

IBC LEARNING CURVES

 **INSTITUTE OF INSOLVENCY PROFESSIONALS**
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Foreword

The Insolvency and Bankruptcy Code, 2016 (Code) envisaged dedicated roles for various stakeholders like creditors, debtors, Insolvency Professionals and Adjudicating Authorities. While the role of Adjudicating Authority as mentioned in the Code has been vested in the National Company Law Tribunal (NCLT), the National Company Law Appellate Tribunal (NCLAT) and the Hon'ble Supreme Court of India are the Appellate Authorities.

The role played by Adjudicating Authorities is crucial as it serves as a precedent for all upcoming similar facts and situations. Through case laws, all pervasive and pertinent questions are answered. The case laws have laid down guidelines and laws for code of conduct for various stakeholders as well as answered the important questions that cropped up while application and interpretation of the codified law.

Through this book, the ICSI IIP has commendably recognized the most relevant and pointed issues and rulings of the various Courts and have presented it in a very reader friendly way. This book will prove to be useful for anybody in the practice of insolvency law in any capacity, whether as an Insolvency Professional, Advisor, Consultant, Advocate or any other stakeholder involved in the Insolvency process. This book is a compilation of all the important cases that ICSI IIP tracks on a daily basis as part of its '*Daily Learning Curve Series*' to provide a summarized and easy to understand format to its readers instead of going through voluminous orders/judgments.

I am certain this book will prove to be useful for readers who want an easy to read format for case laws as well as are looking to get an insight into the issues being settled by the Courts under Insolvency Law.

I wish all the best to the readers in all their endeavours!

Place: New Delhi
Date: 05.08.2020

CS Ashish Garg
President

The Institute of Company Secretaries of India

Preface

The Insolvency and Bankruptcy Code, 2016 (“Code”) is the new and comprehensive insolvency law of India which seeks to consolidate the existing framework. The Code inter alia provides for Corporate Insolvency Resolution Process which involves a number of stakeholders including insolvency professionals as well as financial creditors, operational creditors, corporate debtor and its promoters, committee of creditors (CoC), liquidators. The adjudication mechanism under the Code includes Adjudicating Authority (NCLT), Appellate Authority (NCLAT), and Supreme Court being the Apex Court. The mechanism also includes orders that are passed by the Regulatory Body to direct the various stakeholders about their conduct during the Corporate Insolvency Resolution Process. The Code has provided professionals a launching pad to deal with the insolvency/ liquidation process for individuals, firms and corporates. With a number of Amendments of the Code the process is now being sorted for a smooth implementation. As the Code grows, so does the role and responsibilities of the stakeholders working under it.

Through the publication titled ‘Learning Curves’, we have attempted to highlight the most important orders that provide clarity on the interpretation of law, implementation of law as well as the Code of Conduct. For sake of clarity, the chapters have been divided based on the area of process of insolvency or liquidation that they deal with. The book also contains the QR codes for the entire order/judgment covered providing ease of access for the readers.

This publication is a collective effort of team members of ICSI IIP. We are confident that the publication would be useful to professionals, aspiring Insolvency Professionals as well as other stakeholders to understand Insolvency law in India and the expectations of the Adjudicating Authorities in this regard.

Place: New Delhi
Date: 05.08.2020

Dr. Binoy J. Kattadiyil
Managing Director
ICSI Institute of Insolvency Professionals
(Subsidiary of ICSI & Registered IPA of IBBI)

About the Book

Whenever a new law comes into existence, various stakeholders tend to take different views on issues and matters dealt with in the law. The judicial authorities settle the law and such opinions pave a clear way for the future. The Adjudicating Authorities that are envisioned in the Insolvency and Bankruptcy Code, 2016 are National Company Law Tribunal (NCLT) and the Appellate Authorities are the National Company Law Appellate Tribunal (NCLAT) and Supreme Court.

Since it is a relatively new statute, various questions of law and interpretation are cropped up which are generally left to the courts to decide upon. ICSI IIP in its endeavor to educate its members and help understand the nuances of the Insolvency Law, has a series of *daily learning curves* ongoing from February 2019. The series covers an important order/judgment passed by the Adjudicating or the Appellate Authorities and aims to summarize and analyze the law or interpretation being attempted in the particular order. It helps in better understanding the nuances of the law.

In this publication, we have compiled the most important and relevant learning curves from the past 1.5 years covering issues ranging from the fee of the Resolution Professional to the constitutional validity of the Code.

We are quite positive that the readers shall find this book useful and a handmade guide for quick reference.

Happy Reading!

Team ICSI IIP

About ICSI IIP

ICSI Institute of Insolvency Professionals (ICSI IIP) is a frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI) under the Insolvency and Bankruptcy Code, 2016 (IBC). It is a company incorporated under section 8 of the Companies Act, 2013 and is a wholly owned subsidiary of the Institute of Company Secretaries of India. As a Regulator (under the IBC), ICSI IIP has been vested with different key responsibilities, inter alia including, enrolling, educating, training as well as monitoring the functioning of its professional members, laying down standards of professional conduct as well as taking disciplinary measures (as per the law) in respect of defaulting members. ICSI IIP has about 900 registered members (IPs) belonging to a very wide spectrum of professionals, like Company Secretaries, Management Professionals, Advocates, Cost Accountants and Chartered Accountants. The Governing Board of ICSI IIP consists of eminent personalities who are acting as Independent Directors and Nominee Directors of ICSI IIP.

Since its inception, ICSI IIP has carried out a number of activities as a part and in discharge of its mandate as an Insolvency Professional Agency (IPA). Such activities inter alia include, bringing out important publications like *Practical Aspects of Insolvency Law*, *Interim Resolution Professional – A Handbook*, *Pronouncements under the Insolvency and Bankruptcy, 2016: Issue Analysis*, *Judicial/Regulatory Ruling for Stakeholders – A Handbook*, *Voluntary Liquidation : A Hand book*, organizing and carrying out intensive training programmes for IPs, holding interactive sessions with different stakeholders, conducting webinars on important subjects under IBC with specific focus on practical challenges faced by the Insolvency Professionals. The activities are motivated to contribute towards Education, Training and Development of Insolvency Professionals.

ICSI IIP is also the first organization to have come up with a monthly journal (*ICSI IIP's Insolvency and Bankruptcy Journal*) dedicated exclusively to the Insolvency and Bankruptcy Law in India (and also other relevant jurisdictions). ICSI IIP has also been issuing *Daily Learning Curves* and *Knowledge Reponere* and *Knowledge Capsules* which have been designed to keep the Insolvency Professionals abreast of legislative, judicial and regulatory developments under IBC.

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CORPORATE INSOLVENCY RESOLUTION PROCESS

CASE NO.1

Section 11 is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code.

