



When public trust meets insolvency law

The insolvency estate encompasses enforceable rights and interests, no less than ownership of property

The Supreme Court's judgment of February 13, 2026, in the *State Bank of India versus Union of India* fundamentally reshapes the interaction between state and market. The court has ruled that spectrum is a natural resource held in public trust, and the right to use it does not form part of the insolvency estate of a telecom service provider (TSP). This ruling effectively places the most valuable asset of a TSP beyond the reach of a resolution plan. The likely consequence is the liquidation of stressed TSPs and the fragmentation of the insolvency framework, contrary to legislative design.

Though grounded in high constitutional concerns over natural resources, the ruling rests on a conceptual overextension. The Public Trust Doctrine (PTD) is applied without sufficient regard to the evolution of the modern regulatory state and market economy. If extended across sectors, the reasoning could exclude from the insolvency estate all licensed natural resources and associated usage rights, thereby driving stressed, licence-dependent enterprises into liquidation.

The PTD emerged to protect communal access to resources such as air and water, as a check against the privatisation of the commons. Its application to telecommunications, however, requires greater nuance. In this sector, the state has translated the PTD into a detailed statutory and contractual framework of auctions, licences, and contracts. That framework explicitly permits the allocation, trading, and transfer of spectrum-usage rights.

When the state auctions spectrum, it does not abandon the public trust; it operationalises the use through market mechanisms. A sovereign resource is converted into a regulated, tradeable economic entitlement, juridically embodied in the licence. For the Insolvency and Bankruptcy Code (IBC), 2016, it is this statutory-contractual construct that matters, not the doctrine in abstraction.

The judgment does not fully distinguish between

sovereign ownership of spectrum and the contractual licence conferring the right to use it. These operate at distinct juridical levels. Spectrum remains vested in the state at all times, while the licence is a statutorily recognised intangible right, acquired for valuable consideration. Though a derivative of sovereign resources, it has clear commercial attributes. In accounting and economic terms, the money paid to acquire the licence exits the balance sheet and is replaced by an intangible asset of corresponding value.

The ruling effectively extends the PTD across the entire value chain, treating the non-proprietary character of the spectrum as determinative of the non-asset status of the licence. Once the state grants a licence subject to defined conditions, the resulting rights and obligations are governed by that framework. Banks and financial institutions lend money to TSPs secured against these licences; that security ought not to be diluted by invoking the PTD. Likewise, a consumer purchasing a telephone connection engages in a commercial relationship with the TSP; that relationship cannot be unsettled by recourse to the PTD.

The judgment conflates resolution with liquidation. In liquidation, assets are sold, and the proceeds are distributed in accordance with the priority rule; third-party assets are rightly excluded. A licence, however, is central to revenue generation, and transferable, subject to conditions. A resolution plan rescues the corporate debtor as a going concern. It does not appropriate or sell spectrum; nor does it extinguish or recreate the licence. It allows its continued use by the same entity, subject to regulatory approval. There is only a change in control of the licensee, while the regulatory relationship endures.

At a broader level, the ruling raises concerns about the interactions among special statutes. The suggestion that telecom law must override insolvency law

because spectrum is a special resource overlooks a settled principle of interpretation: Where two special laws operate in distinct domains, courts must prefer harmonious construction over implied exclusion.

Telecom regulation and the IBC address different dimensions of the same economic reality. Telecom law governs access to spectrum, licensing conditions, technical standards, and regulatory compliance in respect of a scarce public resource. The IBC governs financial distress, capital reallocation, and enterprise reorganisation. One regulates the resource; the other restructures the user. Their objectives are distinct yet complementary.

There is nothing in telecom legislation to suggest that licensed entities are insulated from insolvency resolution. Nor does the IBC purport to dilute sovereign ownership or licensing control. On the contrary, the Code preserves regulatory approvals and conditions. The interpretive task, therefore, is to ensure that each operates within its sphere without frustrating the object of the other.

To elevate spectrum into a category so exceptional that it displaces the insolvency regime risks fragmenting a framework designed to operate uniformly across the economy. Horizontal market laws — securities regulation and competition law — apply across sectors. Insolvency law is no different. Its role as a system-wide mechanism for efficient resource allocation would be undermined if regulated industries were effectively carved out by implication.

The IBC is a mechanism for resource reallocation. A distressed TSP is, by definition, an inefficient user of capital and resources. A resolution plan enables the transfer of control of the enterprise and the licence it holds to a more capable operator. In doing so, the IBC advances, rather than undermines, the objective of efficient spectrum use. Telecom law continues to govern technical regulation and licensing conditions; the insolvency law addresses the stress of the licensee.

Mature insolvency jurisdictions recognise this equilibrium. They allow the continuation of regulatory licences through a resolution plan, subject to regulatory approval. Because preventing such continuation destroys enterprise value and risks leaving critical resources idle. If a licence cannot survive resolution, liquidation follows: Spectrum remains unused for a period, generating neither revenue for the state nor services for consumers, which is inconsistent with both insolvency and telecom laws.

The issue, therefore, is not one of choosing between constitutional fidelity and commercial pragmatism but of harmonising two special regimes so that each operates within its legitimate sphere. The PTD safeguards sovereign ownership and public interest in natural resources.

Elevating PTD into a bar against economic reorganisation risks turning a doctrine of stewardship into one of exclusion. A coherent legal order must allow sovereign control over spectrum to coexist with an effective resolution regime so that public resources remain protected, markets remain predictable and viable, but stressed entities are rescued.

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