and performance evaluation. Having perused the contents of the said report, which was a precursor to enactment of the IBC, this Court finds that the Board was projected to perform the role of a regulator, so as to achieve the object with which IBC was enacted. We find considerable force in the contention raised on behalf of the respondent – Board that the regulatory functions of the Board ought not to be construed as restricted to regulating the aforesaid three entities i.e. insolvency professionals, insolvency professional agencies and information utilities. The provisions of the IBC, particularly after the amendments that have been introduced from time to time, indicate that the legislature itself has indicated that the role of the Board, as a regulator, is broad-based, far-reaching and has a crucial bearing on achieving the object of enactment of IBC.

24. In this backdrop, when the relevant provisions of the IBC are perused, it becomes evident that reading the role of the Board as a regulator only for the aforementioned three entities, would not be in

consonance with the scheme of the IBC. Section 188 of the IBC provides for establishment and incorporation of the Board, while Sections 189 to 195 thereof, provide the details of constitution of the Board, powers of the Chairperson of the Board and other such aspects. Section 196 of the IBC provides for the powers and functions of the Board. Amongst other functions, the Board crucially performs quasi-legislative functions and these have to be appreciated along with the clauses of Section 240 of the IBC. But before referring to the aforementioned provisions, it would be appropriate to also consider as to the executive functions performed by the Board under the IBC. The Board, under Section 196(1)(a) maintains a register of service providers and it has the power to renew, withdraw, suspend or cancel such registrations. The Board also performs quasi-judicial functions in the form of regulating the functioning of insolvency professionals, insolvency professional agencies and information utilities. It has the power to appoint a disciplinary committee, which is empowered to impose penalties, etc.

25. Since the Board does perform such executive and quasi-judicial functions in the context of the aforesaid three entities, the petitioners have forcefully argued that the Board can essentially be said to be a regulator, only with respect to the said three entities and that its role cannot be construed as broad-based, as the respondent No.1 would like this Court to believe. But, this Court is of the opinion that since the aforesaid three entities i.e. insolvency professionals, insolvency professional agencies and information utilities, indeed perform a pivotal role in CIRP, even the aforesaid role of regulating the said three entities by the Board, indicates an intrinsic role of the Board in ensuring that CIRP is conducted and undertaken efficiently, so that the object of the IBC is satisfied. Apart from the role that the Board performs as a regulator in the context of the aforesaid three entities,

a proper appreciation of Sections 196 and 240 of the IBC indicates that at various stages of the CIRP concerning the roles of the CoC as well as the resolution applicants, the Board exercises its executive, quasi-judicial and quasi-legislative functions.

26. Sections 196 and 240 of the IBC indicate in great detail, the quasi-legislative functions performed by the Board. Section 196(1)(c) of the IBC provides that the Board has the power to levy fee or other charge for carrying out the purposes of the IBC, including fee for registration and renewal of service providers. The Explanation appended to the said provision inserted by a recent amendment dated 06.04.2026, further clarifies the manner in which the Board can impose the levy or other charge in relation to the process under the IBC. Since various clauses of Section 196 of the IBC as also Section 240 thereof, refer to the power of the Board as a regulator, to perform its role throughout the process of CIRP, it would be appropriate to quote the relevant portions of the aforesaid two provisions. The same read as follows:

"**196. Powers and functions of Board.**—

(1) The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions namely:—

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;

(b) specify the minimum eligibility requirements for registration of insolvency professional agencies, insolvency professionals and information utilities;

(c) levy fee or other charges for carrying out the purposes of this Code, including fee for registration and renewal] of insolvency professional agencies, insolvency professionals and information utilities;

(d) specify by regulations standards for the functioning of insolvency professional agencies, insolvency professionals and information utilities;

(e) lay down by regulations the minimum curriculum for the examination of the insolvency professionals for their enrolment as members of the insolvency professional agencies;

(f) carry out inspections and investigations on insolvency professional agencies, insolvency professionals and information utilities and pass such orders as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(g) monitor the performance of insolvency professional agencies, insolvency professionals and information utilities and pass any directions as may be required for compliance of the provisions of this Code and the regulations issued hereunder;

(h) call for any information and records from the insolvency professional agencies, insolvency professionals and information utilities;

(i) publish such information, data, research studies and other information as may be specified by regulations;

(j) specify by regulations the manner of collecting and storing data by the information utilities and for providing access to such data;

(k) collect and maintain records relating to insolvency and bankruptcy cases and disseminate information relating to such cases;

(l) constitute such committees as may be required including in particular the committees laid down in section 197;

(m) promote transparency and best practices in its governance;

(n) maintain websites and such other universally accessible repositories of electronic information as may be necessary;

(o) enter into memorandum of understanding with any other statutory authorities;

(p) issue necessary guidelines to the insolvency professional agencies, insolvency professionals and information utilities;

(q) specify mechanism for redressal of grievances against insolvency professionals, insolvency professional agencies and information utilities and pass orders relating to complaints filed against the aforesaid for compliance of the provisions of this Code and the regulations issued hereunder;

(r) conduct periodic study, research and audit the functioning and performance of to the insolvency professional agencies, insolvency professionals and information utilities at such intervals as may be specified by the Board;

(s) specify mechanisms for issuing regulations, including the conduct of public consultation processes before notification of any regulations;

(t) make regulations and guidelines on matters relating to insolvency and bankruptcy as may be required under this Code, including mechanism for time bound disposal of the assets of the corporate debtor or debtor; and

(u) perform such other functions as may be prescribed.

(2) The Board may make model bye-laws to be to adopted by insolvency professional agencies which may provide for—

(a) the minimum standards of professional competence of the members of insolvency professional agencies;

(b) the standards for professional and ethical conduct of the members of insolvency professional agencies;

(c) requirements for enrolment of persons as members of insolvency professional agencies which shall be non-discriminatory;

Explanation.—For the purposes of this clause, the term "non-discriminatory" means lack of discrimination on the grounds of religion, caste, gender or place of birth and such other grounds as may be specified;

(d) the manner of granting membership;

(e) setting up of a governing board for internal governance and management of insolvency professional agency in accordance with the regulations specified by the Board;

(f) the information required to be submitted by members including the form and the time for submitting such information;

(g) the specific classes of persons to whom services shall be provided at concessional rates or for no remuneration by members;

(h) the grounds on which penalties may be levied upon the members of insolvency professional agencies and the manner thereof;

(i) a fair and transparent mechanism for redressal of grievances against the members of insolvency professional agencies;

(j) the grounds under which the insolvency professionals may be expelled from the membership of insolvency professional agencies;

(k) the quantum of fee and the manner of collecting fee for inducting persons as its members;

(l) the procedure for enrolment of persons as members of insolvency professional agency;

(m) the manner of conducting examination for enrolment of insolvency professionals;

(n) the manner of monitoring and reviewing the working of insolvency professional who are members;

(o) the duties and other activities to be performed by members;

(p) the manner of conducting disciplinary proceedings against its members and imposing penalties;

(q) the manner of utilising the amount received as penalty imposed against any insolvency professional.

(3) xxx xxx xxx

240. Power to make regulations.—

(1) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

xxx xxx xxx

(d) the other costs under clause (e) of sub-section (13) of section 5;

xxx xxx xxx

(nc) the manner of voting and determining the voting share in respect of financial debts under sub-section (7) of section 21;

xxx xxx xxx

(o) the persons who shall comprise the committee of creditors, the functions to be exercised such committee and the manner in which functions shall be exercised under the proviso to sub-section (8) of section 21;

(oa) any other class or classes of creditors who may attend the meetings of committee of creditors under the proviso to sub-section (11) of section 21;

(p) the other electronic means by which the members of the committee of creditors may meet under sub-section (1) of section 24;

(q) the manner of assigning voting share to each creditor under sub-section (7) of section 24;

(r) the manner of conducting the meetings of the committee of creditors under sub-section (8) of section 24;

(s) the manner of appointing accountants, lawyers and other advisors under clause (d) of sub-section (2) of section 25;

xxx xxx xxx

(u) the form and the manner in which an information memorandum shall be prepared by the resolution professional sub-section (1) of section 29;

(v) the other matter pertaining to the corporate debtor under the Explanation to sub-section (2) of section 29;

(w) the manner of making payment of insolvency resolution process costs under clause (a), the manner of payment of debts of operational creditors under clause (b), the manner of payment of debts of financial creditors who do not vote in favour of the resolution plan under clause (ba), the conditions and manner for constitution of a committee under clause (d) and the other requirements to which a resolution plan shall conform to under clause (f) of sub-section (2) of section 30;

(wa) other requirements under sub-section (4) of section 30;

(wb) the form, manner and the conditions under the second proviso to sub-section (1) of section 31;

(wc) the manner and conditions for making an application by the committee of creditors for restoring the corporate insolvency resolution process and manner and conditions for completing the restored corporate insolvency resolution process under sub-section (1A) of section 33;

(wd) the conditions under the proviso to sub-section (2) of section 33;

xxx xxx xxx

(zt) the appointment of other officers and employees under sub-section (2), and the salaries and allowances payable to, and other terms and conditions of service of, such officers and employees of the Board under sub-section (3), of section 194;

(zu) the other information under clause (i) of sub-section (1) of section 196;

xxx xxx xxx

(zw) the place and the time for discovery and production of books of account and other documents under clause (i) of sub-section (3) of section 196;

(zx) the other committees to be constituted by the Board and the other members of such committees under section 197;

xxx xxx xxx ”

27. Only the relevant clauses of Section 240 have been quoted hereinabove, as they specifically pertain to the CIRP, while others pertain to the liquidation process. In the present case, since the attack on the role of the Board as a regulator on behalf of the petitioners, is based on an allegation that the Board does not perform any worthwhile function during CIRP, the clauses pertaining to liquidation have not been quoted.

28. This Court is of the opinion that the above-quoted clauses of Sections 196 and 240 of the IBC, elaborately demonstrate the role of the Board as a regulator throughout the entire CIRP. It would be inappropriate to hold that the Board performs the role as a regulator only in respect of the aforesaid three entities and that otherwise, it has nothing to do with CIRP. The manner in which CoC, for instance, undertakes the action of voting, the details of the manner in which the resolution applicants submit their applications and other such aspects, are also regulated by the Board. As per the aforementioned two provisions, it has powers to regulate such actions, which are integral part of CIRP by framing regulations under the regulation-making power specifically granted to the Board under the IBC. Thus, the contention raised on behalf of the petitioners that the Board does not regulate the CIRP and that therefore, the impugned Regulation 31A of the IBBI Regulations ought to be struck down, deserves to be rejected.

29. As a matter of fact, the aforesaid contention of the petitioners goes against the observations made by the Courts in various cases with regard to the importance attached to the role of the Board, as a regulator, particularly during CIRP.

30. The Delhi High Court, in the case of **Kunwar Sachdev vs. IDBI Bank** (*supra*), had an occasion to consider the role of the Board in the context of CIRP. After referring to the relevant provisions of the IBC, the Delhi High Court observed in the said judgement that the Board could frame and finalize the code of conduct/guidelines for effective functioning of the CoC. In the said judgement, the Delhi High Court took into consideration Section 196 of the IBC and reached a conclusion that although the sanctity of commercial wisdom of the CoC was indeed protected under the IBC, but for an effective working of the CoC and for satisfying the objectives of the IBC, a proper set of guidelines and code of conduct was necessary. In the light of the pivotal role of the Board as a regulator under the IBC, the Delhi High Court thought it fit to issue directions to the Board to frame and finalize such a code of conduct/guidelines. The aforesaid judgement of the Delhi High Court clearly indicates the importance of the role of the Board, in the light of the scheme of the IBC.

31. The Supreme Court, in the case of **State Bank of India and others vs. Consortium of Murari Lal Jalan and Florian Fritsch and another** (*supra*) also noticed the important role of the Board as a regulator, under the provisions of the IBC. A specific reference was made to the guidelines issued by the Board for the CoC on 06.08.2024. It was found that the Board issued the self-regulating guidelines for effective and time-bound decision-making by the members of the CoC. The entire set of guidelines was quoted with approval by the Supreme Court and it was held that the members of

the CoC ought to follow the aforesaid guidelines and a suggestion was further given that the Central Government or the Board itself must explore the possibility of better enforcement of the standards and practices enumerated in the guidelines through an independent mechanism under the auspices of an oversite committee, instead of treating the said guidelines merely as self-regulatory.

32. The aforesaid observation of the Supreme Court, in the case of **State Bank of India and others vs. Consortium of Murari Lal Jalan and Florian Fritsch and another** (*supra*) further indicates judicial notice taken by Courts, with regard to the crucial role performed by the Board as a regulator under the IBC.