CASE TITLE	Forech India Limited Vs. Edelweiss Assets Reconstruction Co. Limited
CASE CITATION	Civil Appeal No.818 of 2018
DATE OF ORDER	22.01.2019
COURT/TRIBUNAL	Supreme Court (Civil Appellate Jurisdiction)
CASES REFERRED	PSL Limited vs. Jotun India Private Limited
SECTION/REGULATION REFERRED	Section 11 of IBC-Person not entitled to make application

Brief of the case:

Section 11 of the Code specifies which persons are not eligible to initiate proceedings under it. In particular, Section 11(d) reads as follows:

“11. Persons not entitled to make applications- The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:-

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation - For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.”

Decision:

The Hon’ble court in the case of Forech India Limited Vs. Edelweiss Assets Reconstruction Co. Limited, held that,

“This Section is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. From a reading of this Section, it does not follow that until a liquidation order has been made against the corporate debtor, an Insolvency Petition may be filed under Section 7 or Section 9 as 17 the case may be, as has been held by the Appellate Tribunal.”

There is no provision under the I&B Code which stipulates that if a winding up or liquidation proceeding has been initiated against the corporate debtor, the petition under Section 7 or Section 9 against the said corporate debtor is not maintainable.

QR CODE FOR FULL ORDER/JUDGEMENT:



The demand notice under section 8(1) of the Insolvency and Bankruptcy Code, 2016 can be served on the Corporate Debtor either at their Registered Office or their Corporate Office to be treated as a valid service of notice.

CASE TITLE	Alloysmin Industries Vs. Raman Casting Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No.684 of 2018
DATE OF ORDER	21.01.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 8 of IBC- Insolvency Resolution by Operational Creditor

Brief of the case:

The Appellant filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process against Respondent. The NCLT, New Delhi, Bench-III by impugned order dated 17th September, 2018 rejected the application on the ground that the demand notice under Section 8 of the Code was duly sent through courier to the registered office address but the same was returned to the Applicant with remark “S/A RTO”.

Decision:

It was held that the Adjudicating Authority erred in rejecting the application under Section 9 on a wrong presumption that demand notice is to be served on the Registered Office of the Corporate Debtor and not on Corporate Office. If the demand notice under Section 8 (1) is served on Corporate Debtor either on its Registered Office or its Corporate Office, it should be treated to be valid service of notice under Section 8 and application under Section 9 on failure of payment, if filed after 10 days, is maintainable.

Therefore, in view of the aforesaid, a fresh notice may be issued to the Corporate Debtor to give an opportunity, in its both aforesaid addresses to enable the Respondent to settle the claim with the Appellant and enable the Appellant to withdraw its petition. Otherwise, the application under Section 9 is to be admitted.

QR CODE FOR FULL ORDER/JUDGEMENT:



No Corporate Insolvency Resolution Process proceeding could be initiated against a company that is not in existence on the rolls of ROC.

CASE TITLE	K. Muruganandan (RP) (In the matter of Upshot Utility Services Limited)
CASE CITATION	MA/689/2018 & MA/698/2018 in CP/1035/2018
DATE OF ORDER	09.01.2019
COURT/TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 19(2), 19 (3) & Section 60(5)

Brief of the case:

The IRP had submitted that he has made all the efforts to find out as to whether Corporate Debtor is in existence, while doing so he came across company was struck off by ROC before the petitioner filed this Company Petition before this bench.

Decision:

NCLT, after taking note of the submissions made by the IRP's Counsel that the company was struck off by the ROC, held that since there is a recorded material showing that the company was already struck off, the company's petition shall no more survive. The application seeking co-operation of promoters under Section 19 of the Code was accordingly dismissed as being infructuous. The NCLT also observed that the Operational Creditor (OC) filed the case without even finding out as to whether the Corporate Debtor is in existence as on the date of filing, and the Bench had passed an order of admission, resulting into IRP discharging his functions by taking out his time and money. It directed the OC who filed the application without even verifying the existence of the company to pay fees to IRP for discharging his functions.

The NCLT held that since no proceedings could be initiated against a company that is not in existence on the rolls of ROC, accordingly, the petition was dismissed as misconceived relieving the IRP from his duties.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT allowed Financial Creditor to recover the amount from the suspense account of the Corporate Debtor after commencement of Corporate Insolvency Resolution Process.

CASE TITLE	Pramod Kumar Sharma Vs. IDBI Bank Limited
CASE CITATION	CA No.277/2018 in CP No.(IB) 120/ALD/2017
DATE OF ORDER	31.01.2019
COURT/TRIBUNAL	NCLT, Allahabad Bench
CASES REFERRED	Debashish Nanda v. State Bank of India
SECTION/REGULATION REFERRED	Section 60(5)(b) of IBC-Jurisdiction of NCLT to entertain any claim

Brief of the case:

The issue for determination was ‘whether the amount which is in the suspense account of the Bank can be made use of by the Bank for payment towards lead bank charges dues’.

In this case, IDBI Bank Limited had debited Rs. 32,40,000/- from Trust and Retention Account(TRA) of Corporate Debtor before commencement of CIRP and transferred the same to the Suspense Account. After commencement of CIRP, IDBI Bank Limited adjusted the amount towards lead bank charges due to it for the period prior to commencement of CIRP.

The NCLAT, New Delhi had in an earlier appeal matter upheld the NCLT orders passed in the matter of *Debashish Nanda v. State Bank of India* (orders dt. 02.08.2018), wherein the NCLT had held, “*once the moratorium has been declared it is not open to any person including ‘financial creditors’ and the appellant bank to recover any amount from the account of the ‘Corporate Debtor’, nor it can appropriate any amount towards its own dues*”.

Decision:

Distinguishing the facts of the present case, the NCLT held that, “Here in the case on hand, no amount was withdrawn from the TRA Account of the Corporate Debtor after the commencement of CIRP”. Thus, holding that the bank has a right to adjust the amount from the suspense account towards the lead bank charges due to it for the period prior to commencement of CIRP, the NCLT dismissed the application filed by the RP.

QR CODE FOR FULL ORDER/JUDGEMENT:



Change in the Registered office of Corporate Debtor if intimated to ROC prior to the date of issuance of the demand notice, then service of demand notice at the old address would amount to non-service.

CASE TITLE	Sugan Choudhary v. Khandelwal Busar Industries Pvt. Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 270 of 2018
DATE OF ORDER	08.03.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 8(1) & (2) of IBC- Issue of demand notice by Operational Creditor

Brief of the case:

An application under Section 9 of the IBC was filed by M/s. Khandelwal Busar Industries Private Limited’ for initiation of the ‘Corporate Insolvency Resolution Process’ against ‘M/s. Mansfield Cables Company Limited’ - (‘Corporate Debtor’). The said application was admitted by the Tribunal vide order dated May 15, 2018.

