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BALANCING SARFAESI AND IBC: JUDICIAL RESPONSE TO MORATORIUM ABUSE - A DOCTRINAL ANALYSIS

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INTRODUCTION

The SARFAESI Act, 2002, and the IBC Act, 2016, create two pillars of the Indian debt recovery and resolution framework. Let us look at a SARFAESI v/s IBC analysis of these two Acts. The provisions of SARFAESI allow the secured creditor mostly banks and financial Institutions to enforce a security interest in the property of the Borrower without the intervention of a court and the focus is mainly asset recovery by taking possession and sale/ auction of the asset as per section 13. The provisions of IBC focus on the resolution of stress assets in a collective manner as per CIRP (Corporate Insolvency Resolution Process) or to go for liquidation and the section 14 moratorium is mainly for protecting the estate of the corporate debtor for the benefit of all across and not to take any action against people until the resolution plan is approved.They have always been in a delicate balance. SARFAESI ensures quick measures for secured creditors whereas IBC provides equitable distribution and revival. Nonetheless, this duality has created differences, especially on the moratorium that may defuse SARFAESI actions. By the year 2025, the jurisprudence has evolved sharply. In recent times, the Supreme Court, NCLAT, NCLT, and High Courts have perceived the IBC moratorium as not merely a shield" for honest resolution seekers but also a possible sword" for chronic defaulters. The landmark decision of the Bombay High Court (March 2026) in Rozina Firoz Hajiani & Ors. v. The Union of India v. Ors. have made very clear lines against misuse.

Developmental stages of interrelationship

The IBC is over a decade younger than SARFAESI Act. Put in place to take care of the rising NPAs, the same allowed banks to avert long-drawn civil suits. Earlier judicial pronouncements permitted parallel proceedings of a bank initiating SARFAESI and at the same time adopting IBC remedy as it held that the IBC remedy having a collective mechanism will not bar individual enforcement until moratorium kicks in.

The IBC, with its overriding effect, lit the path ahead. In the case of Indian Overseas Bank v. RCM Infrastructure Ltd., the Supreme Court, 2022 ruling held that once the CIRP is admitted and the moratorium was declared under Section 14(1)(c), all SARFAESI proceedings including ongoing auctions must stop. No action to foreclose, recover, or enforce any security interest shall be taken because IBC prevails. A sale under SARFAESI is incomplete until receipt of full consideration and vesting of title, clarifies court .

This was refined subsequently. Celir LLP vs Bafna Motors (Mumbai) Pvt. According to the Supreme Court observed that if the borrower does not pay the dues, his right of redemption becomes extinguished with the publication of the auction notice 8 in terms of section 13 of the SARFAESI-latest amendment in 2016.

It limited last-minute redemptions but created friction with the goal of asset preservation by IBC. The NCLAT applied this judgement in 2025 cases, ruling pre-moratorium auction notices can unencumber assets.

This added another layer of personal guarantors.

Sections 94 – 96 of IBC were introduced in 2019. A personal guarantor may, by or against whom, an insolvency application is filed, immediately creates an interim moratorium by virtue of Section 96, against any legal action or proceedings in relation to any debt". Banks viewed this to be a useful tool against the guarantors till 2025, SARFAESI situation became battleground for misuse.

Before 2025, there shall be tolerant overlap in the system. It was held that the SARFAESI auctions can go on till the CIRP admission and that the Section 7 IBC applications are maintainable despite the pending SARFAESI notices. In 2025–2026, strategic filings grew, requiring judicial intervention.

Moratorium Conflicts In Core

There is a conflict between the enforcement powers under SARFAESI and the moratoriums envisaged under the IBC.

Corporate Moratorium (Section 14 IBC): When a CIRP is admitted under any Section 7, 9 or 10, a 180-day period which is extendable and prohibits-

- A suit's institution or continuance
- Conveyance of property.
- Initiating foreclosure or enforcement of security interests, including SARFAESI actions.

This provision takes precedence over SARFAESI by virtue of Section 238. Essentially, if the Bank has issued a demand notice or taken symbolic possession before CIRP admission, further actions post-admission like taking over physical possession or confirming any auction will be barred from doing so after admission. The NCLAT in 2025 confirmed that even partial sales are null and void. For instance, the remaining consideration that was paid at the time of moratorium is void.

<u>Personal Guarantor Moratorium (Section 96 IBC):</u>

The Personal Guarantor Moratorium or Interim Moratorium as per Section 96 of the IBC will create greater complications in the year 2025 through 2026. Upon submitting an application based on debtor initiated (Section 94) or creditor initiated (Section 95) proceedings, the debtor will automatically trigger the moratorium. As such, all debt related proceedings against the personal guarantor (e.g. SARFAESI enforcement against collateral) shall remain suspended.