33. The petitioners relied upon the judgement of the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and another** (*supra*). We find that even in the said judgement, the Supreme Court took notice of the role performed by the Board as a regulator. The Supreme Court referred to the BLRC report, which had recommended formation of the Board for functioning as a regulator and in that context, it was observed that the Board was expected to formulate regulations that would dynamically detail the procedural norms of working of the IBC with necessary immediacy. The said observations made by the Supreme Court are crucial, as they indicate a pivotal and dynamic role ascribed to the Board as a regulator under the scheme of the IBC.

34. The Madras High Court, in the case of **CA Venkata Siva Kumar vs. Insolvency and Bankruptcy Board of India** (supra), also referred to the provisions of the IBC, as also the BLRC report and having taken note of the relevant provisions of the IBC, observed as follows:

> "13. In this case, it is evident that Parliament enacted the

> IBC by drawing on the BLRC Report and the bill prepared by the BLRC. In both the FSLRC and BLRC Reports, it was recommended that the regulator should be self- sufficient at least with regard to operational expenses by collecting fees to finance its activities. When viewed in this context, it is clear that sections 196(1)(c) and 207 of the IBC and the IP Regulations are intended to fulfil the object and purpose of the IBC as regards the functioning of the IBBI. On examining the IBC, it is also clear that the IBBI plays a significant role as the principal regulator as regards insolvency and liquidation. Even with specific reference to IPs, as pointed out by the learned ASGI, under section 16(3) and (4) of the IBC, the IBBI is entrusted with the responsibility of recommending a RP if the operational creditor concerned fails to do so. In addition, by way of illustration, under section 22(4) and (5) and section 27(4) and (5), respectively, the IBBI is required to confirm the proposal of the committee of creditors (the CoC) with regard to the appointment of the RP or the replacement RP, respectively. Under section 25(2)(d), (h) and (k), the RP is required, in the discharge of duties, to act in the manner specified by the IBBI. Under section 28(4) and (5), if the RP acts without seeking the approval of the CoC, the CoC is entitled to report the matter to the IBBI for taking necessary action against the RP. Even with regard to proposing the name of an IP as a liquidator, the IBBI plays a role under section 34. Furthermore, we find that the IBBI has been tasked with several responsibilities under the IBC as is evident from the fact that the IBC is replete with references to the IBBI. Thus, we conclude that the IBBI does provide significant services, including in relation to IPs and that there is broad correlation between fees and services. Given the fact that direct or arithmetical correlation as between the fee received and service rendered is not necessary especially in the context of regulatory fees, we are of the view that regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of quid pro quo."

35. The Delhi High Court, in the case of **Insolvency and Bankruptcy Board of India Vs. State Bank of India** (*supra*) also

referred to the provisions of the IBC and concluded that the Board, in effect, is an authority carrying out a number of functions relating to implementation of the IBC. The role of the Board, as a regulator, was specifically noted by the Delhi High Court, while making the said observations.

36. In this backdrop, we find that various Courts and particularly, the Supreme Court, in the aforementioned judgements, have taken judicial notice of the plethora of functions performed by the Board and powers exercised by it, including the power to make regulations concerning various stages of CIRP, with the aim and object to ensure that CIRP is conducted from start to finish in an efficient manner.

37. The petitioners have sought to limit the role of the Board as a regulator only with respect to the insolvency professionals, insolvency professional agencies and information utilities. We are of the opinion that the said attempt on the part of the petitioners to limit the role of the Board, is not borne out by the legislative scheme of the IBC in the light of the above-quoted provisions, as also the findings and observations given by various Courts, while dealing with the regulatory role performed by the Board under the provisions of the IBC.

38. This Court is of the opinion that the Board indeed performs executive, quasi-judicial and quasi-legislative functions under the provisions of the IBC and its role is highlighted in various provisions, including those which mandate the adjudicatory authority at various stages to seek the opinion of the Board as a regulator. We are of the opinion that the broad regulatory role of the Board under the provisions of the IBC, needs to be taken into consideration, while dealing with other aspects of the matter that arise for consideration

in these petitions.

Whether the regulatory fee is with authority of law?

39. The petitioners, particularly Hazel Mercantile Limited, has contended before this Court that the impugned Regulation 31A introduced by way of amendment with effect from 01.10.2022 in the IBBI Regulations, is without authority of law, as it is beyond the powers and functions of the Board under Section 196 of the IBC. In order to consider the said contention, it would be necessary to refer to Sections 196(1)(c) and 240 of the IBC. Section 196(1)(c) provides for a power with the Board to levy fee or other charges for carrying out the purposes of the IBC, including fee for registration and renewal of the said service providers. The attempt of the petitioner – Hazel Mercantile Limited is to restrict the levy of fee or other charges only to the aforementioned three service providers i.e. insolvency professionals, insolvency professional agencies and information utilities. We find that the said contention of the petitioner – Hazel Mercantile Limited is devoid of any substance, simply for the reason that limiting the power of the Board to levy fee or other charges only to the aforementioned three service providers, would render specific words used in Section 196(1)(c) as otiose and meaningless. In this context, the respondent Board is justified in relying upon judgements of the Supreme Court in **Umed Vs. Raj Singh** (*supra*) and **V. Jagannadha Rao Vs. State of A.P.** *(supra)* wherein it is laid down that interpretation of a provision that renders some of its words superfluous, redundant or meaningless, must be avoided.

40. It is crucial to note that the words that would be rendered meaningless by such an interpretation, were substituted by a specific amendment in the IBC, that was brought into effect from

06.06.2018. The words added by the said amendment i.e. “for carrying out the purposes of this code, including” are crucial and go to the very heart of the matter. Addition of the said words by way of amendment shows that the legislature consciously provided for a power in the Board, as a regulator under the IBC, to levy fee or other charges for carrying out the purposes of the IBC, thereby indicating that the Board does have the power to levy such a fee beyond collecting fee for registration and renewal of the aforesaid three service providers. Therefore, we are unable to agree with the contention raised on behalf of the petitioner – Hazel Mercantile Limited that under Section 196(1)(c) of the IBC, the Board, as a regulator, does not have the power to levy fee, as contemplated under Regulation 31A of the IBBI Regulations introduced by the said amendment with effect from 01.10.2022.

41. In this context, Section 240 of the IBC also assumes significance, when it is read with Regulation 31 of the IBBI Regulations. It is significant to note that by the very amendment which introduced Regulation 31A of the IBBI Regulations, clause (ba) was also introduced in Regulation 31, which pertains to insolvency resolution process costs. This, in turn, has to be read with Section 5(13), which defines insolvency resolution process costs, wherein clause (e) states that such costs would mean any other costs that may be specified by the Board. A conjoint reading of Sections 5(13)(e), 196(1)(c) and 240(2)(d) of the IBC and Regulation 31 of the IBBI Regulations, clearly shows that the Board, as a regulator, had the power under the legislative scheme of the IBC to impose regulatory fee by way of Regulation 31A introduced in the IBBI Regulations by the aforesaid amendment. Therefore, the petitioners cannot contend that introduction of regulatory fee by way of amending the IBBI Regulations and inserting Regulation 31A therein,

was without the authority of law. We find that the introduction of Regulation 31A in the IBBI Regulations was well within the quasi-legislative powers conferred on the Board under the aforesaid provisions of the IBC.

<u>Is Regulation 31A ultra vires the provisions of the IBC?</u>

42. The petitioners have vehemently argued that the impugned regulatory fee in Regulation 31A of the IBBI Regulations, is ultra vires the provisions of the IBC and that it is in the teeth of the scheme of IBC. In that context, reference is made to various provisions of the IBC, particularly Section 5(13) thereof. It is contended that the aforesaid clause (e) thereof has to be read *ejusdem generis* with clauses (a) to (d). It is contended that the general words used in clause (e) necessarily take their colour from the restrictive words used in clauses (a) to (d) of Section 5(13) of the IBC. In this context, the petitioners specifically relied upon the contents of clauses (a) to (d) of Section 5(13) of the IBC, to claim that they formed a single or uniform class and therefore, the general words used in clause (e) must necessarily be read in the narrow context of clauses (a) to (d).

43. Much emphasis was placed on the judgement of the Supreme Court in the case of **Nirma Industries Limited and another vs. Securities and Exchange Board of India** (*supra*), in support of the said contention. On the other hand, the respondent – Board relied upon judgements of the Supreme Court in the cases of **Grasim Industries Limited vs. Collector of Stamps** (*supra*), **Rajasthan State Electricity Board, Jaipur vs. Mohan Lal and others** (*supra*) and **Pioneer Urban Land and Infrastructure Limited vs. Union of India and others** (*supra*), to demonstrate that the principle of *ejusdem generis* could certainly not be invoked in the context of Section 5(13)

(e) of the IBC.

44. Before the rival contentions in this context are analyzed, it would be appropriate to refer to Section 5(13) as also other provisions of the IBC and the IBBI Regulations that concern the concept of CIRP costs. Section 5(13) of the IBC reads as follows:

> "5. **Definitions**.—
>
> In this Part, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (13) "insolvency resolution process costs" means—
>
> (a) the amount of any interim finance and the costs incurred in raising such finance;
>
> (b) the fees payable to any person acting as a resolution professional;
>
> (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
>
> (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
>
> (e) any other costs as may be specified by the Board;"

45. Regulation 31 and 31A of the IBBI Regulations read as follows:

> "**31. Insolvency resolution process costs**.
>
> "Insolvency resolution process costs" under Section 5(13)(e) shall mean-
>
> (a) amounts due to suppliers of essential goods and services under Regulation 32;
>
> (aa) fee payable to authorised representative under sub-regulation (8) of regulation 16A;
>
> (ab) out of pocket expenses of authorised representative for discharge of his functions under section 25A;
>
> (ac) fee payable to facilitator under clause (c) of sub-regulation (1) of regulation 16C.

(b) amounts due to a person whose rights are prejudicially affected on account of the moratorium imposed under section 14(1)(d);

(ba) fee payable to the Board under regulation 31A;

(c) expenses incurred on or by the interim resolution professional to the extent ratified under Regulation 33;

(d) expenses incurred on or by the resolution professional fixed under Regulation 34; and

(e) other costs directly relating to the corporate insolvency resolution process and approved by the committee.

31A. Regulatory Fee

(1) A regulatory fee calculated at the rate of 0.25 per cent of the realisable value to creditors under the resolution plan approved under section 31, shall be payable to the Board, where such realisable value is more than the liquidation value:

Provided that this sub-regulation shall be applicable where resolution plan is approved under section 31, on or after 1st October 2022.

Explanation: For removal of doubts, it is hereby clarified that the regulatory fee under this sub-regulation, shall not be payable in cases where the approved resolution plan in respect of insolvency resolution of a real estate project is from an association or group of allottees in such real estate project.

(2) A regulatory fee calculated at the rate of one per cent of the cost being booked in insolvency resolution process costs in respect of hiring any professional or other services by the interim resolution professional or resolution professional, as the case may be, for assistance in a corporate insolvency resolution process, shall be payable to the Board, in the manner as specified in clause (cb) of sub-regulation (2) of regulation (7) of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016."

46. Section 240(2)(d) is also relevant in this context and it has been already quoted hereinabove.

47. The above-quoted Section 5(13) of the IBC concerns insolvency resolution process costs and clause (e) thereof states that such costs would include any other costs as may be specified by the Board. Section 240(2)(d) gives power to the Board to frame regulations in respect of other costs, as specified in Section 5(13)(e) of the IBC and as noted hereinabove, Section 196(1)(c) thereof gives power to the Board to levy fee or other charges for carrying out the purposes of IBC.

48. By way of amendment, clause (ba) was added to Regulation 31 of the IBBI Regulations, which concerns insolvency resolution process costs, specifically under Section 5(13)(e) of the IBC and by the very same amendment, the impugned Regulation 31A was also introduced in the IBBI Regulations. All the aforesaid provisions read together bring out the meaning and definition of the expression 'insolvency resolution process costs'. As per the said provisions, this definition includes the impugned regulatory fee introduced by Regulation 31A in the IBBI Regulations by way of amendment with effect from 01.10.2022. In this backdrop, the assertion of the petitioners, while invoking the principle of *ejusdem generis* in the context of clause (e) to Section 5(13) of the IBC, has to be considered.