The Appellant-Director of the ‘Corporate Debtor’ challenged the same on the grounds that the demand notice under Section 8(1) was delivered in its old address which was changed and the said fact was duly intimated to the Registrar of companies vide letter dated December 7, 2017. It was further contended that since the demand notice was served at the old address, no reply could be served with respect to demand notice in terms of Section 8(2) of the Code.

Decision:

The Appellate Tribunal was of the view that “*the Appellant has made out a case of non-service of demand notice on the ‘Corporate Debtor’, it having changed the Registered Office of the company prior to the date of issuance of demand notice under Section 8(1).*” The appellate Tribunal further clarified that “*this order will not come in the way of the other creditors to move before the competent forum/ authority if any amount is payable, after notice to the ‘Corporate Debtor’.*” Thus, order passed by Adjudicating Authority was set aside.

QR CODE FOR FULL ORDER/JUDGEMENT:



Initiation of CIRP against Principal Borrower is not a pre-requisite for initiating CIRP against Guarantor.

CASE TITLE	Dr. Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd
CASE CITATION	Company Appeal (AT) (Insolvency) No. 346 of 2018
DATE OF ORDER	08.01.2019
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>State Bank of India v. Indexport Registered and Ors</i> <i>Innoventive Industries v. ICICI Bank and Ors.</i>
SECTION/ REGULATION REFERRED	Section 3, Section 4, Section 5, Section 7 of IBC and Section 128 of Contract Act, 1872

Brief of the case:

The Appellant was a shareholder in two different corporate entities which had given their respective Corporate Guarantees in respect of loan availed by *All India Society for Advance Education and Research* (Principal Borrower or ‘PB’) from *M/s Piramal Enterprises Ltd.* Default was committed by the PB in repayment to FC, and consequently, FC filed two separate applications u/s 7 against the two Corporate Guarantors (CGs), both of which were admitted by the AA, Principal Bench, New Delhi, vide its orders dt. 24th May, 2018 and 31st May, 2018. Appellant accordingly challenged maintainability of two CIRPs based on same set of claim, debt, default and record.

Decision:

NCLAT, relying on the judgment of Hon’ble Supreme Court in the matter of “*State Bank of India v. Indexport Registered and Ors.*” held as follows:—

“The liability of the Surety being coextensive, it is not necessary to initiate CIRP against the Principal Borrower before initiating CIRP against the Corporate Guarantors. There is no bar in the Code for filing simultaneously two applications under Section 7 against the Principal Borrower as well as the Corporate Guarantor(s) or against both the Guarantors. However, once, for same set of claim, application under Section 7 filed by the FC is admitted against one of the Corporate Debtor/Principal Borrower or Corporate Guarantor(s), second application by the same FC for same set of claim and default cannot be admitted against the other Corporate Debtor (the Corporate Guarantor(s) or the Principal Borrower).”

QR CODE FOR FULL ORDER/JUDGEMENT:



Disposal of an application under section 7 of Insolvency and Bankruptcy Code, 2016 requires a hearing to be given merely to the Financial Creditor and Corporate Debtor, and not to any third party or intervenor.

CASE TITLE	IDBI Bank Vs. Odisha Slurry Pipeline Infrastructure Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 51 of 2019
DATE OF ORDER	15.01.2019
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	M/s. Innoventive Industries Ltd. Vs. ICICI Bank Ltd.
SECTION/ REGULATION REFERRED	Section 3 (6), (11), (12); Section 4, Section 5(7), (8), (21); Section 7 of IBC

Brief of the case:

In the aforementioned appeal, IDBI Bank Ltd. (Financial Creditor/FC) had disclosed that it had filed the application before NCLT, Kolkata, on 12th March 2018, and despite a passage of more than 10 months, no final order has been passed on its application.

Decision:

In a grievance raised by the Financial Creditor claiming long pendency of his application (Section 7) filed before NCLT, Kolkata, without any disposal, the NCLAT, while reiterating the guidelines laid down by the Supreme Court in the matter of *M/s. Innoventive Industries Ltd. Vs. ICICI Bank Ltd.*, held that except the FC and the CD, there is no requirement of hearing any third party, including any intervenor, at the stage of admission of application.

The NCLAT, while refusing to pass any specific directions to the NCLT to either admit or reject the application, reiterated the legal principle as: “*if there is a ‘debt’ and ‘default’ and the record is otherwise complete, the application is to be admitted. On the other hand, if there is no ‘debt’ payable in law or in fact then it is to be rejected*”

QR CODE FOR FULL ORDER/JUDGEMENT:



Except the Corporate Debtor, no other party has right to intervene at the stage of admission of the petition. However, an aggrieved party may prefer an appeal if it is aggrieved by the order of admission.

CASE TITLE	Damont Developers Private Limited Vs. Bank of Baroda
CASE CITATION	Company Appeal (AT) (Insolvency) No.436-437 of 2019
DATE OF ORDER	24.04.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. Vs. ICICI Bank and Ors.
SECTION/REGULATION REFERRED	Section 7 of IBC-

Brief of the case:

The Appeal was filed challenging the initiation of CIRP against the Corporate Debtor. The grievance of the Appellant is that the Adjudicating Authority by impugned order dated 4th February, 2019 rejected the Impleadment Application filed by the Appellant and by subsequent order dated 18th March, 2019 admitted the application under Section 7.

Decision:

While disposing of an appeal, the NCLAT observed that except the Corporate Debtor, no other party has a right to intervene at the stage of admission of a petition under Section 7 or 9. However, an aggrieved party may prefer an appeal, if it is aggrieved by order of admission.

From the aforesaid precedent of *Innoventive Industries Ltd. Vs. ICICI Bank and Ors*, it is clear that the AA is required to go through the record to find if there is a debt and default and while doing so it was open for the Corporate Debtor to show that there is no debt payable and no default, at the stage of admission of the petition. Even if, after that the Appellant has some grievance he can move before the Adjudicating Authority under Section 60(5) and thereafter, if his grievance is not resolved, he may prefer an appeal under section 61 before this Appellate Tribunal.

QR CODE FOR FULL ORDER/JUDGEMENT:



In order to invoke the provisions of Sec 60(5)(c) of the Code, the Insolvency Resolution or Liquidation Proceedings must be continuing against the Corporate Debtor

CASE TITLE	Levantine Heights Apartment Allottees vs Chitra Srinivas RP (Southern Investments (P) Ltd.)
CASE CITATION	MA/330/2019 in CP/202/IB/2018
DATE OF ORDER	05.04.2019
COURT/TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	Fehmida Shaheen & Ors vs Union of India & Ors.
SECTION/REGULATION REFERRED	Section 60(5)(c) of IBC-Jurisdiction of NCLT to entertain or dispose of any question of priorities in CIRP or liquidation proceeding

Brief of the case:

The application was filed under section 60(5) (c) of IBC seeking prayer to execute sale deed.

