Airwaves Not Assets - Supreme Court Puts Spectrum Beyond Lender's Reach in Proceedings Under IBC

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Introduction

In *State Bank of India v Union of India & Ors.*, 2026 INSC 153 (Judgment) the Hon'ble Supreme Court (SC) examined the treatment of spectrum and telecom licenses in corporate insolvency resolution proceedings of telecom companies under the Insolvency and Bankruptcy Code, 2016 (IBC) in the background of the prevailing telecom law regime which regulates allocation of spectrum to a telecom service provider (TSP) by Department of Telecommunications (DoT).

The Court passed a common judgment and order in a group of appeals from the judgment of National Company Law Appellate Tribunal (NCLAT) in *Union of India v Vijaykumar v Iyer and Ors.*, [2022] 17 Comp Cas – OL 70 (NCLAT) which examined the treatment of telecom spectrum and telecom licenses in insolvency resolution proceedings of telecom companies pursuant to a reference by a three-judge bench of the Supreme Court in *Union of India v Association of Unified Telecom Service Providers*, (2020) 9 SCC 748.

Key Holdings

1. ***Spectrum as a natural resource held in public trust:*** The SC reiterated well-established principles that airwaves or spectrum is a finite, scarce natural resource forming part of the electromagnetic spectrum and constitutes a 'material resource of the community' under Article 39(b) of the Constitution. The Court reiterated that natural resources belong to the people and the State holds them as trustee under the public trust doctrine. Further, considering that revenue from licensing and spectrum usage is linked to the Universal Service Obligation framework, it must be 'ploughed back' to extend telecom access for the common good.

2. ***Grant of licence does not confer proprietary interest:*** Section 4 of the Indian Telegraph Act, 1885 vests the exclusive privilege of establishing, maintaining and working a telegraph or telecom system in the Central Government. A license granted under the Indian Telegraph Act, though contractual in form, emanates from a statutory power and does not create proprietary rights in favour of a telecom licence holder or TSP. The Court reiterated that grant of a telecom licence does not transfer ownership and only confers a limited, conditional and revocable privilege to use spectrum for a prescribed term and purpose.

3. ***Sovereign control over license and spectrum:*** Basis the UASL Licence Agreement, the 2015 Spectrum Trading Guidelines, and tripartite agreements between DoT, a TSP and lenders, the Court reiterated that effective, pervasive control over licence and spectrum vests in DoT as licensor. While the license prohibits assignment, transfer, sub-licensing, partnership or any third-party interest without prior written consent of the licensor, the Spectrum Trading Guidelines mandate that spectrum trading can be permitted *inter se* licensees only after the seller / licensee clears all past dues. The SC thus emphasised that spectrum trading is not a purely private commercial arrangement but remains perpetually subject to financial and regulatory obligations imposed by the State.

4. ***Spectrum as an "asset" under IBC:*** While a TSP records spectrum licensing rights as an intangible asset in its balance sheets, this does not translate into ownership in the legal sense under the Indian

Accounting Standards. The IBC, by contrast, excludes assets that are owned by third parties but are in possession of the corporate debtor from the insolvency and liquidation estate on the premise that assets held under contractual arrangements confer only a right of use without transfer of title. Thus, even if spectrum rights manifest asset-like features in the balance sheet, the absence of any transfer of title means no "ownership" vests in a TSP and spectrum licensing rights remain outside the IBC asset pool.

5. ***Reconciling IBC and telecom laws:*** The SC applied well-established principles to reconcile telecom laws with the non-obstante clause in Section 238 of the IBC and held that where both enactments are special laws, the interpretative endeavour must pivot on their dominant purposes, aiming for harmonious construction rather than allowing one to obliterate the other.

   While telecom laws constitute a complete and exhaustive code for the telecom sector, including regulation of allocation, use and transfer of spectrum, the IBC is confined to insolvency and creditor claims and is not intended to become a guiding principle for restructuring ownership and control of spectrum or other State-controlled natural resources.

   In this context, the SC deployed the metaphor of "tail wagging the dog" to criticise an interpretation where treatment of spectrum as an "asset" in the books of accounts of a telecom company results in the telecom sector being brought "under the sweep of IBC". The Court reiterated that disputes over statutory powers concerning natural resources lie outside the remit of the insolvency adjudicatory framework and IBC cannot be used to "usurp or neutralise" powers vested in the State under special statutes.

6. ***Moratorium does not create new rights:*** The Court clarified that moratorium under Section 14 is intended to preserve the status quo and protect existing possession during CIRP. Section 14 does not create an automatic right to continuation or renewal of a sovereign licence, nor does it bar the licensor from exercising its statutory powers. Thus, a defaulting TSP cannot take advantage of a moratorium to indefinitely use spectrum while evading public-law financial obligations.

7. ***Spectrum is not enforceable security for lenders:*** Tripartite agreements amongst a TSP, DoT, and Lenders are recognised as bespoke financing mechanisms, but such agreements do not authorise lenders to operate the licensed service nor enable lenders to foist a "Selectee" upon DoT without DoT's prior approval. Thus, if no eligible Selectee is found, the licence terminates with DoT enjoying first charge over sale proceeds of the licensee's assets and lenders ranking thereafter. The SC affirmed NCLAT's view that "spectrum cannot be treated as a security interest by the lenders".

Implications of the Judgement

While the judgment provides definitive clarity on the interplay between IBC and the telecom regulatory framework, it materially reshapes the prevailing understanding on the treatment of dues of telecom companies.

1. The Judgement has largely negative implications for lenders from a recovery standpoint. The Judgement eliminates the main value lever available to a lender for treatment of dues of telecom companies. However, it does not take away from the well-established right of substitution available to a lender.

2. The Judgement thus necessitates a re-examination of financing structures for a telecom company, as a lender would have to move away from a spectrum-based comfort to cash flows and non-spectrum assets. Further, new lending could carry stricter conditions around regulatory compliance and more conservative limits.

3. For an ongoing telecom company CIRP, parties should be guided by the principle that spectrum cannot be unilaterally pooled and sold in a Resolution Plan under IBC. Stakeholders would have to rely on DoT-sanctioned transfers which honours both sovereign debt and financial debt.

4. The Judgement for resolution applicants crystallises the principle that IBC is not an umbrella code that trumps a special sectoral statute. A resolution plan cannot assume grant of renewal, transfer or continuation of a telecom licence or "assets" merely because an insolvency resolution plan has been approved by a committee of creditors.

The legislature has always maintained a position that the IBC is sector agnostic; however, this Judgement highlights the need for building a framework where IBC can co-exist and coordinate with sector-specific regulatory frameworks.

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