In the years prior, when there are SARFAESI auctions, the defaulters would file back-to-back personal insolvency applications just prior to a physical possession handover to the auction purchasers as the result of attempting to frustrate their respective third-party rights to the auction property. By filing prior to the physical handover, the automatic stay from the filing creates the effect of neutralizing the third-party auction right; therefore denying the bank from recovering the amount from the auction sale proceeds. The actuarial panels of the NCLT have made clear in early 2025 that the abuse of process provisions of Section 65 of the IBC will be invoked to penalize personal guarantor filings that coincide with the auction date.

Additional conflicts will also exist in the following areas:

- Priority & Distribution: Although secured creditors under Section 26E of the SARFAESI Act will have priority in any sale and distribution of the sale proceeds during a SARFAESI sale, the waterfall provisions under Section 53 of the IBC will dilute the security interest of the secured creditors during a liquidation of such assets. As a result, secured creditors will continue to dispute the sale of the assets during the CIRP process and will continue to file claims for the same asset from both the SARFAESI sale and from the liquidation.

- Redemption v. Resolution: As established in Celir LLP, in the SARFAESI context redemption rights of the secured creditors are extinguished when the secured creditor first conducts a sale of the asset. However, the IBC will provide for an automatic revival of the rights of redemption if a CIRP is commenced subsequent to the sale of the collateral.
- Parallel Proceedings: In the SARFAESI context, a secured creditor may initiate pre-moratorium SARFAESI proceedings against a default debtor; however, once the default debtor's application for CIRP has been admitted by the NCLT, no SARFAESI enforcement proceedings may be commenced against the default debtor. On March 21, 2026, the NCLAT confirmed that any SARFAESI sale that occurred prior to the commencement of the CIRP will be considered complete as of the date of such sale.

Each conflict will delay the resolution of the defaulted debtor thereby diminishing the credibility of the auction and burdening the banks with increased NPAs until the conflict has been resolved.

Judicial Safeguards Against Misuse of IBC (2025–2026)

A definitive judicial crackdown took place during 2025–2026, with an emphasis from courts that IBC was intended for resolving debt, not enabling avoidance of payment of debt.

Bombay High Court Landmark Ruling (March 2026): The Division Bench in Rozina Firoz Hajiani & Ors. v. Republic of India & Ors. , decided March 24, 2026 dealt with what can be described as a textbook case of abuse. HDFC Bank had initiated proceedings under the SARFAESI Act, as well as conducting an auction and issuing a sale certificate. By the time possession was to be handed to the auction purchaser, the borrowers/guarantors filed applications pursuant to Sections 94 and 95, which had the effect of triggering a moratorium under Section 96, and then sought a stay from the DRT.

The High Court quashed the order of the DRT and made the following findings:

1. The IBC filings post-auction constituted an intentional and collusive abuse of the IBC intended to "alias a cloak of immunity," and therefore the secured assets sold under the SARFAESI Act prior to the imposition of the moratorium are not included in the personal estate of the guarantor.

2. The rights of the auction purchasers crystallised upon confirmation of the sale; the moratorium had no effect retroactively to unwind those rights.

3. Writ jurisdiction under Article 226 exists in circumstances where a NCLT/DRT fails to prevent a miscarriage of justice.

The Court described such conduct as a "disturbing trend," and therefore defeated the purposes of both statutes. The Court directed that the DRT dispose of the matter on the merits and safeguard the interests of the banks and auction purchasers.

NCLT/NCLAT Developments: NCLT Ahmedabad imposed costs on a debtor who filed a Section 94 application four days before the auction, finding that the debtor had abused the statutory process and acted in contravention of Section 65.

However, in the case of National Spot Exchange Ltd. v. Union of India, it was clarified that the IBC cannot supersede some statutory seizures (such as MPID Act) and ensures the continuity of SARFAESI priorities in hybrid situations.

These measures are:

- Interventions by auction buyers in the NCLT.
- Skepticism of Section 65 regarding mala fide submissions.
- Preclusion of sale of assets before moratorium.
- Focus on commercial prudence and timely actions.

Effects on Stakeholders and Banking Industry

These judgments restore the efficacy of the SARFAESI scheme for banks. In 2025, recovery ratios showed marginal improvements owing to courts reducing delays. The auction buyers benefit from legal clarity, ensuring more bidding and higher asset valuations.

The borrowers remain protected by appeal options under Section 17 of the SARFAESI Scheme in DRTs, representations under Section 13(3A), and genuine resolution through the IBC process. Yet, the courts distinguish between good-faith financial distress and strategic delays.

Issues still exist, such as NCLT's backlog, inconsistent NCLT interpretations, and an increase in personal guarantor claims. Although banking NPAs have shown some decline, they still face hybrid risks arising from IBC and SARFAESI interactions.

Conclusion

The 2025–2026 jurisprudence signals maturity: IBC moratorium is a tool for resolution, not obstruction. By cracking down on misuse—exemplified by the Bombay High Court and NCLAT—the judiciary has reaffirmed creditor confidence in SARFAESI while upholding IBC's ethos. For India's financial ecosystem, this balance is vital. As NPAs evolve, sustained legislative tweaks and judicial vigilance will ensure both laws complement, rather than collide, in the pursuit of economic resilience.

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