Decision:

NCLT dismissed the application (MA/330/2019) in limine and held that “for invoking the provisions of section 60(5)(c) of the code, the Insolvency Resolution or Liquidation Proceedings must be continuing against the Corporate Debtor(CD).” Pointing out that in the instant case, neither the Corporate Insolvency Resolution Process nor the Liquidation Proceedings are subsisting against the CD, as the CP/202/(IB)/CB/2018 stood closed and the role of RP was over by virtue of Hon'ble Supreme Court order dated 20th November, 2018, the NCLT concluded that the application filed under section 60(5)(c) is neither maintainable on facts nor in law.

The NCLT also pointed out that essential requirements of section 60(5)(c) are:

- (a) any question of priorities or any question of law or facts. arising out of, or;
- (b) in relation to the insolvency resolution, or;
- (c) liquidation proceedings of the corporate debtor or corporate person under the code.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 10

Section 4 of the Code gets triggered, the moment default is of rupees one lakh or more.

CASE TITLE	Ashok Oswal Vs. UCO Bank & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) 763 of 2018
DATE OF ORDER	15.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. Vs. ICICI Bank and Ors.
SECTION/REGULATION REFERRED	Section 4 & Section 7 of the Code

Brief of the case:

An application under Sec 7 of the Code was filed by UCO Bank (Financial Creditor) against ‘Oswal Spinning and Weaving Mills Ltd.’ (Corporate Debtor). Appellant submitted that the Adjudicating Authority failed to notice that the account of the Corporate Debtor was wrongly declared as NPA and also failed to consider that there is disputed question relating to amount as shown in the Section 7 petition. It was submitted that in absence of definite amount and date of default, the petition under Section 7 was not maintainable.

Decision:

NCLT relied on the decision of Hon'ble Supreme Court in “*Innoventive Industries Ltd. Vs. ICICI Bank and Ors.*”. The observations by the Supreme Court reads as under:-

“The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an installment amount. The Code gets triggered the moment default is of rupees one lakh or more (Section 4).

In the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law.”

Since, in the present case, it is not disputed that there has been a debt which is more than Rs.1 Lakh and the Corporate Debtor failed to pay the debt, application under Section 7 was maintainable. The appeal was dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT:



For effective continuation of Corporate Insolvency Resolution Process, the Financial Creditor constituting the CoC has to contribute proportionately to the expenses, fee and other cost of the process

CASE TITLE	Reliance Commercial Finance Limited Vs. Noble Resourcing Business and Solution Private Limited
CASE CITATION	(IB)-494(PB)/2017
DATE OF ORDER	12.04.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

In the present matter, FC (Reliance Commercial Finance Ltd.) seeking directions to the other Financial Creditor, Intec Capital Ltd., to contribute to the approved CIRP cost in the proportion of their voting share.

Decision:

Hon'ble NCLT, while disposing-off the application vide order dated 12th April, 2019, held as follows:

“We of the view that for effective continuation Of Corporate Insolvency Resolution Process, the financial creditor constituting COC has to contribute to the expenses, fee and other cost of the process. Otherwise, the whole process would come to a halt and cause unnecessary delay. If the financial creditor like Intec Capital Limited-non applicant is not inclined to contribute to the cost of the process, then we are doubtful as to how their claim be considered in the whole process. Accordingly, we direct the non-applicant-respondent to contribute proportionately to the extent of 42.78% to the running CIRP as approved by COC- the non-applicant-respondent fails to contribute then their claim in the CIR Process would not be considered. ”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 12

A corpus created by members of CoC for CIRP cost is not an asset of the Corporate Debtor, and thus, cannot be subject to any attachment order passed by any authority against the Corporate Debtor.

CASE TITLE	ICICI Bank Vs. Gitanjali Gems Limited
CASE CITATION	M.A 1520/2019 in MA 254/2019 in C.P. (IB) 3585 (MB)/2018
DATE OF ORDER	14.05.2019
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7, Section 238 of IBC and Section 5(1) of Money Laundering Act, 2002

Brief of the case:

Resolution Professional (RP) filed an application before the NCLT seeking orders for opening a separate Bank Account with ICICI Bank, wherein the Hon'ble tribunal was informed regarding passing of a resolution and consequent pooling of funds by COC members creating a corpus of Rs.10 Crores towards CIRP Cost. At the same time, an apprehension was raised by the RP stating that the Directorate of Enforcement, Department of Revenue, Ministry of Finance, Mumbai Zonal office vide their order dt. 31st July, 2018/25th June, 2018 had made provisional attachment over the assets by invoking section 5(1) of the PMLA, 2002, and accordingly a prayer was made to protect the said corpus from attachment.

Decision:

Relying on the language of the *non-obstante* clause contained in section 238 of IBC, coupled with the fact that the corpus has been arranged under the directions of the NCLT to facilitate Insolvency Proceedings, the Adjudicating Authority held that the same cannot be attached by any other authority under law. It was also clarified that the corpus created is not an asset of the defaulter company, and hence, is beyond the attachment by the Directorate of Enforcement.

Thus, allowing the application, the NCLT directed the RP to open an account for CIRP purpose of the CD which shall not be subject to control of any authority or bank. It was further directed that the bank account shall be operated as an 'Escrow Account' under the control and supervision of NCLT along with the COC members.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 13

NCLAT allows exclusion of 35 days for counting the 270 days period, for a successful resolution process in terms of section 12A of Insolvency and Bankruptcy Code, 2016.

CASE TITLE	Daiyan Ahmed Azmi vs. Rekha Kantilal Shah, Liquidator & Ors.
CASE CITATION	CA (AT) (Insolvency) No. 271 of 2019
DATE OF ORDER	21.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Y.Shivram Prasad v. S. Dhanapal &Ors.
SECTION/REGULATION REFERRED	Section 60(5) (c) of IBC

Brief of the case:

An appeal was filed by promoters of the Corporate Debtor (*M/S LeoDuct Engineers Consultants Ltd.*) impugning Hon'ble NCLT's (Mumbai Bench) order dt. 8th March 2019 disallowing RP's application filed u/s 60(5)(c) of IBC seeking exclusion of time lost on account of cancellation of license of the erstwhile RP, as also contending that despite such circumstances, directions were passed by Hon'ble NCLT to continue for a period of three weeks. It was further informed that if the period specified would have been excluded for the purposes of counting 270 days, COC could have considered appellant's proposal for filing Section 12A application. It was also informed that 90% of the FCs have already intimated that they are considering for settlement.

Decision:

Taking into account the facts and circumstances of the case, as also the stand taken by the parties, the Hon'ble NCLAT, vide its order dt. 21st May 2019. While allowing the appeal and setting aside the impugned order, held that NCLT should have allowed exclusion of the intervening period. Further, the RP was directed to conduct the COC meeting immediately to place section 12A application before it. It was also directed, that, in case, the application is accepted by 90% Voting share of FCs, the NCLT shall allow the same, and if the application is not accepted by such 90% Voting share, then the NCLT shall pass orders for Liquidation and give directions to the Liquidator to act in terms of directions passed by Hon'ble NCLAT in the matter of *Y.Shivram Prasad v. S. Dhanapal & Ors.*

QR CODE FOR FULL ORDER/JUDGEMENT:



“Provision in IBC with regard to filing of claim within the stipulated period of 90 days is not mandatory.”

