

Personal Guarantor Insolvency After Subhash Chandra: The Limits of Creditor Voting and Tribunal Scrutiny

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INTRODUCTION

The proceedings concerning Dr. Subhash Chandra before the National Company Law Tribunal, New Delhi, have raised an unusual question under Part III of the Insolvency and Bankruptcy Code, 2016 (“**IBC**”): what happens when creditors approve a repayment plan by the statutory majority, the Adjudicating Authority scrutinises and approves the plan, but the Members of the Tribunal do not agree on the legal consequences of that approval?

The question has become particularly significant because the plan was approved by 80.814% (eighty point eight one four per cent) of the voting share of creditors participating in the vote, while the admitted claims recorded in the proceedings were approximately INR 22,006.57 (Indian Rupees Twenty-Two Thousand Six Crores Fifty-Seven Lakhs only). The amount proposed to be paid directly by Dr. Chandra under the plan was INR 6,25,00,000 (Indian Rupees Six Crores Twenty-Five Lakhs only), with a further INR 25,00,000 (Indian Rupees Twenty-Five Lakhs only) towards process costs. The plan also contemplated payments of approximately INR 1494,00,00,000 (Indian Rupees One Thousand Four Hundred and Ninety-Four Crores only) by the principal borrowers, which formed part of the objections raised by certain creditors.

The Third Member of the NCLT, Nilesh Sharma, approved the repayment plan on August 25, 2026, subject to excluding claims filed through Mr. Anil Kumar on behalf of 960 (nine hundred and sixty) individuals and Mr. Sunil Jain on behalf of 300 (three-hundred) individuals. He further held that an approved repayment plan binds both assenting and dissenting creditors under Section 115 of the IBC. That opinion did not, however, result in a final order. When the matter returned to the original division bench, the bench concluded on August 31, 2026 that no majority view had emerged. The President of the NCLT thereafter constituted a five-member special principal bench.

On September 01, 2026, that bench stayed the third member’s order in its entirety and restrained Dr. Chandra from alienating any assets, directly or indirectly. The matter is listed for further hearing on September 23, 2026. The significance of the case therefore lies not merely in the quantum of the proposed recovery. It lies in what the proceedings reveal about the relationship between creditor voting, judicial scrutiny and the statutory binding effect of a repayment plan under Part III.

THE PROCEEDINGS AND THE REPAYMENT PLAN

Indiabulls Housing Finance Limited initiated proceedings against Dr. Chandra as a personal guarantor under Section 95 of the IBC in 2022. The NCLT appointed Mr. Raj Kamal Saraogi as Resolution Professional on May 30, 2022. Following an interim order of the Supreme Court dated August 05, 2022 in W.P. (C) No. 567 of 2022, the NCLT kept the report under Section 99 in abeyance. After the Supreme Court vacated its interim order on April 22, 2024, the petition was admitted. Mr. Saraogi was subsequently replaced by Mr. Shiv Nandan Sharma as Resolution Professional on May 27, 2024.

The newly appointed Resolution Professional thereafter placed the repayment plan before the creditors. The voting closed on November 01, 2024, with the plan receiving 80.814% (eighty point eight one four per cent) of the voting share. Section 111 requires approval by a majority of more than three-fourths in value of the creditors present and voting. On the face of the voting result, therefore, the statutory threshold was met. The difficulty was that the validity of the voting itself became contentious.

Five entities — Veena Investments Private Limited, Direct Media Distribution Ventures Private Limited, World Crest Advisors LLP, Lemonade Capital Advisors LLP and Corpcall Capital Advisors LLP — together represented

approximately 61.78% (sixty-one point seven eight per cent) of the voting share. Several dissenting creditors contended that these entities were “associates” of Dr. Chandra and therefore could not vote under Section 109(4)(b), read with the definition of “associate” in Section 79(2)(g). Other objections concerned the verification of claims, the timing and notice of the creditors’ meeting, the absence of a forensic audit or asset-tracing exercise, the treatment of certain assets and the position of STCI Finance Limited as a secured creditor. These objections ultimately produced two substantially different approaches from the original Division Bench.

THREE MEMBERS, THREE POSITIONS

On September 03, 2025, Member (Judicial) Ashok Kumar Bhardwaj and Member (Technical) Reena Sinha Puri delivered separate opinions. Bhardwaj approved the repayment plan. He nevertheless took the view that specified dissenting creditors should retain their remedies for recovery of their remaining debt in accordance with law, rather than being deprived of those remedies merely because the plan had been approved. Puri rejected the plan, finding a number of procedural and substantive deficiencies, including issues relating to the admission of claims, voting, notice and the conduct of the Resolution Professional. The difference between the Members was therefore not confined to whether the plan should be approved. It also concerned the legal consequences of approval. The matter was consequently referred to Nilesch Sharma as the Third Member under Section 419(5) of the Companies Act, 2013. He pronounced his opinion on August 25, 2026.

