

April 2026

The Supreme Court holds that the defence of set off can be raised against a corporate debtor in arbitration proceedings even if the claims stand extinguished upon approval of a resolution plan

The Supreme Court of India (“**Supreme Court**”) in *Ujaas Energy Limited vs. West Bengal Power Development Corporation Limited*¹ held that while claims not forming part of an approved resolution plan stand extinguished, a limited right to raise the defence of a set off in respect of such claim may still survive, depending on the terms of the resolution plan and in the facts and circumstances of each case. By this judgement, the Supreme Court has clarified the interplay between the ‘clean slate’ principle under the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) following the approval of a resolution plan and the permissibility of raising a plea of set off in proceedings under the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”).

Brief facts

West Bengal Power Development Corporation Limited (“**Respondent**”) floated an e-tender for the manufacture, procurement, and installation of a solar power plant. Ujaas Energy Limited (“**Appellant**”) successfully participated in the bid process and was granted the letter of award.

Subsequently, the Appellant was admitted into Corporate Insolvency Resolution Process (“**CIRP**”). During the CIRP of the Appellant, certain disputes arose between the parties in relation to the performance of the contract. Accordingly, the Appellant through the resolution professional initiated arbitration proceedings against the Respondent. In the arbitration, the Appellant filed its statement of claim, and the Respondent filed its statement of defence and counterclaim. However, the Respondent did not pursue its counterclaim filed in the arbitration before the resolution professional during CIRP.

The National Company Law Tribunal, Indore, accepted the Appellant’s resolution plan, thereby concluding CIRP. The Appellant thereafter filed an Application under Section 31 (6)² of the Arbitration Act (“**Application**”) seeking dismissal of the counterclaim on the ground that the counterclaim did not form part of the resolution plan and thus the same stood extinguished. The arbitral tribunal allowed the Application and rejected the Respondent’s counterclaim (“**Interim Award**”).

The Respondent challenged the Interim Award under Section 34³ of the Arbitration Act before the Calcutta High Court (“**Calcutta HC**”). The Calcutta HC dismissed the Respondent’s challenge by way of an order dated August 21, 2024.

¹ SLP (Civil) No. 29651 of 2024 (decided on March 20, 2026)

² Section 31 - Form and contents of an arbitral award. Section 31 (6) provides that an arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

³ Section 34 - Application for setting aside arbitral award.

Being aggrieved, the Respondent challenged the said order before the division bench of the Calcutta HC. The division bench of the Calcutta HC passed an order directing the arbitral tribunal to continue the arbitral proceedings, leaving it open to the arbitral tribunal to decide the status of the counterclaim while passing the award (“**Impugned Order**”). Being aggrieved by the Impugned Order, the Appellant preferred an appeal before the Supreme Court.

In the appeal, the Appellant *inter alia* contended that: (a) since the Respondent had failed to raise its claim before the resolution professional within the prescribed time, it could not subsequently assert the same by way of a counterclaim in the arbitration proceedings as the claim stood barred upon approval of the resolution plan; and (b) allowing any counterclaim in the arbitration, which was not submitted to the resolution professional prior to the approval of the resolution plan, would defeat the ‘clean slate’ principle under the IBC. The Respondent *inter alia* contended that it ought to be permitted to raise the defence of set off in the arbitration for adjustment against the Appellant’s claim.

Issue

Whether a party is permitted to raise the defence of set off in respect of its extinguished counterclaim in arbitration proceedings despite having failed to file the same before the resolution professional prior to the approval of the resolution plan?

Findings and analysis

The Supreme Court considered the aspect that the Respondent had raised its counterclaim prior to the approval of the resolution plan and though the resolution professional of the Appellant was aware of such counterclaim, the counterclaim was not made a part of the resolution plan. The resolution plan also barred all future payments/settlements in respect of the claims not raised before it. These factors were heavily considered by the Supreme Court, which partly allowed the appeal and *inter alia* held as follows:

1. in *Ghanshyam Mishra and Sons (P) Ltd vs. Edelweiss Asset Reconstruction Company Limited*⁴, the Supreme Court held that claims provided in a resolution plan stand frozen and claims not part of the resolution plan stand extinguished. In the present case, since the Respondent’s claim, raised by way of a counterclaim before the arbitral tribunal, did not find place in the resolution plan, it stood extinguished and the Respondent was not permitted to seek any affirmative relief from the arbitral tribunal;
2. the terms of the resolution plan specifically provided that claims for payment or settlement including a counterclaim not included therein were not recoverable. However, the resolution plan did not expressly bar a plea of set off being raised as a defence in any pending arbitral proceedings. In the absence of an express bar, the legal maxim *expressio unius est exclusio alterius*⁵ was applicable to the present case; and
3. while the Respondent was not entitled to independently pursue its claim by way of a counterclaim following the approval of the resolution plan, it was permitted to raise the plea of set off by way of defence.