49. The law relating to the concept of *ejusdem generis* is by now well-settled and it has been referred to and relied upon by the Courts as an interpretative tool on many occasions. In the case of **Rajasthan State Electricity Board, Jaipur vs. Mohan Lal and others** (*supra*) and **Pioneer Urban Land and Infrastructure Limited vs. Union of India and others** (*supra*), the Supreme Court had an occasion to deal with

the said concept. The Constitution Bench of the Supreme Court, in the case of **Rajasthan State Electricity Board, Jaipur vs. Mohan Lal and others** (*supra*), observed as follows:

> "**4.** In our opinion, the High Courts fell into an error in applying the principle of *ejusdem generis* when interpreting the expression 'other authorities' in Article 12 of the Constitution, as they overlooked the basic principle of interpretation that, to invoke the application of *ejusdem generis* rule, there must be a distinct genus or category running through the bodies already named. *Craies on Statute Law* summarises the principle as follows:
>
> 'The *ejusdem generis* rule is one to be applied with caution and not pushed too far…. To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, but the mention of a single species does not constitute a genus [*Craies on Statute Law*, 6^{th} Edn, p 181].'
>
> Maxwell in his book on 'Interpretation of Statutes' explained the principle by saying: 'But the general word which follows particular and specific words of the same nature as itself takes its meaning from them, and is presumed to be restricted to the same genus as those words …. Unless there is a genus or category, there is no room for the application of the *ejusdem generis* doctrine [Maawell on Interpretation of Statutes, 11th Edn pp 326, 327]'. In United Towns Electric Co., Ltd. v. Attorney-General for Newfoundland [(1939) I AER 423], the Privy Council held that, in their opinion, there is no room for the application of the principle of *ejusdem generis* in the absence of any mention of a genus, since the mention of a single species — for example, water rates — does not constitute a genus. In Article 12 of the Constitution, the bodies specifically named are the Executive Governments of the Union and the States, the Legislatures of the Union and the States, and local authorities. We are unable to find any common genus running through these named bodies, nor can these bodies be placed in one single category on any

> rational basis. The doctrine of *ejusdem generis* could not, therefore, be, applied to the interpretation of the expression "other authorities" in this article."

50. This principle was followed in a number of judgements, including the judgement of the Supreme Court, in the case of **Grasim Industries Limited vs. Collector of Stamps** (*supra*). In the said case, while discussing the principle of *ejusdem generis*, the Supreme Court observed as follows:

> "**12.** In the background of what has been urged by the assessee it has to be further seen whether the principles of *ejusdem generis* have application. The rule is applicable when particular words pertaining to a class, category or genus are followed by general words. In such a case the general words are construed as limited to things of the same kind as those specified. The rule reflects an attempt to reconcile incompatibility between the specific and general words in view of the other rules of interpretation that all words in a statute are given effect if possible, that a statute is to be construed as a whole and that no words in a statute are presumed to be superfluous. The rule applies only when (1) the statute enumerates the specific words, (2) the subjects of enumeration constitute a class or category, (3) that class or category is not exhausted by the enumeration, (4) the general terms follow the enumeration, and (5) there is no indication of a different legislative intent. If the subjects of enumeration belong to a broad-based genus, as also to a narrower genus there is no principle that the general words should be confined to the narrower genus. In interpreting Section 30 of the United Towns Electrical Company Act, 1902 which reads 'the company shall be liable for water rates on all lands and buildings owned by it in the aforesaid towns, but otherwise the company shall be exempt from taxation', the Privy Council rejected the contention that the word 'taxation' should be considered *ejusdem generis* with 'water rate'. It was held that there is no room for application of the principle in the absence of any mention of a genus, since the mention of a single species, for example of water rates, does not constitute a genus. (See: United Towns Electric Co. Ltd. v. Attorney-General for

Newfoundland [(1939) 1 All ER 423 (PC)] .) The rule cannot be applied unless there is genus constituted or a category disclosed. If the preceding words do not constitute mere specifications of a genus but constitute description of a complete genus, the rule has no application. The rule has to be applied with care and caution. This is not an inviolable rule of law, but it is only permissible inference, in the absence of any indication to the contrary. Where the context and the object and mischief of the enactment do not require restricted meaning to be attached to words of general import it becomes the duty of the courts to give those words their plain and ordinary meaning. The following enunciation in *Craies on Statute Law* (7th Edn.), at pp. 181-82 succinctly states the principle:

> 'The modern tendency of the law, it was said, (by Asquith, J. in Allen v. Emmerson [1944 KB 362 : (1944) 1 All ER 344 (KBD)]) is 'to attenuate the application of the rule of *ejusdem generis*'. To invoke the application of the *ejusdem generis* rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects. Where this is lacking, the rule cannot apply, (Hood-Barrs v. IRC [(1946) 2 All ER 768 : 176 LT 283 (CA)]) but the mention of a single species does not constitute a genus. (Per Lord Thankerton in United Towns Electric Co. Ltd. v. Attorney-General for Newfoundland [(1939) 1 All ER 423 (PC)] .) 'Unless you can find a category,' said Farwell, L.J., (in Tillmanns and Co. v. S.S. Knutsford [(1908) 2 KB 385 : 77 LJ KB 778 : 99 LT 399 (CA)] 'there is no room for the application of the *ejusdem generis* doctrine,' and where the words are clearly wide in their meaning they ought not to be qualified on the ground of their association with other words. For instance, where a local Act required that 'theatres and other places of public entertainment' should be licensed, the question arose whether a 'funfair' for which no fee was charged for admission was within the Act. It was held to be so, and that the *ejusdem generis* rule did not apply to confine the words 'other

> places' to places of the same kind as theatres. So the insertion of such words as 'or things of whatever description' would exclude the rule. (Attorney-General v. Leicester Corpn. [(1910) 2 Ch 359 : (1908-10) All ER Rep Ext 1002 : 103 LT 14]) In N.A.L.G.O. v. Bolton Corpn. [1943 AC 166 : (1942) 2 All ER 425 (HL)] Lord Simon, L.C. referred to a definition of 'workman' as any person who has entered into a works under a contract with an employer whether the contract be by way of manual labour, clerical work 'or otherwise' and said:'The use of the words "or otherwise" does not bring into play the *ejusdem generis* principle : for "manual labour" and "clerical work" do not belong to a single limited genus' and Lord Wright in the same case said:'The *ejusdem generis* rule is often useful or convenient, but it is merely a rule of construction, not a rule of law. In the present case it is entirely inapt. It presupposes a "genus" but here the only "genus" is "a contract with an employer".' "

51. In a relatively recent judgement in the case of **Pioneer Urban Land and Infrastructure Limited vs. Union of India and others** (*supra*), the Supreme Court considered the said principle of *ejusdem generis* along with the principle of *noscitor a sociis* in the context of the provisions of the IBC. The relevant portion of the said judgement reads as follows:

> "**84.** It was then argued, relying on a large number of judgments that Section 5(8)(f) must be construed noscitur a sociis with clauses (a) to (e) and (g) to (i), and so construed would only refer to loans or other financial transactions which would involve money at both ends. This, again, is not correct in view of the fact that Section 5(8)(f) is clearly a residuary 'catch all' provision, taking within it matters which are not subsumed within the other sub-clauses. Even otherwise, in CED v. Kantilal Trikamlal [CED v. Kantilal Trikamlal, (1976) 4 SCC 643 : 1977 SCC (Tax) 90], this Court has held that when an expression is a residuary one, *ejusdem generis* will not apply. It was thus held : (SCC p. 655, para 21)

"21. … We have also to stress the expression "other right" in the explanation which is of the widest import and cannot be constricted by reading it ejusdem generis with "debt". "Other right", in the context, is expressly meant considerably to widen the concept and therefore suggests a somewhat contrary intention to the application of the ejusdem generis rule. We may derive instruction from Green's construction of the identical expression in the English Act. [Section 45(2)]. The learned author writes:

> 'A disclaimer is an extinguishment of a right for this purpose. Although in the event the person disclaiming never has any right in the property, he has the right to obtain it, this inchoate right is a "right" for the purposes of Section 45(2). The ejusdem generis rule does not apply to the words "a debt or other right" and the word "right" is a word of the widest import. Moreover, the expression "at the expense of the deceased" is used in an ordinary and natural manner; and is apt to cover not only cases where the extinguishment involves a loss to the deceased of a benefit he already enjoyed, but also those where it prevents him from acquiring the benefit.'

85. Also, in *Subramanian Swamy* v. *Union of India* (2016) 7 SCC 221, this Court held : (SCC pp. 291-93, paras 70-74)

"70. The other aspect that is being highlighted in the context of Article 19(2) is that defamation even if conceived of to include a criminal offence, it must have the potentiality to "incite to cause an offence". To elaborate, the submission is the words "incite to cause an offence" should be read to give attributes and characteristics of criminality to the word "defamation". It must have the potentiality to lead to breach of peace and public order. It has been urged that the intention of clause (2) of Article 19 is to include a public law remedy in respect of a grievance that has a collective impact but not as an actionable claim under the common law by an individual and, therefore, the word "defamation" has to be understood in that context, as the associate words are "incitement to an offence" would so warrant. Mr Rao, learned Senior Counsel, astutely canvassed that unless the word "defamation" is understood in this manner applying the principle of *noscitur a sociis*, the cherished and natural right of freedom of speech and expression which has been recognised under Article 19(1)(*a*) would be absolutely at peril. Mr Narasimha, learned ASG would contend that the said rule of construction would not be applicable to understand the meaning of the term "defamation". Be it noted, while construing the provision of Article 19(2), it is the duty of the Court to keep in view the exalted spirit, essential aspects, the value and philosophy of the Constitution. There is no doubt that the principle of *noscitur a sociis* can be taken recourse to in order to understand and interpret the Constitution but while applying the principle, one has to keep in mind the contours and scope of applicability of the said principle.

71. In *State of Bombay* v. *Hospital Mazdoor* Sabha, AIR 1960 SC 610, it has been held that it must be borne in mind that *noscitur a sociis* is merely a rule of construction and it cannot prevail in cases where it is clear that wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the said rule of construction can be usefully applied. It can also be applied where the meaning of the words of wider import is doubtful; but, where the object of the legislature in using wider words is clear and free of ambiguity, the rule of construction in question cannot be pressed into service.

72. In *Bank of India* v. *Vijay Transport*, 1988 Supp SCC 47, the Court was dealing with the contention that a literal interpretation is not always the only interpretation of a provision in a statute and the court has to look at the setting in which the words are used and the circumstances in which the law came to be passed to decide whether there is something implicit behind the words actually used which would control the literal

meaning of the words used. For the said purpose, reliance was placed on *R.L. Arora* v. *State of U.P.,* (1964) 6 SCR 784. Dealing with the said aspect, the Court has observed thus : *Bank of India* v. *Vijay Transport*, 1988 Supp SCC 47], SCC p. 51, para 11)

> ‘*11.* … It may be that in interpreting the words of the provision of a statute, the setting in which such words are placed may be taken into consideration, but that does not mean that even though the words which are to be interpreted convey a clear meaning, still a different interpretation or meaning should be given to them because of the setting. In other words, while the setting of the words may sometimes be necessary for the interpretation of the words of the statute, but that has not been ruled by this Court to be the only and the surest method of interpretation.’

73. The Constitution Bench, in *Godfrey Phillips (India) Ltd.* v. *State of U.P.* (2005) 2 SCC 515, while expressing its opinion on the aforesaid rule of construction, opined : (SCC pp. 550 & 551, paras 81 & 83)

> ‘*81.* We are aware that the maxim of *noscitur a sociis* may be a treacherous one unless the “*societas*” to which the “*socii*” belong, are known. The risk may be present when there is no other factor except contiguity to suggest the “*societas*”. But where there is, as here, a term of wide denotation which is not free from ambiguity, the addition of the words such as “including” is sufficiently indicative of the *societas*. As we have said, the word “includes” in the present context indicates a commonality or shared features or attributes of the including word with the included.
>
> ***
>
> *83.* Hence on an application of general principles of interpretation, we would hold that the word “luxuries” in Entry 62 of List II means the activity of enjoyment of or indulgence in that which is costly or which is

> generally recognised as being beyond the necessary requirements of an average member of society and not articles of luxury.'

74. At this juncture, we may note that in *Ahmedabad Private Primary Teachers' Assn.* v. *Administrative Officer* (2004) 1 SCC 755, it has been stated that *noscitur a sociis* is a legitimate rule of construction to construe the words in an Act of Parliament with reference to the words found in immediate connection with them. In this regard, we may refer to a passage from Justice G.P. Singh, *Principles of Statutory Interpretation* [(13th Edn., 2012) 509] where the learned author has referred to the lucid explanation given by Gajendragadkar, J. We think it appropriate to reproduce the passage:

> 'It is a rule wider than the rule of *ejusdem generis*; rather the latter rule is only an application of the former. The rule has been lucidly explained by Gajendragadkar, J. in the following words:
>
>> "This rule, according to Maxwell [Maxwell, *Interpretation of Statutes* (11th Edn., 1962) 321], means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general."'