The Third Member took a position that did not simply reproduce either of the earlier opinions. He approved the repayment plan, but directed the exclusion of the claims filed through Mr. Anil Kumar and Mr. Sunil Jain from the final list of creditors and consequential redistribution of the amount attributable to those claims. He also held that the plan would bind all creditors covered by it, including those who had voted against it. It was this latter conclusion that ultimately created the procedural difficulty.

HOW FAR CAN THE TRIBUNAL SCRUTINISE A REPAYMENT PLAN?

Section 114 requires the Adjudicating Authority to approve or reject a repayment plan on the basis of the report of the meeting of creditors under Section 112. Section 114(3) further permits the Authority, where it forms an opinion that the plan requires modification, to direct reconsideration by the creditors. The Third Member therefore rejected the proposition that the Tribunal’s role is confined to mechanically endorsing the creditors’ decision. His reasoning was more measured. The creditors’ commercial decision remains important, but it must be reached through a process that complies with the statutory framework. The Adjudicating Authority must examine the repayment plan, the process followed for its approval, the Resolution Professional’s report and the mandatory requirements imposed by the IBC and the applicable regulations.

At the same time, the Third Member did not treat Section 114 as conferring a general power on the Tribunal to substitute its own assessment of commercial desirability for that of the creditors. That distinction is important. The question is not whether the Tribunal considers a different commercial bargain preferable. It is whether the plan and the process by which it was approved satisfy the statutory conditions for approval. In that sense, the decision places Section 114 somewhere between two extremes: it is neither a purely ministerial exercise nor an invitation to the Tribunal to redesign the commercial bargain approved by creditors.

THE VOTING QUESTION: “ASSOCIATE” IS NOT THE SAME AS “RELATED PARTY”

The challenge to the five supporting entities raised a separate statutory question. Section 109(4)(b) prevents an “associate” of the debtor from voting at the meeting of creditors. Section 79(2)(g), in turn, defines an

associate by reference to ownership or control. The dissenting creditors sought to rely, among other things, on the relationship between Veena Investments and members of Dr. Chandra's family, and on the downstream corporate structure involving Direct Media and World Crest. The Technical Member adopted a broader, purposive interpretation. The Third Member did not.

The Third Member held that Section 79(2)(g) could not simply be expanded to cover a company merely because an individual who qualifies as an associate of the debtor holds a controlling interest in that company. In his view, the statutory language required the ownership or control nexus specified in the provision itself. The reasoning is significant because it illustrates a recurring tension in insolvency legislation: whether a specific statutory definition should be applied according to its text, or extended to address structures which may arguably defeat the policy underlying the provision.

For present purposes, however, the decision should not be read as establishing a general proposition that Part III has a universally "narrower" concept of connected parties than Part II. The more precise point is that the Third Member declined to import the broader related-party framework applicable in other parts of the IBC into the specific definition of "associate" enacted for Part III. That distinction may become important in future personal-guarantor proceedings involving layered ownership structures.

THE FORENSIC-AUDIT QUESTION

The creditors also relied heavily on the apparent disparity between Dr. Chandra's present disclosed net worth of approximately INR 31,79,00,000 (Indian Rupees Thirty-One Crore Seventy-Nine Lakhs only) and net worth certificates issued in 2017 and 2018 recording figures of approximately INR 45,888 (Indian Rupees Forty-Five Thousand Eight Hundred Eighty-Eight Crores only) and INR 40,562 (Indian Rupees Forty Thousand Five Hundred Sixty-Two Crores only) respectively. The disparity was relied upon as a basis for seeking a forensic audit and asset-tracing exercise. The Third Member accepted that the difference warranted scrutiny and clarification. He did not, however, regard the earlier certificates as conclusive evidence that assets of the same value continued to exist. Nor did he accept that a forensic audit was a statutory precondition to approval of a repayment plan.

The distinction is between a legitimate evidentiary concern and a statutory requirement. The Third Member noted that the IBC expressly confers investigative powers in other insolvency contexts, including on a Bankruptcy Trustee under Section 149. Part III does not confer an equivalent general investigative mandate on the Resolution Professional conducting the personal insolvency resolution process. He therefore declined to direct a forensic audit merely because creditors sought one. This does not mean that questions concerning asset disclosure are irrelevant. It means that, in the Third Member's view, the absence of a forensic investigation did not, on the facts before him, make approval of the repayment plan legally impermissible.

PROCEDURAL NON-COMPLIANCE AND PREJUDICE

The Third Member also recorded non-compliance with the timelines under Sections 106(4)(a) and 107(1). Section 106(4)(a) requires the meeting of creditors to be held not less than 14 (fourteen) days and not more than 28 (twenty-eight) days from submission of the Resolution Professional's report. In this case, the report was submitted on October 17, 2024, while the meeting was held on October 24, 2024. The corresponding 14-day notice requirement under Section 107(1) was also not strictly complied with.