CASE TITLE	State Bank of India Vs. Surya Pharmaceuticals Limited
CASE CITATION	(IB)-904(PB)/2018
DATE OF ORDER	17.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Twenty first Century Wire Rods Ltd. CA 934 (PB)/2019 filed in C.P. No. (IB)-737(PB) /2018
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

In this matter, RP rejected claim of State Bank of India (Appellant) on the ground of delay as it was filed beyond 90 days.

Decision:

Hon'ble NCLAT, while disposing- off an application titled as *State Bank of India v. Surya Pharmaceuticals Ltd.*, has, vide its order dated 17th May 2019, made the following important observation:

“The filing of reply would not be necessary as the claim has been rejected by the RP on the ground of delay as it was filed beyond 90 days. *In various judgments, we have clarified that the provisions with regard to the filing of claim within the stipulated period is not mandatory'. A reference may be made to the order passed in CA No. 727 (PB/2019 (CP No. (IB)-737 (PB)/2018 namely Twenty first Century Wire Rods Ltd.) decided on 01.05 2019.*

"Keeping in view the aforesaid situation, the resolution professional may now consider the claim on merit without rejecting it on the ground of delay.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 15

Commercial Tax Department's Order for freezing of CD's bank account issued prior to initiation of CIRP is held to be a "coercive step" which cannot sustain during CIRP.

CASE TITLE	Union Bank of India v. Era Infra Engineering Limited
CASE CITATION	CA 869 (PB)/2019 in C.P. No. (IB)-190(PB)/2017
DATE OF ORDER	03.06.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 60(5) of IBC

Brief of the case:

An application was filed by the Resolution Professional under section 60(5) of IBC, seeking orders for defreezing of bank accounts of the Corporate Debtor.

In the matter, while the CIRP proceedings (against the CD) were initiated on 8th May, 2019, the orders for freezing of CD's bank accounts were passed by the Commercial Tax Department's on 16th March, 2017, and thus, the Tax Department's orders predated initiation of CIRP. Since, the freezing/attachment orders continued after the CIRP, RP through its application had sought directions (from NCLT) for defreezing of CD's said accounts to enable him to carry out the CIRP effectively.

Decision:

After analyzing the facts and circumstances of the case as also taking into account the mandate of law (IBC), Hon'ble NCLT directed for not defreezing of the said accounts, and also directed the non-applicant/respondent to keep all the proceedings in abeyance till the period of moratorium continues. It was further directed that no recovery certificate issued against the CD shall be given effect till the continuation of moratorium. Hon'ble NCLT (Principal Bench), held as follows:

"no action can be taken against the corporate debtor *nor any such action taken earlier can continue. The freezing of accounts is a coercive step and is an impediment for the Resolution Professional to conduct the Corporate Insolvency Resolution Process effectively.*

QR CODE FOR FULL ORDER/JUDGEMENT:



A mere dispute relating to quantum of debt, due from Corporate Debtor to Financial Creditor, cannot be a ground to challenge NCLT order admitting application under section 7 of Insolvency and Bankruptcy Code, 2016

CASE TITLE	Arun Rathi Vs. Indian Overseas Bank
CASE CITATION	Company Appeal (AT) (Insolvency) No. 609 of 2019
DATE OF ORDER	31.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Limited v. ICICI Bank and Ors.
SECTION/REGULATION REFERRED	Section 7 of IBC and Section 13 of SARFAESI Act, 2002

Brief of the case:

An appeal preferred by the director of Corporate Debtor (M/s. Rathi TMT Saria Pvt. Ltd.) challenging the impugned NCLT's order wherein an application filed under section 7 of IBC was admitted. Appellant submitted that there was a dispute about the debt amount. This apart the Adjudicating Authority failed to consider.

Decision:

Hon'ble NCLAT, *vide* its order dated 31st May, 2019, held that when commission of "default" in payment of debt due from CD to FC is admitted by the CD, a mere dispute raised as regards quantum of debt cannot be a ground to set aside an order admitting the application, given the fact that the quantum is more than Rs. 1 lakh.

In order to arrive at a decision on appellant's objection, Hon'ble NCLAT referred to Hon'ble SC's dictum in the matter of *Innoventive Industries Limited v. ICICI Bank and Ors.* (Decision dt. 31st August, 2017).

In view of the aforementioned, Hon' ble NCLAT dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



Hon'ble NCLAT allowed withdrawal of section 9 application on the basis of settlement inter se the parties and before constitution of CoC.

CASE TITLE	Ashish Choudhery Vs. Unipik Automation Solutions
CASE CITATION	Company Appeal (AT) (Ins) No. 544 of 2019
DATE OF ORDER	10.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Swiss Ribbons & Anr. v. UOI & Ors.
SECTION/REGULAITION REFERRED	Section 9 of IBC

Brief of the case:

The present appeal was preferred by a shareholder of M/s. Choudhery Cheese Bazar Pvt. Ltd.' (Corporate Debtor/CD). Appellant submitted that the parties have settled the matter before constitution of 'Committee of Creditors' and seeking a prayer for setting aside of NCLT's order admitting section 9 application filed in respect of CD.

Decision:

Hon'ble NCLAT vide its order dt.10th June 2019, allowed the appeal stating that a settlement had been arrived at *inter se* the parties, and before constitution of COC. After taking into account the facts and circumstances of the case, Hon'ble NCLAT while allowing the appeal, held as follows:

*"5... the parties have settled the matter prior to the constitution of the 'Committee of Creditors' and in view of the decision of the Hon'ble Supreme Court in '**Swiss Ribbons Pvt. Ltd. &Anr**'... and in exercise of inherent powers under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016, we set aside the impugned order dated 23rd April, 2019 and allow the respondent (Operational Creditor) to withdraw the application under Section 9 of the I&B Code... In effect, order (s) passed by Ld. Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium and all other order (s) passed by Adjudicating Authority pursuant to impugned order and action taken by the 'Resolution Professional' are set aside. The application preferred by the Respondent under Section 9 of the I&B Code is disposed of as withdrawn... The Respondent Company is released from all the rigour of law and is allowed to function independently through its Board of Directors from immediate effect."*

QR CODE FOR FULL ORDER/JUDGEMENT:



Not only individuals, but a Body Corporate can also be an "undischarged insolvent" in terms of Section 29 A(a) of the Code.

CASE TITLE	State Bank of India Vs. Bhushan Energy Limited
CASE CITATION	CA No. 929(PB)/2018 in C.P. (IB)-530(PB)/2017
DATE OF ORDER	30.05.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 29A of the Insolvency and Bankruptcy Code.