The learned author on further discussion has expressed the view that meaning of a word is to be judged from the company it keeps i.e. reference to words found in immediate connection with them. It applies when two or more words are susceptible of analogous meanings are coupled together, to be read and understood in their cognate sense. [G.P. Singh, *Principles of Statutory Interpretation* (8th Edn.) 379.] *Noscitur a sociis* is merely a rule of construction and cannot prevail where it is clear that wider and diverse etymology is intentionally and deliberately used in the provision. It is only when and where the intention of the legislature in associating wider words with words of narrowest significance is doubtful or otherwise not clear, that the rule of *noscitur a sociis* is useful.

> **86.** It is clear from a reading of these judgments that noscitur a sociis being a mere rule of construction cannot be applied in the present case as it is clear that wider words have been deliberately used in a residuary provision, to make the scope of the definition of "financial debt" subsume matters which are not found in the other sub-clauses of Section 5(8). This contention must also, therefore, be rejected."

52. The exposition of the principles of *ejusdem generis* and *noscitor a sociis* by the Supreme Court in the aforementioned judgements and followed thereafter in various other judgements, makes it sufficiently clear that for invoking the said principles, the general words used in a provision of law have to be preceded by words that form an identifiable class or genus. It is also laid down that if the preceding words do not form such a class or genus, the general words used in the later portion of the provision cannot be limited to the preceding words, apart from holding that the principle of *ejusdem generis* does not apply to a residuary clause. The position of law as enumerated in the said judgements also clarifies that if the subjects specified in the preceding words belong to a broad-based genus as well as a narrow genus, the general words should not be confined to the narrower genus. This is most crucial for the argument of principle of *ejusdem generis* raised on behalf of the petitioners.

53. In this backdrop, when we peruse clauses (a) to (d) of Section 5(13) of the IBC, pertaining to insolvency resolution process costs, it is found that each clause pertains to a different class or genus of expenses or costs under the IBC. Clause (a) pertains to interim finance and the costs incurred in raising such finance. Clause (b) refers to fees payable to any person acting as a resolution professional. Clause (c) refers to costs incurred by the resolution

professional in running the business of the corporate debtor as a going concern and clause (d) refers to costs incurred at the expense of the Government to facilitate the insolvency resolution process.

54. We are of the opinion that each of the clauses from (a) to (d) of Section 5(13) of the IBC refer to distinct costs and they cannot be classified as belonging to a particular class or genus. Clause (e), which comes at the end of clauses (a) to (d) of Section 5(13) of the IBC, uses the words 'any other costs as may be specified by the Board'. The said words used in clause (e) cannot be said to be general words, following the specific words used in the preceding clauses, that form a single class or genus of words.

55. We find that clause (e) as a residuary clause, cannot be read in a narrow fashion by invoking the principle of *ejusdem generis* in context of clauses (a) to (d), which precede it. It is also relevant to note that clause (e) refers to costs that may be specified by the Board, while costs referred to in clauses (a) to (d) in the said provision, are costs that are distinctly enumerated, which have nothing to do with each other in terms of their nature and the stages at which such costs are incurred. Consequently, the principle of *noscitor a sociis* can also not be invoked because the words in clause (e) of Section 5(13) of the IBC have nothing in common with the words used in clauses (a) to (d) of the said provision.

56. In any case, Section 5(13) has to be read with Section 196(1)(c) and 240(2)(d) of the IBC. As noted hereinabove, Regulation 31 of the IBBI Regulations specifically pertains to the power of the Board to include certain levies as part of the insolvency resolution process costs. In this context, clause (e) of Regulation 31 of the IBBI Regulations is also significant, as it pertains to other costs directly

relating to corporate insolvency, CIRP and approved by the Committee. Thus, it cannot be said that the Board could not impose the impugned regulatory fee as part of the insolvency resolution process costs, on the ground that the Board can levy a fee or charge only in the nature of fee identified in clauses (a) to (d) of Section 5(13) of the IBC.

57. We also find that the petitioners cannot rely upon the judgement of the Supreme Court in the case of **Nirma Industries Limited & Anr. vs. Securities and Exchange Board of India** (*supra*). A perusal of the said judgement shows that the Supreme Court was considering such a purported residuary clause in a Regulation, which was itself couched in negative terms. It was found that the concerned Regulation itself indicated a class of circumstances, wherein a public offer once made in the context of Regulations framed by the Securities and Exchange Board of India, could not be withdrawn. On facts, it was found that the clauses preceding the said general clause indicated the circumstances, wherein such a public offer could not be withdrawn and that such circumstances indeed formed a specific class or genus. In such facts, the Supreme Court held that the concerned clause of the Regulation would have to be read along with the words used in the preceding clauses and in that context, the principle of *ejusdem generis* was applied.

58. We are of the opinion that the case of **Nirma Industries Limited and another vs. Securities and Exchange Board of India** (*supra*) being distinguishable on facts, cannot be relied upon by the petitioners, in support of their contention that in the present case, the Board could not have invoked its regulation-making power to include the impugned regulatory fee, as part of the insolvency resolution process costs, under Section 5(13)(e) of the IBC. Once

such a conclusion is reached, it becomes evident that the petitioners cannot successfully claim that the impugned Regulation 31A can be said to be *ultra vires* the provisions of the IBC.

59. As noted hereinabove, a proper and conjoint reading of Sections 5(13)(e), 196(1)(c) and 240(2)(d) of the IBC with Regulations 31 and 31A of the IBBI Regulations, clearly demonstrates that the Board was well within its powers to frame the impugned Regulation 31A of the IBBI Regulations with effect from 01.10.2022, in order to levy the regulatory fee as part of the insolvency resolution process costs, so defined under the provisions of the IBC.

<u>Whether regulatory fee is a tax or fee?</u>

60. The petitioners have made a frontal attack on the impugned regulatory fee introduced by way of amendment, as per Regulation 31A of the IBBI Regulations with effect from 01.10.2022, contending that in real terms, it is a tax and not a fee. The petitioners allege that regulatory fee is a compulsory exaction from entities like the petitioners, who are successful resolution applicants, although the Board which is entitled to recover such regulatory fee provides no service at all to the CIRP, much less to the successful resolution applicants like the petitioners. This contention is stoutly refuted on behalf of the respondent No.1 – Board and in that context, the rival parties have relied upon a series of judgments. A reference to the said judgments would indicate the manner in which the law relating to a levy being treated as a tax or fee, has developed over a period of time and thereupon, the position of law, as it stands today, can be applied to the facts of the present case.

61. The petitioners placed reliance on judgment of the Constitution Bench of the Supreme Court (seven Hon'ble Judges), in

the case of **Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (*supra*), wherein the distinction between tax and fee was deliberated upon. The Supreme Court in the said judgment held that the distinction between a tax and a fee primarily lies in the fact that tax is levied as part of the common burden, while a fee is a payment for special benefit or privilege. The relevant portion of the said judgment, upon which the petitioners heavily relied, reads as follows :

> "46. As regards the distinction between a tax and a fee, it is argued in the first place on behalf of the respondent that a fee is something voluntary which a person has got to pay if he wants certain services from the Government; but there is no obligation on his part to seek such services and if he does not want the services, he can avoid the obligation. The example given is of a licence fee. If a man wants a licence that is entirely his own choice and then only he has to pay the fees, but not otherwise. We think that a careful examination will reveal that the element of compulsion or coerciveness is present in all kinds of imposition, though in different degrees and that it is not totally absent in fees. This, therefore, cannot be made the sole or even a material criterion for distinguishing a tax from fees. It is difficult, we think, to conceive of a tax except, it be something like a poll tax, the incidence of which falls on all persons within a State. The house tax has to be paid only by those who own houses, the land tax by those who possess lands, municipal taxes or rates will fall on those who have properties within a municipality. Persons, who do not have houses, lands or properties within municipalities, would not have to pay these taxes, but nevertheless these impositions come within the category of taxes and nobody can say that it is a choice of these people to own lands or houses or specified kinds of properties so that there is no compulsion on them to pay taxes at all. Compulsion lies in the fact that payment is enforceable by law against a man in spite of his unwillingness or want of consent; and this element is present in taxes as well as in fees. Of course, in some cases whether a man would come within the category of a service receiver may be a matter of his choice, but that by itself would not constitute a major test which can be taken as the criterion of this species of imposition. The distinction between a tax and a fee lies primarily in the fact that a tax is

> levied as a part of a common burden, while a fee is a payment for a special benefit or privilege. Fees confer a special capacity, although the special advantage, as for example in the case of registration fees for documents or marriage licences, is secondary to the primary motive of regulation in the public interest [Findlay Shirras, Science of Public Finance, Vol. I, 202] . Public interest seems to be at the basis of all impositions, but in a fee it is some special benefit which the individual receives. As Seligman says, it is the special benefit accruing to the individual which is the reason for payment in the case of fees; in the case of a tax, the particular advantage if it exists at all is an incidental result of State action [Seligman's Essays on Taxation, 409]."

62. In the case of **Hingir-Rampur Coal Co. Ltd. and others vs. State of Orissa and others** (*supra*), the Supreme Court in a Constitution Bench of five Hon'ble Judges held that in regard to a fee as opposed to a tax, there must always be correlation between the fee collected and the service intended to be rendered. It was held that where the legislature attempted to impose a tax under the guise of levying a fee, it could be colourable exercise of power and that the Courts would be well within their rights to scrutinize the scheme of the levy very carefully, to examine whether there was a correlation between the service and the levy.

63. In the case of **Sreenivasa General Traders vs. State of AP** (*supra*), a two Judge Bench of the Supreme Court considered the development of law as regards the distinction between tax and fee. It was found that the traditional view, that there must be actual *quid pro quo* for a fee, had undergone a sea change in subsequent decisions. In that context, the Supreme Court in the said judgment made the following observations :

> "31. The traditional view that there must be actual quid pro quo for a fee has undergone a sea change in the subsequent decisions. The distinction between a tax and a fee lies primarily in the fact that a tax is levied as part of a common burden, while a fee is for payment of a specific

benefit or privilege although the special advantage is secondary to the primary motive of regulation in public interest if the element of revenue for general purpose of the State predominates, the levy becomes a tax. In regard to fees there is, and must always be, correlation between the fee collected and the service intended to be rendered. In determining whether a levy is a fee, the true test must be whether its primary and essential purpose is to render specific services to a specified area or class; it may be of no consequence that the State may ultimately and indirectly be benefited by it. The power of any legislature to levy a fee is conditioned by the fact that it must be “by and large” a quid pro quo for the services rendered. However, correlationship between the levy and the services rendered (*sic* or) expected is one of general character and not of mathematical exactitude. All that is necessary is that there should be a “reasonable relationship” between the levy of the fee and the services rendered. If authority is needed for this proposition, it is to be found in the several decisions of this Court drawing a distinction between a ‘tax’ and a ‘fee’. (See: *The Commissioner, Hindu Religious Endowments, Madras* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [AIR 1954 SC 282 : 1954 SCR 1005 : 1954 SCJ 335] ; *H.H. Sudhundra Thirtha Swamiar* v. *Commissioner for Hindu Religious and Charitable Endowments, Mysore* [1963 Supp 2 SCR 302 : AIR 1963 SC 966] ; *The Hingir-Rampur Coal Co. Ltd.* v. *State of Orissa* [AIR 1961 SC 459 : (1961) 2 SCR 537] ; *H.H. Shri Swamiji of Shri Admar Mutt* v. *Commissioner. Hindu Religious and Charitable Endowments Department* [(1979) 4 SCC 642 : 1980 SCC (Tax) 16 : (1980) 1 SCR 368] ; *Southern Pharmaceuticals and Chemicals, Trichur* v. *State of Kerala* [(1981) 4 SCC 391 : 1981 SCC (Tax) 320 : (1982) 1 SCR 519] and *Municipal Corporation of Delhi* v. *Mohd. Yasin* [(1983) 3 SCC 229 : 1983 SCC (Tax) 154 : AIR 1983 SC 617].)

32. There is no generic difference between a tax and a fee. Both are compulsory exactions of money by public authorities. Compulsion lies in the fact that payment is enforceable by law against a person in spite of his unwillingness or want of consent. A levy in the nature of a fee does not cease to be of that character merely because there is an element of compulsion or coerciveness present in it, nor is it a postulate of a fee that it must have direct relation to the actual service rendered by the authority to each individual who obtains the benefit of the service. It is now increasingly realised that merely because the

collections for the services rendered or grant of a privilege or licence are taken to the consolidated fund of the State and not separately appropriated towards the expenditure for rendering the service is not by itself decisive. Presumably, the attention of the Court in the *Shirur Mutt case* [(1980) 1 SCC 416 : AIR 1980 SC 1008 : (1979) 3 SCR 1217] was not drawn to Article 266 of the Constitution. The Constitution nowhere contemplates it to be an essential element of fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo in the strict sense is not always a sine qua non for a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax: *Constitutional Law of India* by H.M. Seervai, Vol. 2, 2nd Edn., p. 1252, paras 22, 39."