The Third Member nevertheless concluded that the breach did not warrant rejection of the plan. The creditors had participated in the process, the voting period had been extended, and no creditor was shown to have been prevented from considering the plan or exercising its voting rights. The significance of this finding should not be overstated. The decision does not establish that statutory timelines in Part III can generally be waived by creditor consent or that procedural breaches are immaterial. The Third Member expressly recognised that creditor consent cannot override a statutory requirement. His conclusion was instead that, in the particular circumstances, the established procedural defect did not justify the ultimate consequence of rejecting the repayment plan.

THE MORE DIFFICULT QUESTION: WHAT HAPPENS TO DISSENTING CREDITORS?

The most consequential issue is Section 115. The Judicial Member's earlier approach allowed dissenting creditors to retain remedies for recovery of their remaining debt. The Third Member rejected that approach. In his view, once a repayment plan is approved under Section 114, Section 115 governs its effect. The provision does not contemplate an arrangement under which the same plan binds consenting creditors but leaves dissenting creditors free to recover the original debt independently from the personal guarantor.

The Third Member accordingly held that the approved plan would bind all creditors covered by it, whether assenting or dissenting. The significance of this conclusion goes beyond the particular facts of the case. A collective repayment mechanism necessarily raises the question whether a creditor can opt out of the consequences of the collective decision after participating in the statutory process. The Third Member's answer was no. But that answer was not shared by the Judicial Member who had originally approved the plan. This difference is precisely what prevented the Third Member's opinion from producing a straightforward majority.

WHY THE 25 AUGUST OPINION DID NOT BECOME THE FINAL ORDER

The procedural history after August 25, 2026 is unusual. When the Third Member's opinion was placed before the original Division Bench on August 31, 2026 for the consequential order, that Bench concluded that no majority view had emerged. The Bench therefore made a fresh reference to the President under Section 419(5) of the Companies Act, 2013. The difficulty was not simply that one Member had approved the plan and another had rejected it. The Third Member had approved the plan, but had done so on a material legal issue on which he disagreed with the Judicial Member: whether dissenting creditors would remain free to pursue their original claims outside the plan. The five-Member Special Principal Bench's order dated September 01, 2026 expressly records this divergence. It concluded that there was no clear majority view capable of being given effect to and stayed the Third Member's order. The result is important. The August 25 opinion is a detailed and reasoned judicial opinion, but it is not presently an operative final order determining the repayment plan. The five-Member Bench has not, in its September 01 order, adjudicated the substantive questions on associate status, the scope of Section 114 scrutiny or the need for further investigation. Those questions therefore remain unresolved at the level of binding adjudication.

WHAT THE CASE MAY MEAN FOR FUTURE PERSONAL-GUARANTOR PROCEEDINGS

Three broader points emerge:

- First, the statutory majority is necessary, but it does not eliminate judicial scrutiny. Section 111 determines the voting threshold; Section 114 requires the Adjudicating Authority to consider whether the plan can legally be approved. The Third Member's opinion illustrates the distinction between

respecting a creditor-approved commercial decision and ensuring that the decision-making process complies with the IBC.

- Second, the composition of the voting creditors can be as important as the percentage of votes recorded. A plan approved by more than three-fourths of the voting share is not insulated from a challenge to the eligibility of those who voted. The unresolved question in the present proceedings is therefore not merely whether 80.814% (eighty point eight one four per cent) voted in favour, but whether the voting process was constituted in accordance with the statutory framework. The Third Member ultimately rejected the challenge to the five disputed entities under Section 79(2)(g), but that reasoning is presently part of a stayed order rather than a final operative determination.
- Third, Section 115 may prove to be the most consequential issue in the case. If an approved repayment plan necessarily binds dissenting creditors, the creditor-voting mechanism operates as a genuinely collective resolution process. If dissenting creditors can preserve independent recovery rights against the personal guarantor notwithstanding approval of the plan, the commercial consequences of the same vote are materially different.

The five-Member Bench will therefore have to confront a question that is procedural on its face but substantive in consequence: how should the Tribunal give effect to a repayment plan when the Members agree neither on whether the plan should bind dissenting creditors nor, consequently, on the precise legal consequences of approval?

For the moment, there is no final answer. The order dated September 01, 2026, has stayed the Third Member's opinion and restrained Dr. Chandra from alienating his assets pending further consideration. The matter is listed before the five-Member Bench on September 23, 2026.

What makes *Indiabulls Housing Finance Ltd. v. Dr. Subhash Chandra* significant, therefore, is not simply the size of the claims or the amount offered under the plan. It is the way in which the case brings into sharp focus three structural features of personal-guarantor insolvency: creditor voting, judicial scrutiny and the collective binding effect of an approved repayment plan. The eventual determination of those issues may have consequences well beyond the present proceedings.