Brief of the case:

In the matter of *State bank of India vs. Bhushan Energy Limited*, a primary question of law arose for determination is whether a body corporate could be an ‘undischarged insolvent’? On proper interpretation of Section 29A(a) read with sub section (j) of the IBC Code, a person is not eligible to submit a resolution plan, if such a person, or any other person acting jointly or in concert with such person is an ‘undischarged insolvent’.

Decision:

The National Company Law Tribunal, Principal Bench, New Delhi on **30th May, 2019** while approving the resolution plan submitted by Tata Steel for Bhushan Energy Limited made following observations in connection with the term "**undischarged insolvent**" under Section 29A of the Insolvency and Bankruptcy Code.

- (i) Not only individuals, but a Body Corporate can also be an "undischarged insolvent" in terms of Section 29 A(a) of the Code. *(The expression 'person used in Section 29A of the Code has been defined to include a body corporate (company) by virtue of Section 3(23) of the Code.)*
- (ii) Section 7, Section 9 and Section 10 proceedings are summary proceedings for the determination of default which are not conclusive in nature. The Adjudicating Authority further noted that CIRP is a rescue process and while a company is under CIRP, it cannot be said to be 'undischarged insolvent'.
- (iii) The Tribunal observed that it is extremely doubtful whether the Adjudicating Authority- NCLT has jurisdiction to issue such a declaration by adopting a summary procedure.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT dismissed a petition filed on the basis of default of payment of rent by Corporate Debtor to the Petitioner.

CASE TITLE	M/s Parvath Industries Vs. M/s All Digital Network India Limited
CASE CITATION	C.P.(IB) No. 205/BB/2018
DATE OF ORDER	18.06.2019
COURT/TRIBUNAL	NCLT, Bangalore Bench
CASES REFERRED	Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

An application was filed under section 9 of IBC wherein the Petitioner (*M/s Parvath Industries*) sought orders for initiation of CIRP proceedings in respect of the CD stating that the applicant had leased out office space to the CD who failed to regularly pay the rent thereof. The maintainability of the application was challenged by CD/Respondent on the grounds that the Petitioner being Landlord does not qualify as Operational Creditor within the meaning of IBC, 2016.

Decision:

After taking into account facts of the case, NCLT inter alia concluded that the Petitioner has an alternative remedy of filing a civil suit seeking eviction of the tenant and also recover its arrears of rent. It further held that it is a settled position of law that the provisions of the Code cannot be invoked for recovery of outstanding amount but it can be invoked to initiate CIRP for justified reasons as per the Code.

The Hon'ble Apex Court's dicta in the matter of *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.* was also quoted by the NCLT to substantiate its finding that *IBC is not intended to be a substitute for a recovery forum.*

In conclusion, the application was dismissed as misconceived, however, the NCLT clarified that its order shall not come in the way of the petitioner in invoking any other remedy available to it under any other law to redress its grievances.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLAT upholds NCLT's order rejecting a section 9 application on the ground that there is a pre-existing dispute inter se the parties on the debt amount.

CASE TITLE	CIL Australia North Pty. Limited Vs. Sharp Corp Limited
CASE CITATION	Company Appeal (AT) (Ins.) No.319 of 2019
DATE OF ORDER	02.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. v. ICICI Bank MobiloX Innovations (P) Ltd. v. Kirusa Software (P) Ltd
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

This appeal had been preferred by Operational Creditor against order dt. 12th February, 2019 passed by Hon'ble NCLT, New Delhi Bench wherein an application filed u/s 9 of IBC was rejected on the ground of a pre-existing dispute.

Decision:

Hon'ble NCLAT vide its order dt. 2nd May, 2019 upheld the impugned order and held that '*The fact being there is pre-existing dispute, we also hold that the application u/s 9 is not maintainable.*'

Hon'ble Appellate Tribunal also referred to the ratio laid down by Hon'ble Supreme Court (SC) in the matter of *Innoventive Industries Ltd. v. ICICI Bank* and in the matter of *MobiloX Innovations (P) Ltd. v. Kirusa Software (P) Ltd.* The relevant extract from the judgment is reproduced below:

"29. The scheme of Section 7 stands in contrast with the scheme under section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing- i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."

QR CODE FOR FULL ORDER/JUDGEMENT:



Extension of CIRP period refused since the CoC was not restrained by any external agency or the Adjudicating Authority from making a decision about proposed Resolution Plan.

CASE TITLE	S. Rajagopal RP (Frontier Lifeline Limited) Vs. Deputy General Manager
CASE CITATION	MA/430/2019 in CP/698/IB/2017
DATE OF ORDER	18.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/RULE/REGULATION REFERRED	Section 60(5) of IBC read with Rule 11,15, 153 of NCLT Rules

Brief of the case:

An application was filed by the Resolution Professional for exclusion of time of 43 days and subsequently to extend the period of CIRP by 43 days. The COC had received a resolution plan and had asked the Resolution applicant to revise the said received plan. The Resolution applicant had revised the resolution plan and it was pending for approval before the COC. However the COC had yet to take a decision.

Decision:

NCLT, Chennai Bench held that since the COC was not restrained by any external agency or the Adjudicating Authority from making the decision over the Resolution Plan pending before it, there is no ground to grant exclusion of time and the extension sought thereafter.

The Bench while refusing grant of exclusion of time, opined that the case fit for liquidation for the following reasons:

1. *Proposed Resolution Plan is not approved by the COC till date.*
2. *The Resolution Plan value is far below the liquidation value.*
3. *Lack of decision making by the COC will not become a reason for exclusion of the time period from the CIRP period.*

*The appeal was, therefore, **dismissed** and it was left open to the Resolution Professional to take any appropriate action in accordance with law.*

QR CODE FOR FULL ORDER/JUDGEMENT:



Once a debt payable by Corporate Debtor stands cleared on account of approval of plan by payment in favour of lenders, the effect of Deed of Guarantee comes to an end.

CASE TITLE	Standard Chartered Bank & Ors. Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Ins.) No. 242 of 2019
DATE OF ORDER	04.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 29A and Section 30 of IBC; and Section 140 and Section 145 of Contract Act, 1872

Brief of the case:

The NCLT (Ahmadabad Bench) order dated 8th March, 2019 (impugned order) approving the resolution plan filed by M/s Arcelor Mittal India (P) Ltd. (successful resolution applicant) in respect of the Corporate Debtor, M/s Essar Steel India Limited, was sought challenged by different parties by filing their respective appeals against the common impugned order. Since the appeals were filed against a common order, they were all heard together and also disposed by vide Hon'ble NCLAT's order dated 4th July, 2019. In one of the appeals titled as Prashant Ruia v. State Bank of India & Ors. (CA(AT) (Ins.) No. 257 of 2019), the grounds of challenge made thereof were the appellant being a Guarantor of CD's loans, its rights to be indemnified u/s 140 of Contract Act, stands extinguished on account of approval of Resolution Plan submitted by M/s Arcelor Mittal India (P) Ltd.