64. In the case of **B.S.E. Brokers' Forum, Bombay and others vs. Securities and Exchange Board of India and others** (*supra*), upon which even the petitioners placed reliance, a three Judge Bench of the Supreme Court had an occasion to consider a fee, found to be regulatory in nature, imposed upon Stock Brokers and others. In the said judgment, the Supreme Court referred to earlier precedents and observed as follows :

"31. In the case of *City Corpn. of Calicut* v. *Thachambalath Sadasivan* [(1985) 2 SCC 112 : 1985 SCC (Tax) 211] this Court reflected the change that is taking place in the judicial thinking as to the difference between a tax and a fee. It held that the traditional concept of quid pro quo in a fee is undergoing transformation, though the fee must have relation to the services rendered, or the advantages conferred, it is not necessary to establish that those who pay the fee must receive direct or special benefit or advantage of the services rendered for which the fee is being paid. It held that if one who is liable to pay receives general benefit from the authority levying the fee the element of service required for collecting fee is satisfied.

32. In the case of *Sirsilk Ltd.* v. *Textiles Committee* [1989 Supp (1) SCC 168 : 1989 SCC (Tax) 219 : AIR 1989 SC 317] this Court held that when the entire proceeds of the fee are utilised in financing the various projects undertaken by the Textiles Committee, it cannot be said that there is no reasonable and sufficient correlation between the levy of fee

and the services rendered by the Textiles Committee. It further held that when the levy of the fee is for the benefit of the entire textile industry, there is sufficient quid pro quo between the levy recovered and the services rendered to the industry as a whole.

33. In a more recent case of *Commr. & Secy. to Govt., Commercial Taxes & Religious Endowments Deptt.* v. *Sree Murugan Financing Corpn.* [(1992) 3 SCC 488] this Court, after taking into consideration the financial involvement of general public in the chit funds, observed that the object of the Act obviously was to protect the interest of the subscribers and more the number of subscribers meant more the burden on the authorities under the Act and as a consequence, more fee is required to meet the expenditure. Taking note of the human expectation of winning in a draw or a bid at the auction and becoming rich overnight mostly by the lower-middle class and the poor who invest their hard-earned money in such chit funds, this Court held that a situation like that makes the levy a regulatory measure since the collection of such funds from such category of people will have to be monitored strictly, and it also held that the Act and the Rules which operate with such objectives, if charge enhanced fee, such enhancement is justified in law as amounting to sufficient quid pro quo.

34. In *Krishi Upaj Mandi Samiti* v. *Orient Paper & Industries Ltd.* [(1995) 1 SCC 655] rejecting the contention of the respondent therein, this Court held that the machinery created under the said Act is meant to facilitate and benefit all the buyers and sellers of all the agricultural produce within the market area and it cannot be said that the respondent Mills are neither directly nor indirectly a beneficiary of the said machinery.

35. In the case of *Secy. to Govt. of Madras* v. *P.R. Sriramulu* [(1996) 1 SCC 345] testing the validity of the Court Fee Act involved therein, this Court negatived the contention that the expenses incurred by the administration of justice in criminal courts should not be treated as sufficient quid pro quo for the levy of court fee in civil cases. It held that such levy should not be examined so minutely or be weighed in golden scales to discern any difference between the two. It also held that there could not be any scientific method by which levy of fee may be made exactly corresponding to the expenditure in a particular year relating to the administration of civil justice. It held that it is not the requirement of law that the collection raised by the

levy should exactly tally or correspond to the expenditure in the administration of civil justice. It further held that the test of corelation of the collection with the services rendered is to be reckoned at the aggregate level and not at the individual level.

36. In *Vam Organic Chemicals Ltd.* v. *State of U.P.* [(1997) 2 SCC 715] this Court held that there is a distinction between a fee charged for licence, that is regulatory fees and fees for services rendered as compensatory fees. In the case of regulatory fees, the Court held that like the licence fees, existence of quid pro quo is not necessary although the fee imposed must not, in the circumstances of the case, be excessive, keeping in view the quantum and nature of the work involved in the required supervision.

37. In *Secunderabad Hyderabad Hotel Owners' Assn.* v. *Hyderabad Municipal Corpn.* [(1999) 2 SCC 274] this Court after considering the earlier judgments, to some of which we have already made reference, held that a licence fee may be either regulatory or compensatory. When a fee is charged for rendering specific services, a certain element of quid pro quo must be there between the service rendered and the fee charged so that the licence fee is commensurate with the cost of rendering the service although the exact arithmetical equivalence is not expected. It held, however, that it is not the only kind of fee which can be charged. Licence fees can also be regulatory when the activities for which a licence is given require to be regulated or controlled. The fee which is charged for regulation of such activity would be validly classifiable as a fee and not a tax although no service is rendered. An element of quid pro quo for levy of such fee is not required although such fees cannot be excessive.

38. As noticed in the *City Corpn. of Calicut* [(1985) 2 SCC 112 : 1985 SCC (Tax) 211] the traditional concept of quid pro quo in a fee has undergone considerable transformation. From a conspectus of the ratio of the above judgments, we find that so far as the regulatory fee is concerned, the service to be rendered is not a condition precedent and the same does not lose the character of a fee provided the fee so charged is not excessive. It is also not necessary that the services to be rendered by the collecting authority should be confined to the contributories alone. As held in *Sirsilk Ltd.* [1989 Supp (1) SCC 168 : 1989 SCC (Tax) 219 : AIR 1989 SC 317] if the levy is for the benefit of the entire industry, there is sufficient quid pro quo

> between the levy recovered and services rendered to the industry as a whole. If we apply the test as laid down by this Court in the abovesaid judgments to the facts of the case in hand, it can be seen that the statute under Section 11 of the Act requires the Board to undertake various activities to regulate the business of the securities market which requires constant and continuing supervision including investigation and instituting legal proceedings against the offending traders, wherever necessary. Such activities are clearly regulatory activities and the Board is empowered under Section 11(2)(*k*) to charge the required fee for the said purpose, and once it is held that the fee levied is also regulatory in nature then the requirement of quid pro quo recedes to the background and the same need not be confined to the contributories alone."

65. The Supreme Court in the said judgment went on to examine the data relating to the expenditure incurred by SEBI and held that the Court could examine reasonableness of a levy in the case of a regulatory fee to find out whether there was a correlatable *quid pro quo,* but *quid pro quo* was not a condition precedent for levy of a regulatory fee. The only limited examination that could be undertaken was, as to whether the levy was excessive and unreasonable.

66. The above quoted observations made by the Supreme Court in the said case of **B.S.E. Brokers' Forum, Bombay and others vs. Securities and Exchange Board of India and others** (*supra*) are important because they also refer to earlier judgments of the Supreme Court in various cases, including *VAM Organic Chemicals Ltd. and another vs. State of U.P. and others,* **(1997) 2 SCC 715**, upon which the petitioners have placed much reliance.

67. Thereafter, in the case of **State of West Bengal vs. Kesoram Industries Limited** (*supra*), another Constitution Bench of the Supreme Court (five Hon'ble Judges) considered the position of law in respect of levy of fee, when a challenge was raised thereto on the

ground that in real terms it amounted to imposition of tax. In the context of the evolution of law and the manner in which the position of law had changed over a period of time with regard to distinction between tax on the one hand and fee on the other, the Supreme Court in the said judgment observed as follows :

> "146. As stated earlier also, the impugned cess can be justified as fee as well. The term cess is commonly employed to connote a tax with a purpose or a tax allocated to a particular thing. However, it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax; it may be a fee or fee as well. It is not necessary that the services rendered from out of the fee collected should be directly in proportion with the amount of fee collected. It is equally not necessary that the services rendered by the fee collected should remain confined to the persons from whom the fee has been collected. Availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of the fee collected is enough to uphold the validity of the fee charged. The levy of the impugned cess can equally be upheld by reference to Entry 66 read with Entry 5 of List II."

68. Thus, it becomes evident that with passage of time, in the context of levy of a fee, even availability of indirect benefit and a general nexus between the persons bearing the burden of levy of fee and the services rendered out of such fee, was found to be enough to uphold the validity of such a fee. This is crucial in the present case, for the reason that the petitioners on the one hand claim that the respondent Board provides no service at all to them, as they are successful resolution applicants and they are not regulated by the Board, while on the other hand, the respondent Board claims that it provides wide ranging services throughout CIRP to all the stakeholders, including the petitioners, who are successful resolution applicants. In this context, the rival parties relied upon the provisions of the IBC and the Regulations framed thereunder. An analysis of the

same would be necessary to reach a conclusion in the matter.

69. But, before undertaking the aforesaid exercise, it would be appropriate to further consider a few judgments, upon which the rival parties have placed reliance, indicating the manner in which the law regarding distinction between tax and fee has evolved as also the position with regard to regulatory fee imposed by an Authority.

70. In the case of **Calcutta Municipal Corporation and others vs. Shrey Mercantile (P) Ltd. and others** (*supra*), upon which the petitioners placed reliance, the Court struck down a fee on the ground that there was no element of any service rendered in the facts of the said case. In the said judgment, the Supreme Court reiterated the distinction between tax and fee. Reference was also made to imposition of fee, primarily for the purpose of regulation and control, which could be classified as an exercise of 'police power'. It was held that if the primary purpose of the levy is generating revenue and regulation is merely incidental, then the imposition is clearly a tax. We are of the opinion that although the petitioners heavily relied upon the said judgment, the settled position of law with regard to distinction between tax and fee was reiterated and in the facts and circumstances of the said case, the levy was found to be a tax masquerading as a fee.

71. The petitioners have also relied on judgment of the Supreme Court in the case of **Delhi Race Club Limited vs. Union of India and others** (*supra*). In the said case also, after taking note of the series of judgments on the aforesaid distinction between tax and fee, the Supreme Court held as follows :

> "42. Thus, it is clear that a licence fee imposed for regulatory purposes is not conditioned by the fact that there must be a quid pro quo for the services rendered, but that,

> such licence fee must be reasonable and not excessive. It would again not be possible to work out with arithmetical equivalence the amount of fee which could be said to be reasonable or otherwise. If there is a broad correlation between the expenditure which the State incurs and the fees charged, the fees could be sustained as reasonable."

72. We are of the opinion that even though the petitioners have relied upon the said judgment, the observations made therein, take forward the evolution of law in the context of the distinction between a fee and tax to the point that general correlation between the levy imposed and the service rendered without mathematical equivalence would be enough to sustain the levy as a fee and not classify it as tax.

73. In the case of **Jalkal Vibhag Nagar Nigam and others vs. Pradeshiya Industrial and Investment Corporation and another** (*supra*), a three Judge Bench of the Supreme Court, while considering a levy imposed by a municipal body while deliberating upon the nature of the levy, observed as follows :

> "61. The distinction between a tax and fee has substantially been effaced in the development of our constitutional jurisprudence. At one time, it was possible for courts to assume that there is a distinction between a tax and a fee : a tax being in the nature of a compulsory exaction while a fee is for a service rendered. This differentiation, based on the element of a quid pro quo in the case of a fee and its absence in the case of a tax, has gradually, yet steadily, been obliterated to the point where it lacks any practical or constitutional significance. For one thing, the payment of a charge or a fee may not be truly voluntary and the charge may be imposed simply on a class to whom the service is made available. For another, the service may not be provided directly to a person as distinguished from a general service which is provided to the members of a group or class of which that person is a part. Moreover, as the law has progressed, it has come to be recognised that there need not be any exact correlation between the expenditure which is incurred in providing a service and the amount which is realised by the State. The distinction that while a tax is a

compulsory exaction, a fee constitutes a voluntary payment for services rendered does not hold good. As in the case of a tax, so also in the case of a fee, the exaction may not be truly of a voluntary nature. Similarly, the element of a service may not be totally absent in a given case in the context of a provision which imposes a tax.

62. The gradual obliteration of the distinction between a tax and a fee on a conceptual level has been the subject-matter of several decisions of this Court.

