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LEARNING CURVE-10/2026

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"Cumulative Redeemable Preference Shares (CRPS) are equity capital, not "financial debt," and therefore non-redemption of such shares cannot trigger insolvency under Section 7 of the IBC."

CASE TITLE	EPC Constructions India Limited through its Liquidator- Abhijit Guhathakurta Vs. M/s. Matix Fertilizers and Chemicals Limited
CASE NO.	Civil Appeal No 11077 OF 2025
DATE OF ORDER	28th October, 2025
COURT/ TRIBUNAL	Supreme Court of India
STATUTES/RULES INVOLVED	Section 5(8) of the Insolvency and Bankruptcy Code, 2016: Definition of Financial Debt Section 7 of the Insolvency and Bankruptcy Code, 2016: Initiation of Corporate Insolvency Resolution Process (CIRP) by Financial Creditor Section 33(5) of the Insolvency and Bankruptcy Code, 2016: Bar on Institution of suits after liquidation commencement Section 43 & 55 of the Companies Act, 2013: Preference Share Capital and Redemption of Preference Share Capital
BENCH	Hon'ble Justice Shri J B Pardiwala and Hon'ble Justice Shri K V Viswanathan

Brief Facts of the Case:

EPC Constructions India Limited (EPCC), formerly Essar Projects India Ltd., entered into several contracts with Matix Fertilizers and Chemicals Ltd. (Matix) for setting up a large fertilizer complex at Panagarh, West Bengal. These included on-shore and off-shore supply contracts and engineering and construction agreements dating from 2010. EPCC claimed dues of ₹572.72 crores from Matix arising out of these contracts.

In 2015, Matix faced severe financial constraints and delays in project financing. Its lenders required additional equity infusion to maintain a 2:1 debt–equity ratio, without which further credit would not be disbursed. To show this infusion without actual cash flow, Matix proposed converting a portion of EPCC's receivables—up to ₹400 crores—into Redeemable Preference Shares. EPCC's Board approved this proposal on 30 July 2015, insisting that the shares be 8% Cumulative Redeemable Preference Shares (CRPS).

Pursuant to this arrangement:

- Matix allotted 25 crore CRPS of ₹10 each (₹250 crores) to EPCC on 26 August 2015,
- Carrying 8% cumulative dividend,
- Redeemable at par after three years, subject to Companies Act compliance.

EPCC subsequently underwent CIRP in 2018, and its Resolution Professional (later Liquidator), Abhijit Guhathakurta, demanded ₹632.71 crores from Matix — ₹310 crores toward CRPS redemption and the rest as receivables. Matix disputed the claim. EPCC then filed a Section 7 IBC petition, alleging default in redeeming CRPS. The NCLT (29.08.2023) and NCLAT (09.04.2025) dismissed the petition, holding that the CRPS did not constitute “financial debt.”

Key Issues:

- **Whether Cumulative Redeemable Preference Shares (CRPS) issued by Matix to EPCC constitute a “financial debt” under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, enabling EPCC’s Liquidator to initiate insolvency proceedings under Section 7 of the IBC?**

Contentions of Parties:

Contentions of Appellant (EPCC):

The Appellant argued that the Cumulative Redeemable Preference Shares (CRPS) issued by Matix were effectively a financial instrument carrying an obligation of repayment, triggered at maturity. Therefore, the redemption amount of ₹310 crores constituted a financial debt. Thus, failure to redeem the CRPS should qualify as a default under the Insolvency and Bankruptcy Code.

EPCC’s Liquidator issued a demand notice claiming ₹632.71 crores, including ₹310 crores toward redemption of matured CRPS. Matix’s refusal or failure to redeem the shares, according to EPCC, constituted a clear event of default, entitling the Liquidator to initiate Section 7 proceedings.

Contentions of Respondent (Matix Fertilizers and Chemicals Ltd.):

Matix argued that the Cumulative Redeemable Preference Shares (CRPS) issued to EPCC are share capital, not a loan or borrowing. Preference shares—including redeemable ones—are governed by the Companies Act, 2013, under which they remain part of a company’s capital structure, not its debt obligations.

Matix emphasized that CRPS do not constitute “financial debt” under Section 5(8) IBC, Redemption is not guaranteed and must comply with statutory conditions, Therefore, non-redemption cannot be considered a “default” under the IBC.

Lower Court’s Ruling:

<u>NCLT Kolkata (Order dated 29.08.2023):</u>

The National Company Law Tribunal (NCLT), Kolkata rejected EPCC’s Section 7 IBC application seeking initiation of insolvency proceedings against Matix. NCLT held that the Cumulative Redeemable Preference Shares (CRPS) issued by Matix to EPCC did not constitute a financial debt under Section 5(8) of the IBC.

Its key findings were:

- There was no disbursal of funds by EPCC to Matix—only a conversion of existing operational receivables into preference shares.
- Preference shares are governed under the Companies Act and form share capital, not borrowed funds.

Because CRPS did not qualify as financial debt, Matix's failure to redeem them could not amount to a "default" under Section 7 IBC.

Thus, NCLT concluded EPCC lacked the legal status of a financial creditor.

NCLAT (Order dated 09.04.2025):

The National Company Law Appellate Tribunal (NCLAT) affirmed the NCLT's dismissal of the Section 7 application. NCLAT reinforced NCLT's reasoning that:

- The conversion of operational dues into redeemable preference shares constituted an investment decision,
- The nature of the CRPS is equity-like, not debt-like.

Since EPCC failed to demonstrate the existence of a financial debt, the NCLAT held that:

- EPCC could not invoke Section 7 IBC,
- The petition remained non-maintainable,
- The question of "default" did not arise in the IBC framework.

Supreme Court's Judgement

The Supreme Court dismissed the appeal filed by EPC Constructions India Limited (EPCC) and upheld the NCLT and NCLAT findings that:

•Cumulative Redeemable Preference Shares (CRPS) issued by Matix do not constitute "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code (IBC).

•Therefore, EPCC's Section 7 IBC petition was not maintainable.

The Court held that CRPS are a form of share capital, governed by the Companies Act, not an evidence of borrowing. Preference shares, even when redeemable and cumulative, remain equity instruments, not loans. Their redemption is conditional, subject to availability of profits and statutory conditions under the Companies Act. Thus, CRPS cannot be treated as "financial debt."

Under Section 5(8) IBC, a "financial debt" requires disbursal against consideration for time value of money. The Court concluded that EPCC had not disbursed any money to Matix. The CRPS were issued only through conversion of operational receivables, not through any financial lending. The 8% cumulative dividend is not interest and is payable only from profits. Therefore, the CRPS failed the basic statutory test of financial debt.

Significance of the Case:

The ruling is a landmark clarification that:

•Redeemable preference shares—even cumulative—remain capital instruments,
•Hybrid instruments that straddle equity and debt will not be treated as financial debt unless they strictly satisfy Section 5(8),
•IBC cannot be used to enforce capital-related obligations such as redemption of preference shares.

Link of the Order: https://ibbi.gov.in/uploads/order/9becde62298826ee361404d0f4b477aa.pdf