Decision:

While dismissing such contentions as devoid of merit, Hon'ble NCLAT, held as follows:

“31. Such guarantee is with regard to clearance of debt. Once the debt payable by the ‘Corporate Debtor’ stands cleared in view of the approval of the plan by making payment in favour of the lenders (‘Financial Creditors’), the effect of ‘Deed of Guarantee’ comes to an end as the debt stands paid. The guarantee having become ineffective in view of payment of debt by way of resolution to the original lenders (‘Financial Creditors’) the question of right of subrogation of the Appellant’s right under Section 140 of the Contract Act and the right to be indemnified under Section 145 of the Contract Act does not arise.

Finding no merit in the appeal, the same was dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT:



In case of Corporate Debtor is an MSME, it is not necessary for CoC to follow all the procedures under the CIRP.

CASE TITLE	Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 203 of 2019
DATE OF ORDER	04.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Swiss Ribbons (P) Ltd. & Anr. v. UOI & Ors.
SECTION/REGULATION REFERRED	Section 12A and Section 25 of IBC

Brief of the case:

An appeal was filed against Hon'ble NCLT (Chennai Bench) order dt.1st February, 2019 passed in insolvency proceedings initiated (u/s 9 of IBC) in respect of *M/s Bafna Pharmaceuticals Ltd.* (CD).

It was contended, in specific, that while u/s 25(2)(h), it is the RP's duty to invite prospective RAs who fulfill the criteria to submit their plans, and once the EoI has been published (Reg. 36A) and prospective RAs have been invited, the IM prepared u/s 29 is to be shared with them. In the present case, it was averred that while the IM was prepared but was not circulated. Dealing with these contentions of the Appellant, RP informed that it is on CoC's instructions that publication of EoI was deferred since CoC was actively considering CD's resolution plan furnished by the RA.

Decision:

After perusing facts of the case and the contentions of the parties, Hon'ble NCLAT, while adverting to Statement of Objects and Reasons of the Code, as also Hon'ble SC's ruling in the matter of *Swiss Ribbons (P) Ltd. & Anr. v. UOI & Ors.*, held that "it is clear that the I&B Code envisages maximization of value of the assets of the CD and that the company being MSME, it is not necessary for the 'Committee of Creditors' to follow all the procedures under the 'Corporate Insolvency Resolution Process'. For example, if case is settled before the constitution of the 'Committee of Creditors' or in terms of Section 12A on the basis of offer given by Promoter, in such case, all other procedure for calling of application of 'Resolution Applicant' etc. are not followed. If the Promoter satisfy all the creditors and is in a position to keep the 'Corporate Debtor' as a going concern, it is always open to 'Committee of Creditors' to accept the terms of settlement and approve it by 90% of the voting shares. The same principle can be followed in the case of MSME." The appeal was accordingly dismissed as devoid of any merit.

QR CODE FOR FULL ORDER/JUDGEMENT:



If the circumstances justify and in unforeseen circumstances, NCLT(or NCLAT) may exclude certain period for counting CIRP period- Clarifies Hon'ble NCLAT

CASE TITLE	Vandana Garg Vs. Reliance Capital Ltd. & Others
CASE CITATION	Company Appeal (AT) (Insolvency) No. 603 of 2019
DATE OF ORDER	02.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. & Ors.
SECTION/REGULATION REFERRED	Section 238A of IBC

Brief of the case:

The appeal was preferred by the RP of *M/s GVR Infra Projects Limited* (CD) challenging Hon'ble NCLT's (Division Bench, Chennai) order dt. 30th April, 2019 (impugned order) whereby the relief sought for exclusion of 35 days on the ground of delay in appointment of RP (in place of the IRP) was rejected. A further grievance was also raised by the appellant claiming that delay in appointment of RP resulted in delay in calling of applications from RAs, contending that, if such period is not excluded, in the absence of any viable or feasible plan, the AA may have to pass order for liquidation of CD.

Decision:

Hon'ble NCLAT being seized of the issue, referred to its own judgment dt. 8th May, 2018 passed in the matter of *Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd. & Ors.* wherein the same issue fell for its consideration, and wherein Hon'ble NCLAT held as follows:

"9. ...if an application is filed by the 'Resolution Professional' or the 'Committee of Creditors' or 'any aggrieved person' for justified reasons, it is always open to the Adjudicating Authority/Appellate Authority to 'exclude certain period' for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances."

With the aforementioned observations, the appeal was allowed and prayer for exclusion of 35 days (asalso a period of 18 days during which the application remained pending before the AA) from CIRP period was allowed *vide* Hon'ble NCLAT's order dt. 2nd July 2019.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLAT rejects a legal contention that admission of application under section 7 of Insolvency and Bankruptcy Code, 2016 is not contemplated in all cases wherein there is a default.

CASE TITLE	Nakul Bharana v. ICICI Bank Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 701 of 2019
DATE OF ORDER	10.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Limited v. ICICI Bank and Anr.
SECTION/REGULATION REFERRED	Section 5(7), Section 7(5)(a), Section 8 of the Code

Brief of the case:

An appeal was filed before Hon’ble NCLAT against an order dt. 29th May, 2019 (impugned order) passed by Hon’ble NCLT (Principal Bench) in the proceedings initiated by ICICI Bank (FC) against M/s Gwalior Bypass Project Limited (CD) claiming that the impugned order has been passed in complete disregard to the provisions of Section 7(5)(a) of the Code, as per which the admission of application under Section 7 was not contemplated in all cases wherein default has occurred. A suggestion was made by the Appellant claiming that, even if the default has occurred, the Code confers some discretion in the NCLT to either admit or reject the application, keeping in mind the object of the Code.

Decision:

Dismissing the aforementioned legal contention raised by the Appellant, Hon’ble NCLAT made a reference to Hon’ble SC’s ruling in *Innoventive Industries Limited v. ICICI Bank and Anr.* Wherein the following was held:

“28. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, and that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.”

In the result, the appeal was dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT:



Unless the debt is crystallised and payable in law, the issue of default does not arise.

CASE TITLE	Peter Johnson John Vs. KEC International Limited
CASE CITATION	C.P.(IB)-2912(MB)/2018
DATE OF ORDER	03.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGUALTION REFERRED	Section 9 of IBC and Section 13 of CPC, 1908

Brief of the case:

The Appellant, who was employed by CD in the Democratic Republic of Congo (*‘DR of Congo’*) was not paid any salary. Aggrieved by the said conduct of CD, appellant had approached the concerned Labour Court and also secured a Decree against the CD. CD, however, failed to pay the decretal amount and wound up its business from *DR of Congo*. This compelled the Appellant to approach Hon’ble Bombay High Court under section 13 of CPC, 1908 seeking enforcement of the decree. The Appellant, thereafter, also initiated the present proceedings under section 9 of IBC against the CD.