63. In *Southern Pharmaceuticals & Chemicals* v. *State of Kerala* [*Southern Pharmaceuticals & Chemicals* v. *State of Kerala*, (1981) 4 SCC 391 : 1981 SCC (Tax) 320] A.P. Sen, J. speaking for the Court held : (SCC pp. 408-10, paras 24-25)

> '*24*. The distinction between a "tax" and a "fee" is well-settled. The question came up for consideration for the first time in this Court in *Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* [*Commr., Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, (1954) 1 SCC 412 : 1954 SCR 1005 : AIR 1954 SC 282] . …
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> *25*. "Fees" are the amounts paid for a privilege, and are not an obligation, but the payment is voluntary. Fees are distinguished from taxes in that the chief purpose of a tax is to raise funds for the support of the Government or for a public purpose, while a fee may be charged for the privilege or benefit conferred, or service rendered or to meet the expenses connected therewith. Thus, fees are nothing but payment for some special privilege granted on service rendered. Taxes and taxation are, therefore, distinguishable from various other contributions, charges, or burdens paid or imposed for particular purposes and under particular powers or functions of the Government. *It is now increasingly realised that merely because the collections for the services rendered or grant of a privilege or licence, are taken to the consolidated fund of the State and are not separately appropriated towards the expenditure for rendering the service is not by itself decisive. That*

> *is because the Constitution did not contemplate it to be an essential element of a fee that it should be credited to a separate fund and not to the consolidated fund. It is also increasingly realised that the element of quid pro quo stricto senso is not always a sine qua non of a fee. It is needless to stress that the element of quid pro quo is not necessarily absent in every tax*. We may, in this connection, refer with profit to the observations of Seervai in his *Constitutional Law*, to the effect : [H.M. Seervai, *Constitutional Law of India*, 2nd Edn., Vol. 2, p. 1252, paras 22 & 39.]
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>> 'It is submitted that as recognised by Mukherjea, J. himself, the fact that the collections are not merged in the consolidated fund, is not conclusive, though that fact may enable a court to say that very important feature of a fee was present. *But the attention of the Supreme Court does not appear to have been called to Article 266 which requires that all revenues of the Union of India and the States must go into their respective consolidated funds and all other public moneys must go into the respective public accounts of the Union and the States*. It is submitted that if the services rendered are not by a separate body like the Charity Commissioner, but by a government department, *the character of the imposition would not change because under Article 266 the moneys collected for the services must be credited to the consolidated fund. It may be mentioned that the element of quid pro quo is not necessarily absent in every tax*.'

Our attention has been drawn to the observations in *Kewal Krishan Puri* v. *State of Punjab* [*Kewal Krishan Puri* v. *State of Punjab*, (1980) 1 SCC 416, 425 : (1979) 3 SCR 1217, 1230] : (SCC p. 425, para 8)

> '*8.* … The element of quid pro quo must be established between the payer of the fee and the authority charging it. It may not be the exact equivalent of the fee by a mathematical precision, yet, by and large, or predominantly, the authority collecting the fee must show that the service which they are rendering in lieu of fee is for some special benefit of the payer of the fee.'

> To our mind, these observations are not intended and meant as laying down a rule of universal application. The Court was considering the rate of a market fee, and the question was whether there was any justification for the increase in rate from Rs 2 per every hundred rupees to Rs 3. There was no material placed to justify the increase in rate of the fee and, therefore, it partook the nature of a tax. It seems that the Court proceeded on the assumption that the element of quid pro quo must always be present in a fee. The traditional concept of quid pro quo is undergoing a transformation."

74. The petitioners have also relied upon judgment of the Constitution Bench of the Supreme Court (9 Hon'ble Judges) in the case of **Mineral Area Development Authority and another vs. Steel Authority of India and another** (*supra*). In the said judgment also, which really concerned the levy of a tax, it was observed that in the context of a regulatory fee, there has to be some relationship between the levy and the services provided. If such relationship was demonstrated, the fee could be said to be reasonable and valid.

75. In a recent judgment rendered by a two Judge Bench of the Supreme Court in the case of **Small Scale Entrepreneurs Association and others vs. State of Maharashtra and others** (*supra*), the Supreme Court again referred to a series of its judgments, including judgements rendered by Constitution Benches, on the aspect of distinction between tax and fee. Thereupon, in the aforesaid judgment, the following observations were made :

> "83. In three Judges Bench decision in the case of *Sreenivasa General Traders* v. *State of Andhra Pradesh*14 it was held that there is no generic difference between tax and a fee as the traditional law distinguishing tax from fee has undergone a sea change. The distinction between a fee and tax lies primarily between the fact that tax is a part of common burden while a fee is for payment of a specific benefit or privilege. In regard to the fee, there is, and must always be, direct relation between fee collected and the services intended to be rendered. In determining whether a

levy is a fee, the true test must be whether its primary and essential purpose is to render specific services. The benefit, if any, derived by the State out of such fee collected is of no consequences. The power of any legislature to levy a fee is conditioned by the fact that it must "by and large" be a *quid pro quo* for the services rendered and that there should be a "reasonable relationship" between the levy of the fee and the services rendered.

84. In short, despite the distinction between "tax" and "fee" having been blurred to some extent but still it has not been completely done away with and the distinction, though very fine, continues to remain. The tax is a compulsory extraction for the collection of revenue whereas fee is in the nature of a charge for the services rendered. The element of *quid pro quo* is an essential characteristic of a fee or a charge. Therefore, so long as the said element *ex facie* exists, the levy of fee or charges cannot be equated with tax.

85. The appellants have cited a large number of decisions including that of the Constitution Benches of this Court as large as of nine Judges to bring home the point that distinction between tax and fee has more or less vanished and that the levy of fee/charges partakes taxation. However, despite blurring of the traditional distinction between a fee and taxation, one thing is very much clear that where there is explicit reasonable relationship between levy of fee/service charges and the services rendered, the distinction would continue to stand and the fee/charges would not be treated as part of tax."

76. Having referred to the judgments relied upon by the rival parties, starting with the judgment of the Supreme Court in the case of **Commissioner, Hindu Religious Endowments, Madras vs. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (*supra*) rendered in the year 1954 till the aforesaid recent judgment rendered in the year 2026 by the Supreme Court in the case of **Small Scale Entrepreneurs Association and others vs. State of Maharashtra and others** (*supra*), the evolution of the law with regard to determining whether a levy is a fee or a tax, is clearly noticeable. It is evident that although the distinction has blurred, but nonetheless, a fine distinction still exists.

An element of *quid pro quo* is still an essential characteristic of a fee and it is this aspect that distinguishes it from a tax. But, the nature of *quid pro quo* and the service rendered for the levy charged as a fee has become broad based and general, over a period of time in terms of the law laid down by the Supreme Court in the aforesaid judgments. It is no longer necessary for the authority imposing a fee, particularly a regulatory fee, to strictly demonstrate the exact service rendered as *quid pro quo* for the fee charged from certain entities.

77. Applying the said position of law to the present case, it would be enough for the respondent Board to show generalized and broad-based *quid pro quo* services provided to the stakeholders in the process of the CIRP under the IBC. It is relevant to note that the stakeholders in CIRP include the members of CoC as well as resolution applicants like the petitioners. In fact, this Court finds the contention raised on behalf of the petitioner-Hazel Mercantile Limited to the effect that it had nothing to do with CIRP, as a completely untenable submission, worthy of being rejected outright. We fail to understand how the petitioner-Hazel Mercantile Limited can claim that it has nothing to do with CIRP when the whole process of CIRP is tuned and dynamically operates with the active participation of all stakeholders, particularly the CoC and the resolution applicants.

78. The emphasis on the part of the petitioners, as noted in the earlier part of this judgment, was on the manner in which the respondent Board regulates the three service providers i.e. insolvency professionals, insolvency professional agencies and service utility. The petitioners claimed that, if at all, the respondent Board was regulating any aspect of CIRP, it was only the said three service providers. Although the said contention has been dealt with in the

earlier part of this judgment, further discussion on the same is warranted in the context of the aforesaid contention raised on behalf of the petitioners that the impugned regulatory fee is actually a tax masquerading as fee and that therefore, on this ground alone, the impugned Regulation 31A of the IBBI Regulations imposing such regulatory fee, deserves to be struck down.

79. This Court is of the opinion that the respondent Board by regulating the aforesaid three service providers, on that score itself, regulates CIRP for the reason that the three service providers play an active role during the process of CIRP. The respondent Board is fastened with the responsibility of ensuring that the aforesaid three service providers maintain the integrity of CIRP and that they ensure that the process is undertaken with maximum efficiency and immediacy. Apart from this, a reference to the relevant provisions of the IBC quoted hereinabove, demonstrates that the role of the respondent Board is not restricted to regulating only the aforesaid three service providers.

80. As per Section 196(1)(c) of the IBC, the respondent Board has power to levy fee or other charges for carrying out the purposes of the IBC. It also has the power under Section 196(1)(t) to make regulations and guidelines on matters relating to insolvency and bankruptcy, as may be required for the purposes of the IBC, including the mechanism for time bound disposal of the assets of the corporate debtor or debtor. Although, the words 'for the purposes of this Code' have been added by recent amendment dated 06.04.2026, they can be treated as a useful aid for the purpose of understanding the role of the respondent Board throughout the process of CIRP and the object of the IBC for reviving the corporate debtor, as a going concern.

81. At this stage, reference to various clauses of Section 240(2) of the IBC merits consideration. Under the said provision, the respondent Board is empowered to make regulations to provide for various matters concerning CIRP. These are found in the numerous clauses in the said provision and they indicate as to the manner in which the process of CIRP and all the stakeholders therein are indeed regulated by the respondent Board and that it therefore provides service to the process of CIRP in that context.

82. Clause (nc) of Section 240(2) of the IBC provides for the manner of voting and determining the vote share in respect of financial debts under Section 21(7) of the IBC. Section 21(7) of the IBC specifically empowers the respondent Board to specify as to the manner in which the voting and determining the voting share of the CoC is to be undertaken. The aforesaid action of the CoC is at the very heart of the process of CIRP, therefore, indicating the role of the respondent Board in that context. Clause (o) of Section 240(2) of the IBC gives power to the Board to frame regulations with regard to the persons who shall comprise the CoC, the functions to be exercised by the CoC and the manner in which functions shall be exercised under priviso to Section 21(8) of the IBC. The said proviso pertains to a situation where a corporate debtor does not have any financial creditors and when the CoC has to be constituted and comprise of such persons, as may be specified by the Board. This is another crucial function performed by the respondent Board during CIRP.

83. Clause (oa) of Section 240(2) of the IBC, although introduced recently by amendment dated 06.04.2026, in Section 240(2) of the IBC, for the purposes of interpretation can also be perused. It empowers the Board to make regulations for specifying any other class or classes of creditors who may attend the meeting of CoC

under proviso to Section 21(11) of the IBC. Clause (p) thereof pertains to other electronic means by which members of the CoC can meet under Section 24(1) of the IBC, while clause (q) thereof pertains to the manner of assigning voting share to each creditor under Section 24(7) of the IBC. Clause (r) to Section 240(2) of the IBC pertains to the manner of conducting meetings of the CoC under Section 24(8) thereof.

84. Clauses (u) and (v) of Section 240(2) of the IBC pertain to the power of the Board to make regulations in respect of various aspects of preparation of information memorandum by the insolvency professional under Section 29 of the IBC. Clause (w) provides for the manner in which the Board can make regulations for making payment of insolvency resolution process costs and other details thereof. Clauses (wa), (wb), (wc) and (wd) of Section 240(2) of the IBC, concern various aspects of submission of the resolution plan, such as the manner in which the CoC members approve the resolution plan by a vote of not less than 66% of voting share, the manner in which the second proviso to Section 31 of the IBC pertaining to approval of resolution plan would be finalized, its form, manner and conditions and eventually, if the matter goes to liquidation, the condition under proviso to Section 33(2) of the IBC.

85. Clauses (zt), (zu), (zw) and (zx) of Section 240 (2) of the IBC provide for various aspects of the CIRP, including constitution of the committees by the Board etc. The aforementioned relevant clauses of Section 240(2) of the IBC have been quoted in the earlier part of this judgment and a perusal thereof indeed shows that the role of the Board in providing its various services during the CIRP is not a constricted or a narrow one, as canvassed on behalf of the petitioners. On the other hand, it is indeed a widely prevalent role

performed by the respondent Board throughout the process of the CIRP, right from the moment it is initiated till the resolution plan is either approved by the adjudicatory authority i.e. the NCLT or rejected, which then leads to the process of liquidation. The role of the respondent Board is further widened by the introduction of the concept of *cross-border insolvency* under Section 240C of the IBC. This includes the process for recognition of proceedings, judicial co-operation, assistance and co-ordination in such cases of *cross-border insolvency* for classes of debtors or corporate debtors, involving various countries and territories outside India. A perusal of the IBBI Regulations indeed shows that Board has framed Regulations for crucial stages of CIRP, which include Chapter V for CoC, Chapter VI for meetings of the Committee, Chapter VII for voting by the Committee, Chapter VIII for conduct of CIRP, Chapter IX for insolvency resolution process costs and Chapter X for resolution plan.

86. Hence, the role of the respondent Board sought to be read in a narrow and constricted manner by the petitioners in order to claim that there is absolutely no *quid pro quo* insofar as they are concerned, is found to be unsustainable. The whole process of preparation of the resolution plan and submission of the same before the CoC, approval thereof by requisite majority of the members of the CoC and then the finalized plan being placed before the adjudicatory authority i.e. NCLT, is a process in respect of which the respondent Board performs a wide ranging an integral role, thereby indicating that there is indeed substance in the contention raised on behalf of the respondent Board that it is responsible for ensuring that the CIRP is undertaken with expediency and immediacy to revive the corporate debtor as a going concern to meet the ultimate object and purpose for which the IBC has been enacted.