The Supreme Court also clarified that: (a) in the event the amount claimed in the counterclaim of the Respondent is found to be due and payable by the Appellant and such award exceeds the amount awarded to the Appellant, the surplus amount will not be recoverable by the Respondent; (b) if any amount remains payable by the Appellant after adjustment of the Respondent’s defence plea, the same will be recoverable by the Appellant; and (c) if arbitration proceedings initiated by the Appellant are withdrawn, the counterclaim of the Respondent will also fail, as the same is only permitted for the limited purpose of defence. It was further clarified that the judgement was rendered in the context of the specific terms of the resolution plan and is limited to the facts of the present case.

⁴ (2021) 9 SCC 657 (decided on April 13, 2021)

⁵ The expression of one is the exclusion of another.

Conclusion

This judgement marks a slight evolution of the 'clean slate' principle under the IBC. While the Supreme Court has reaffirmed that claims not forming part of an approved resolution plan stand extinguished, it has carved out a narrow exception in the facts of the present case by recognising that such claims may survive by way of a defence as a set off, where the resolution plan does not expressly bar it.

The judgement accordingly affords limited protection to a party that has failed to lodge its claim within the prescribed CIRP timelines by allowing a reduction of liability through a plea of set off, even when the underlying claim is not admitted.

Insolvency and Debt Restructuring Practice

JSA is recognised as one of the market leaders in India in the field of insolvency and debt restructuring. Our practice comprises legal professionals from the banking & finance, corporate and dispute resolution practices serving clients pan India on insolvency and debt restructuring assignments. We advise both lenders and borrowers in restructuring and refinancing their debt including through an out-of-court restructuring as per the guidelines issued by the Reserve Bank of India, asset reconstruction, one-time settlements as well as other modes of restructuring. We also regularly advise creditors, bidders (resolution applicants), resolution professionals as well as promoters in connection with corporate insolvencies and liquidation under the IBC. We have been involved in some of the largest insolvency and debt restructuring assignments in the country. Our scope of work includes formulating a strategy for debt restructuring, evaluating various options available to different stakeholders, preparing and reviewing restructuring agreements and resolution plans, advising on implementation of resolution plans and representing diverse stakeholders before various courts and tribunals. JSA's immense experience in capital markets & securities, M&A, projects & infrastructure and real estate law, combined with the requisite sectoral expertise, enables the firm to provide seamless service and in-depth legal advice and solutions on complex insolvency and restructuring matters.

This Prism has been prepared by:



Farhad Sorabjee
Partner



Pratik Pawar
Partner



Shanaya Cyrus Irani
Partner



Meher Mistri
Associate



19 Practices and 40 Ranked Lawyers



8 Ranked Practices, 22 Ranked Lawyers



15 Practices and 20 Ranked Lawyers



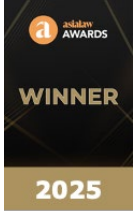
13 Practices and 49 Ranked Lawyers



20 Practices and 24 Ranked Lawyers



8 Practices and 10 Ranked Lawyers Highly Recommended in 5 Cities



Regional Legal Expertise Awards (APAC) of the Year
Energy Firm Competition/
Antitrust Firm



Among Best Overall Law Firms in India and 14 Ranked Practices

9 winning Deals in IBLJ Deals of the Year

15 A List Lawyers in IBLJ A-List – 2026



Recognised in World's 100 best competition practices of 2026



Ranked Among Top 5 Law Firms in India for ESG Practice



Asia M&A Ranking 2025 – Tier 1

For more details, please contact km@jsalaw.com

www.jsalaw.com



Ahmedabad | Bengaluru | Chennai | Gurugram | Hyderabad | Mumbai | New Delhi



This Prism is not an advertisement or any form of solicitation and should not be construed as such. This Prism has been prepared for general information purposes only. Nothing in this Prism constitutes professional advice or a legal opinion. You should obtain appropriate professional advice before making any business, legal or other decisions. JSA and the authors of this Prism disclaim all and any liability to any person who takes any decision based on this publication.

Copyright © 2026 JSA | all rights reserved