87. We are of the opinion that the role of the respondent Board as noticed in the earlier part of this judgment, starting from the manner in which the report of the BLRC of November 2015 ascribed responsibilities to the proposed Board under the IBC, which was contemplated as a statute at that point in time, indicates the crucial regulatory role performed by the respondent Board, for the purposes of the IBC. The Courts have been relying on the respondent Board as a statutory regulator for various aspects of CIRP, including for laying down guidelines for the manner in which members of the CoC shall conduct their affairs, in order to ensure that the process of CIRP is expeditiously taken to its logical end. In that sense, the respondent Board is justified in claiming that it provides a conducive 'eco-system' for efficient completion of CIRP, in order to meet the goals for which the IBC has been enacted. Hence, the petitioners are not justified in relying on judgement of the Supreme Court in the case of **State of Rajasthan & Anr. vs. Rajasthan Chemists Association** *(supra)* to claim that there is no causal nexus between the measure of the levy and the levy itself.

88. Once the aforesaid conclusions are reached, it becomes clear that the impugned levy i.e. the regulatory fee passes the test of law, as it has evolved with regard to the necessary ingredients and constituents of a fee, as opposed to a tax. Since, specific service and *quid pro quo* is not required to be demonstrated by the respondent Board, in order to justify imposition of the impugned levy, the statutory scheme of the IBC and the regulations framed thereunder, clearly demonstrate that the Board indeed provides wide-ranging general service and *quid pro quo* in the process of CIRP to all the stakeholders, including the petitioners and therefore, the impugned levy cannot be treated as a tax. The contention of the petitioners that it is in reality a tax masquerading as a fee, deserves to be rejected.

Accordingly, it is rejected.

<u>Is the impugned regulatory fee bad, as it is excessive in nature?</u>

89. The petitioners have also challenged the impugned regulatory fee on the ground that it is excessive and expropriatory in nature, as a consequence of which in reality it has become a compulsory imposition in the form of a tax. In this context, the petitioners have relied upon some judgments and reference is also made to the audited statement of account of the respondent Board.

90. The petitioners have relied upon the judgments of the Supreme Court in the cases of **P. M. Ashwathanarayana Setty and others vs. State of Karnataka and others** (*supra*); *A. P. Paper Mills Ltd. vs. Govt. of A.P. and another,* **(2020) 8 SCC 167**; **State of U.P. and others vs. VAM Organic Chemicals Ltd. and others** (*supra*); **State of H.P and others vs. Shivalik Agro Poly Products and others** (*supra*) and the judgment of this Court in case of **Vidarbha Chamber of Commerce and Industries, Akola vs. Commissioner, Municipal Corporate of Akola City and another** (*supra*). The thrust of the contention raised on behalf of the petitioners by relying upon the said judgments is that the levy of the impugned regulatory fee in the form of 0.25% of the realisable value to creditors under the resolution plan, is disproportionate and excessive, as it is not justified in any manner when appreciated in the context of the expenditure incurred by the Board in performing its functions. The petitioners claim that there has to be some correlation between the totality of the receipts and the value of the totality of services provided by the respondent Board. It is contended that the moment this balance is disturbed, the levy is rendered arbitrary, unreasonable, disproportionate and therefore, it offends Article 14 of the

Constitution of India.

91. We have carefully considered the aforesaid judgments of the Supreme Court and this Court. We find that in the case of **P. M. Ashwathanarayana Setty and others vs. State of Karnataka and others** (*supra*), the levy in question was not a regulatory fee. It was held that the fee would lose its character and become tax, if it enriches the general revenue of the State to be applied for general purposes. We find that in the present case, the levy of the regulatory fee is by the respondent Board and the amount collected remains with the Board to meet its expenses for the services that it renders. The amount collected through the impugned regulatory fee under the Regulation 31A of the IBBI Regulations w.e.f. 01.10.2022, does not go into the general revenue of the State and on this ground itself, the said judgment is inapplicable to the facts of the present case.

92. In the case of **State of U.P. and others vs. VAM Organic Chemicals Ltd. and others** (*supra*), the Supreme Court found that the enhancement in the levy of the licence fee could not be justified on the basis of the material on record, as the State had failed to produce material about incurring of additional costs etc. In the case of **State of H.P. and others vs. Shivalik Agro Poly Products and others** (*supra*), the Supreme Court, as a matter of fact, found in favour of the State as regards the levy of registration fee. In the case of **A. P. Paper Mills Ltd. vs. Govt. of A.P. and another** (*supra*) on the basis of failure of the State to justify enhancement of fee, the Court rendered adverse findings.

93. In this context, we have heard rival submissions of the parties on the facts and figures that came to the fore in the light of the audited annual accounts of the respondent Board for the financial

year ending 2024-25. Although, these facts and figures were produced by way of a compilation on behalf of the petitioners, at the time of hearing, the respondent Board did not deny the contents thereof. This Court perused the same with the assistance of the learned counsel representing the rival parties. Having perused the said figures, we do not find any reason to hold that excessive amounts have been collected by the Board by levying the impugned regulatory fee, to the extent that it can be concluded to be excessive and disproportionate. All that the said figures indicate is that while prior to the impugned regulatory fee being brought into effect from 01.10.2022, the respondent Board was suffering a deficit, which had to be made good by contributions from the Government, after the impugned regulatory fee has been levied, the respondent Board is able to meet its expenditure and it is also left with surplus. Merely because the respondent Board has ended up having surplus in its collection, cannot *ipso facto* lead to the conclusion that the impugned regulatory fee is excessive and disproportionate, to be held in reality as a tax imposed without authority of law. We are unable to agree with the petitioners on the said ground of challenge.

94. We find substance in the contention raised on behalf of the respondent Board that as a regulatory body, in order to maintain its integrity as a regulator to provide best services, so that the process of CIRP is completed efficiently, to meet the very object of the IBC, financial independence of the Board is a *sine qua non*.

95. The report of the National Council of Applied Economic Research (NCAER) of December 2021 with regard to evaluation of the regulatory performance of the respondent Board, records that a regulator like the respondent Board must have financial independence. Although, in the initial years, such a regulator may

obtain loans from the Government, independent funding of the respondent Board as a regulator has the benefit of operational efficiency, freedom from the Government on pay and budgeting and it avoids conflict of interest arising from the political economy. These are crucial aspects flagged by the NCAER, which is one of India's oldest and largest independent economic think tank set up in the year 1956 to inform policy choices for both Government and Industry.

96. There is merit in the contention raised on behalf of the respondent Board that introduction of the regulatory fee by way of Regulation 31A of the IBBI Regulations is a step in the direction for ensuring financial independence of the Board as a regulatory authority and watchdog in the overall scheme of the IBC, with specific focus on CIRP, for revival of the corporate debtor, as a going concern. This, in turn, is at the very heart of the IBC and the process of CIRP. Therefore, the petitioners are not justified in contending that even if a broad and general *quid pro quo* or service is rendered by the respondent Board, the impugned regulatory fee being excessive and disproportionate renders it as a tax in real terms. There is no material to reach the said conclusion and it cannot be said that the imposition of regulatory fee and the manner in which it is recovered, renders it a tax. The said contention raised on behalf of the petitioners to challenge the validity of the impugned Regulation as *ultra vires* the constitution under Article 14 of the Constitution of India, is also rejected.

<u>Is the impugned regulatory fee retrospective in operation?</u>

97. The petitioners have contended that the *proviso* to impugned Regulation 31A of the IBBI Regulations renders it retrospective in

operation, and therefore, the impugned Regulation deserves to be struck down. Alternatively, it is contended that the *proviso* to clause (1) of impugned Regulation 31A needs to be struck down, even if the Regulation is to be sustained.

98. The thrust of the submissions of the petitioners, is on the assertion that once the resolution plan is approved by the CoC, under the scheme of the IBC, it is 'cast in stone'. The petitioners rely upon the provisions of the IBC, particularly Sections 30 and 31 thereof, read with judgements of the Supreme Court, to contend that once the resolution plan is approved by the CoC, it is binding on the resolution applicant as well as the CoC and since there cannot be any modification thereof, the *proviso* to impugned Regulation 31A of the IBBI Regulations, is rendered unsustainable as being retrospective in operation, for it would amount to allowing the resolution plan, approved by the CoC, being tinkered with.

99. By placing reliance on judgement of the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited and another** (*supra*), it is emphasized that the adjudicatory authority i.e. the NCLT only looks at the resolution plan approved by the CoC for examining whether it is compliant with Section 30(2) of the IBC and that the NCLT can either approve the same or reject it. Rejection of the resolution plan has the drastic consequence of taking the corporate debtor to the process of liquidation. Introduction of the impugned regulatory fee, in the context of the petitioners, at the stage when their resolution plans were pending before the NCLT, created a situation where the NCLT had no option but to reject the resolution plan, which was admittedly otherwise compliant with all the requirements of Section 30(2) of the IBC. At the heart of this contention is the claim of the

petitioners that the NCLT as the adjudicatory authority under Section 31 of the IBC merely performs a ministerial act, verifying a checklist of the requirements of Section 30(2) of the IBC and that, the NCLT does not perform any further role in the matter.

100. On the other hand, the respondent Board asserts that if the contentions raised on behalf of the petitioners are accepted, it would reduce the NCLT i.e. the adjudicatory body, to performing the role of merely ticking boxes regarding the requirements specified in Section 30(2) of the IBC. This goes against the scheme of the IBC where the NCLT, as the adjudicatory authority, indeed has a pivotal role to play. In this context, the respondent Board relies upon judgement of the Supreme Court in the case of **Essar Steel India Limited Committee of Creditors vs. Satish Kumar Gupta** (*supra)*. The rival submissions in this context will have to be analyzed on the basis of the provisions of the IBC.

101. It would also be helpful to refer to the report of the BLRC of November, 2015, which was a precursor to the enactment of the IBC. The said report indicated that the adjudicatory authority would be akin to a bankruptcy judge whose main objective would be to ensure that the insolvency or bankruptcy resolution is being performed within the framework laid down by law. Section 31 of the IBC gives details of the role of the adjudicatory authority i.e. the NCLT in the context of approving or sanctioning the resolution plan approved by the CoC. While doing so, the adjudicatory authority has to make sure that the requirements of Section 30(2) of the IBC have been satisfied in the resolution plan. The aforesaid provision requires the examination of the resolution plan received from the resolution applicant and verifying whether it satisfies the requirements enumerated therein. There is an elaborate set of requirements but

the crucial aspect of the matter is that under Section 30(2)(a) of the IBC, it is to be ensured that the resolution plan provides for payment of insolvency resolution process costs in a manner specified by the Board, in priority to the payment of other debts of the corporate debtor. Section 53 of the IBC, which specifies the waterfall mechanism for distribution of assets under clause (a) to sub-section (1) thereof, also places at the top the payment in full of the insolvency resolution process costs. Thus, when the adjudicatory authority considers the resolution plan approved by the CoC under Section 31 of the IBC, it has to ensure that the resolution plan provides for payment of insolvency resolution process costs in priority over other debts of the corporate debtor. The adjudicatory authority is also required to ensure that the other requirements specified in Section 30(2) of the IBC are satisfied.

102. In this backdrop, the observations made by the Supreme Court in the case of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & another** (*supra*) will have to be appreciated. A perusal of the said judgement indeed shows that the commercial wisdom of CoC, while approving the resolution plan with requisite majority, has to be given primacy and the adjudicatory authority cannot sit in appeal over the same. It is also emphasized in the said judgement that the adjudicatory authority has to act in such a manner that the objectives of the IBC for speedy, predictable and timely resolution are duly satisfied. It is also observed therein that the IBC envisages a certain level of finality before the resolution plan is submitted to the adjudicatory authority and further that, once the CoC approves the resolution plan and it is submitted to the adjudicatory authority for approval, as between the CoC and the resolution applicant, it is binding and no modifications can be made therein.

103. Even if the said position of law is to be taken into account, we are unable to agree with the contention of the petitioners that the consequence thereof is that under the IBC, the adjudicatory authority i.e. the NCLT is reduced to merely performing a ministerial job. We also disagree with the petitioners when they assert that the adjudicatory authority merely performs the job of ticking boxes on a checklist as regards requirements specified in Section 30(2) of the IBC. The aforesaid interpretation of the petitioners is not borne out from the provisions of the IBC, particularly Sections 30 and 31 thereof. The adjudicatory authority is certainly required to leave the commercial wisdom of approval of the proposed resolution plan upon the CoC, but it certainly cannot be reduced to being a body performing a ministerial act, having no adjudicatory role. Therefore, the aforesaid contention raised on behalf of the petitioners is rejected.

104. A perusal of the judgement of the Supreme Court in the case of **Essar Steel India Limited Committee of Creditors Vs. Satish Kumar Gupta** (*supra)* shows that in a given case, the adjudicatory authority can send the resolution plan back to the Committee of Creditors to re-submit the same after satisfying the required parameters. The introduction of *proviso* to sub-section (2) of Section 31 of the IBC dated 06.04.2026 further throws light on the role of the adjudicatory authority while considering the resolution plan submitted after approval of the CoC. The said *proviso* specifies that the adjudicatory authority may, before rejecting the resolution plan, give notice to the CoC to rectify any defects in the resolution plan. Although the said amendment has been brought about recently, it is a pointer towards the manner in which role of the adjudicatory authority can be construed under the scheme of the IBC. There can be no doubt that when the adjudicatory authority exercises power under sub-section

(2) of Section 31 of the IBC to reject a resolution plan, the consequence is drastic in the form of the process of liquidation being initiated under Section 33 thereof. The said consequence of liquidation under the scheme of the IBC is the last resort, as the focus is on reviving the corporate debtor as a going concern. It is perhaps for this reason that the word 'may' is used in sub-section (2) of Section 31 of the IBC, which states that when the adjudicatory authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1) of Section 31, it may by an order reject the resolution plan. We are of the opinion that upon reading the provisions of Sections 30 and 31 of the IBC in a conjoint and reasonable manner, the role of the adjudicatory authority cannot be reduced to that of performing only a ministerial function. The adjudicatory authority, in a given case, can either send the resolution plan back to the CoC for reconsideration in limited circumstances or it can give notice to the CoC to rectify the defects, if any, in the resolution plan. This flexibility has to be read into the said provisions so that the objectives of the IBC are satisfied.

105. It cannot be said that merely because, in a narrow set of circumstances, the adjudicatory authority could resort to the said option, it would necessarily derail the CIRP. On the other hand, if such play in the joints and flexibility is made available to the process by interpreting the role of the adjudicatory authority in the aforesaid manner, the objectives of the IBC of reviving the corporate debtor as a going concern would be satisfied in a more comprehensive manner. In this context, we find that reliance placed by the petitioners on judgements of the Supreme Court in the cases of **Chitra Sharma and others vs. Union of India and others** *(supra)* and **Swiss Ribbons Private Limited and another vs. Union of India and others** (*supra*), is misplaced. There can be no quarrel with the position recognised in

the said judgements that CIRP is essentially market driven and the focus is on revival of the corporate debtor as a going concern, but that would not render the adjudicatory authority merely as a rubber stamp. In fact, the adjudicatory authority, in a given case, can issue directions to ensure that these very objectives of the IBC are fully satisfied.

106. Although the resolution plan when approved by the CoC would be 'cast in stone' as claimed by the petitioners, it would be so cast in stone only insofar as the CoC and the resolution applicant are concerned. The adjudicatory authority would not be bound by such a resolution plan, as Section 31 of the IBC requires the adjudicatory authority to satisfy itself on the question of the requirements of Section 30(2) of the IBC being satisfied by the resolution plan. Thus, we find that the very basis of the contentions raised on behalf of the petitioners, while alleging that impugned Regulation 31A of the IBBI Regulations is retrospective in nature, can be said to be fallacious. The *proviso* to impugned Regulation 31A of the IBBI Regulations specifies a particular date i.e. 01.10.2022 as the date from which it comes into operation. A bare reading of the *proviso* to Regulation 31A of the IBBI Regulations shows that it is operative from 01.10.2022. On a plain reading, it cannot be said to be retrospective. It is only because the petitioners are reading the role of the adjudicatory authority under Section 31 of the IBC in the aforementioned fallacious manner that they are claiming the effect of the *proviso* to Regulation 31A of the IBBI Regulations as being retrospective in nature.

107. Once the role of Adjudicatory Authority under the provisions of the IBC is understood in the correct perspective, it becomes clear that the argument regarding retrospective operation of the impugned

regulation cannot be sustained. In this backdrop, it becomes clear that reliance placed on behalf of the petitioners on the judgements of the Supreme Court in the cases of *Kalpraj Dharamshi and another vs. Kotak Investment Advisors Limited and another*, **(2021) 10 SCC 401**; **Jaypee Kensington Boulevard Apartments Welfare Association and others vs. NBCC (India) Limited and others** (*supra*); **Piramal Capital and Housing Finance Limited vs. 63 Moons Technologies Limited and others** (*supra*), is misplaced and hence, erroneous. The Supreme Court in the case of *RPS Infrastructure Limited vs. Mukul Kumar and another*, **(2023) 10 SCC 718** did observe that the mere fact that the adjudicatory authority was yet to approve the resolution plan did not imply with the plan would go back and forth as it would render CIRP an endless process, but the said observation was made in the context of the finality of the resolution plan between the CoC and the resolution applicant, once the CoC in its commercial wisdom approves the plan. However, it cannot be interpreted to mean that the adjudicatory authority would be powerless to take a call as to whether, in a given case, the CoC could be asked to reconsider a particular aspect of the plan and / or for removal of defects. Such limited power in the adjudicatory authority has to be read in the scheme of the IBC to ensure that the objective of reviving the corporate debtor as a going concern is achieved.

108. We also find that reliance placed on behalf of the petitioners on the judgements concerning the question of retrospectivity is also misplaced. Since the impugned regulation comes into operation in all cases, like the case of the petitioners, wherein the adjudicatory authority is in the process of considering the resolution plan, there is no question of any vested right under existing law being disturbed or of a new obligation or liability being imposed. Therefore, reliance placed on behalf of the petitioners is misplaced as regards

judgements in the cases of *SEBI vs. Rajkumar Nagpal*, **(2023) 8 SCC 274**; *Govind Das and others vs. Income Tax Officer and another*, **(1976) 1 SCC 906**; *Darshan Singh vs. Ram Pal Singh and another*, **1992 Supp (1) SCC 191**; *K. S. Paripoornan vs. State of Kerala and others*, **(1994) 5 SCC 593**; and *Commissioner of Income Tax (Central-I), New Delhi vs. Vatika Township Private Limited*, **(2015) 1 SCC 1**.

109. It is to be noted that since the impugned regulation fee forms part of the insolvency resolution process costs, which have to be defrayed as top priority under Section 30(2)(a) read with Section 53(1)(a) of the IBC, by operation of the *proviso* to Regulation 31A of the IBBI Regulations, the adjudicatory authority would clearly be well within its powers to call for addition of the said regulatory fee in the resolution plan towards cost of CIRP. In this context, the admitted facts pertaining to the petitioners - Hazel Mercantile Limited and Suraksha Realty Limited show that in both the cases, the resolution plan was submitted before the adjudicatory authority for approval / sanction when the impugned Regulation 31A came into operation with effect from 01.10.2022. Therefore, it cannot be said that the regulation fee was sought to be imposed retrospectively on the said petitioners.

110. In the resolution plan proposed by Hazel Mercantile Limited, it was recorded that the provisions of the IBC, Rules and Regulations framed thereunder, as amended from time to time, would apply to the said resolution plan. It was also specifically provided that the CIRP costs would be paid upfront under the resolution plan and that the escalation or increase of CIRP cost shall also be paid in full. The resolution plan of Suraksha Realty Limited also contained such clauses and additionally, it contained an undertaking that the said

petitioner would pay the CIRP costs as per the IBC and the Regulations framed thereunder. Thus, even as per the resolution plans submitted by the petitioners as resolution applicants, the obligation of payment of insolvency resolution process costs in terms of the provisions of the IBC, as amended from time to time, was acknowledged and undertakings were recorded to that effect. This is another fact indicating that the petitioners cannot be permitted to wriggle out of the said obligation by raising the argument of retrospectivity. We also find substance in the contention raised on behalf of the respondent Board that in a resolution plan, escalation of the insolvency resolution process costs under the impugned regulation fee may ultimately require the creditors to take a hit. But none of the creditors are before this Court, challenging the impugned regulation and it is only the petitioners i.e. the resolution applicants are before this Court and that too in the face of acknowledgment of liability in the resolution plan itself of bearing the insolvency resolution process costs and escalation thereof under the provisions of the IBC and the Regulations made thereunder, as amended from time to time. We are of the opinion that in such circumstances, the petitioners cannot pray for striking down of the impugned Regulation 31A or the *proviso* thereto of the IBBI Regulations on the ground of retrospectivity.

<u>Impugned Regulation 31A of the IBBI Regulations and alleged colourable exercise of power:</u>

111. The petitioners have also contended that including the impugned regulatory fee in insolvency resolution process cost amounts to a colourable exercise of power and it is an artificial levy, which gives collection of such fee priority over other debts due of a corporate debtor under the waterfall mechanism under Section 53 of

the IBC. Reliance in this regard is placed on judgements of the Supreme Court in the cases of **Raja Jagannath Baksh Singh Vs. State of Uttar Pradesh and another** *(supra)* and **Saurashtra Cement & Chemical Industries Limited Vs. Union of India** *(supra)*. In the said judgements, the question pertained to imposition of unreasonably high burden of tax, rendering the levy itself a fraud, being confiscatory in nature. In the present case, we have already concluded hereinabove that the impugned regulatory fee, being only 0.25% of the realizable value to creditors under the resolution plan, cannot be said to be excessive or disproportionate in nature. The petitioners have failed to demonstrate that it could be said to be confiscatory in nature.

112. The provisions of the IBC, particularly Sections 5(13)(e), 196(1)(c), 240(2)(d) read with Regulations 31 and 31A of the IBBI Regulations, when appreciated in the correct perspective, clearly demonstrate that the impugned regulatory fee is correctly placed under the insolvency resolution process cost and the same not being excessive or disproportionate in nature, cannot be said to be amounting to colourable exercise of power. Apart from this, it is not even the case of the petitioners that there is any lack of legislative competence in respect of inclusion of regulatory fee in insolvency resolution process cost and there is no question of any *bona fide* or *mala fide* on the part of the Legislature to invoke the doctrine of *colourable exercise of power*.

113. It is also relevant to note that the petitioners have not even challenged the validity of Sections 5(13), 53, 196(1)(c) and 240(2)(d) of the IBC. Even the validity of Regulation 31(ba) of the IBBI Regulations has not been challenged. In the absence of any such challenge to the said provisions, the petitioners cannot be heard on

the allegation of colourable exercise of power in imposing the impugned regulatory fee. An attempt was also made on behalf of the petitioners to claim that framing of Regulation 31A of the IBBI Regulations to impose regulatory fee amounted to excessive delegation on the ground that uncontrolled power has been given to the respondent Board while framing such Regulation. The impugned Regulation, by way of amendment with effect from 01.10.2022, has been framed under Section 196(1)(c) read with Section 240(2)(d) of the IBC. These provisions are not challenged by the petitioners. The delegation of power to the Board for framing such regulations is not unbridled or unguided, simply for the reason that Section 196(1)(c) empowers the Board to levy fee or charge 'for carrying out the purposes of the Board'. The recovery fee is, therefore, included in insolvency resolution process cost under Section 5(13)(e) of the IBC read with Regulation 31(ba) of the IBBI Regulations, and since insolvency resolution process is an integral part of the very purpose of the enactment of the Code, the allegation regarding excessive delegation is wholly misplaced. In any case, under Section 241 of the IBC, every rule and regulation made under the same is to be laid before each House of Parliament and therefore, the contention regarding the impugned Regulation 31A of the IBBI Regulations suffering from the *vice* of the excessive delegation, is wholly unsustainable and accordingly it is rejected.

114. Although amongst the contentions raised on behalf of the petitioner Suraksha Realty Limited, a reference was made to the argument that Regulation 31A is violative of Article 14 of the Constitution of India on the ground that it exempted real estate allottees, during the course of arguments, the said contention was not pressed before this Court.

CONCLUSION

115. In the light of the discussion hereinabove, we find that the petitioners have not been able to make good their contentions with regard to the impugned Regulation 31A of the IBBI Regulations being either *ultra vires* the parent Statute i.e. IBC or the Regulation being arbitrary and hence violating Article 14 of the Constitution of India. The grounds raised in support of the challenge to the impugned Regulation have been considered in detail hereinabove. The petitioners have not been able to make good the said grounds. Consequently, the declaration sought by the petitioners for quashing and striking down impugned Regulation 31A of the IBBI Regulations, cannot be granted and the petitions deserve to be dismissed.

:: ORDER ::

116. Accordingly, all the four petitions are dismissed and the challenge raised to the validity of impugned Regulation 31A of the IBBI Regulations, pertaining to imposition of regulatory fee, is rejected. All pending applications are also disposed of.

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