Vide the impugned order dt. 20th December 2018, Hon’ble NCLT (Mumbai Bench), while dismissing the application filed u/s 9 of IBC, had held that since section 9 application was filed by Appellant during pendency of the aforesaid suit and the Appellant’s claim was based on the foreign decree, it constituted an existing dispute between the parties on the date of filing of application under section 9 of IBC.

Decision:

Upholding the impugned order, Hon’ble NCLAT, *vide* its order dt. 03.07.2019 dismissed the appeal by holding that adjudication initiated by Appellant before Bombay High Court in regard to foreign decree (obtained *ex parte*) falls within the purview of a pre-existing dispute placing an embargo on the powers of the Adjudicating Authority to initiate CIRP and until such adjudication fructifies into a decree favouring the Appellant, claim of the Appellant cannot be held to have crystallised into a “*Debt payable in law*”.

QR CODE FOR FULL ORDER/JUDGEMENT:



Waiver from appointment of Valuers can be granted if the assets of the Corporate Debtor are of negligible value.

CASE TITLE	Evershine Advisory Private Limited Vs. Optic Advisory Private Limited
CASE CITATION	M.A. No. 1452 of 2019 in CP(IB)-442/IB/MB/2018
DATE OF ORDER	03.06.2019
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 33 of IBC and Regulation 27 of Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Brief of the case:

An application u/s 7 of IBC was filed by *Evershine Advisory Services Pvt. Ltd* (Financial Creditor) initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor namely Optic Advisory Pvt. Ltd. Hon'ble NCLT via order dated 16.10.2018 admitted the application for initiation of CIRP against the Corporate Debtor. It is pertinent to mention that Appointment of Valuer is mandatory under Regulation 27 of Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides as follow:

“27. Appointment of registered valuers.

The resolution professional shall within seven days of his appointment, but not later than forty-seventh day from the insolvency commencement date], appoint two registered valuers to determine the fair value and the liquidation value of the corporate debtor in accordance with regulation 35:...”

However, the CoC in its 4th CoC meeting sought waiver from appointment of Valuers, since as per Balance sheet for 2017-2018, the assets of the company were of negligible value i.e. fixed assets worth Rs.1725/- and cash worth Rs. 90,306/- and the same was placed before the Tribunal for its approval.

Decision:

On perusal of the aforementioned facts, the Hon'ble NCLT, Mumbai Bench granted waiver from valuation.

QR CODE FOR FULL ORDER/JUDGEMENT:



Debt arising out of non-payment of lease rent” cannot be the trigger for initiating action u/s 9 of IBC

CASE TITLE	Aurora Accessories (P) Ltd. v. M/s Ace Acoustics & Audio Video Solutions (P) Ltd.
CASE CITATION	CP(IB) No. 15/GB/2019
DATE OF ORDER	09.08.2019
COURT/TRIBUNAL	NCLT, Guwahati
CASES REFERRED	<i>Pramod Yadav & Ors. v. Divine Infracon (P) Ltd.</i> <i>Citicare Super Speciality Hospital v. Vighnaharta Health Visionaries (P) Ltd.</i> <i>Jindal Steel & Power Ltd. v. DCM International Ltd</i>
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

An application was taken up for disposal by Hon’ble NCLT, wherein, on the basis of a claim for non-payment of lease rent by CD prayer for initiation of proceedings u/s 9, IBC was made.

Decision:

Taking up the legal issue as regards standing of the Petitioner as “Operational Creditor”, the AA, while referring to the definition of the term “Operational Debt” held that the definition has four components, viz., (i) Goods, (ii) Services, (iii) Employment, and (iv) Government Dues, and after applying the test laid down in the provision, the Tribunal came to the following finding:

“6.1...On the facts of our case, we would be concerned with the first two, that is, provision of goods or services. We are of the view that supply of goods or services would mean such supply as is the input for either manufacturing or trading...”

“6.2... any debt arising without nexus to the direct input to the output produced or supplied cannot, in the context of the Code, be considered as an operational debt. Even though it can be a claim amounting to a debt, it cannot be categorised as an operational debt.

Thus, concluding, Hon’ble NCLT, vide its order dt. 9th August, 2019, held that the debt arising out of non-payment of lease rent does not fall within the definition of “operational debt”, and accordingly dismissed the application/petition as not maintainable.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 29

Consolidation of Videocon Group Firms proceedings will set a precedent for future group insolvency proceedings

CASE TITLE	State Bank of India & Ors. Vs. Videocon Industries Limited & Ors.
CASE CITATION	MA 1306/2018, MA 1416/2018, MA 393/2019, MA 115/2019, MA 1574/2019, MA 774/2019, MA 778/2019, MA 1583/2019
DATE OF ORDER	08.08.2019
COURT/TRIBUNAL	NCLT, Mumbai
CASES REFERRED	Dr BVS Lakshmi v.Geometrix Laser Solutions Pvt Ltd.; Barlow & Ors. Vs. Polly Peck International Finance Ltd. & Anr., 63 Moons Technologies Ltd.& Ors. Vs. Union of India & Ors. Etc.
SECTION/ REGULATION REFERRED	Section 7, section 12, section 30, section 60(5) of IBC; and Section 126 of Indian Contract Act, 1872

Brief of the case:

Several petitions were filed by the creditors either demanding the consolidation or in some cases objecting the consolidation of insolvency process of the Videocon group Companies.

Decision:

Hon'ble NCLT, Mumbai Bench based upon the principles laid down by judicial authorities, mostly by U.K./U.S.A. courts observed that before arriving at any conclusion on 'Consolidation', the existence of certain ingredients are necessary to be examined, viz ; (1) Common control, (2) Common directors, (3) Common assets, (4) Common liabilities, (5) Inter-dependence, (6) Inter-lacing of finance, (7) Pooling of resources, (8) Co-existence for survival , (9) intricate link of subsidiaries 10) intertwined of accounts, 11) inter-looping of debts, 12) singleness of economics of units, 13) cross shareholding, 14) Inter dependence due to intertwined consolidated accounts, 15) Common pooling of resources, etc.

Hon'ble NCLT, Mumbai Bench allowed consolidation of insolvency resolution process against 13 Videocon Group companies into a single process. Further, the tribunal held that the period of 180 day-time limit for completion of resolution process will be considered from the day of this order by the tribunal.



CASE NO. 30

Claim relating to ‘mortgaged property’ is not barred by limitation under IBC as the period of limitation is 12 years with regard to mortgaged property under Limitation Act

CASE TITLE	Babulal Vardharji Gurjar V. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 549 of 2018
DATE OF ORDER	14.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>B.K. Educational Services Private Limited vs. Parag Gupta & Associates,</i> <i>Binani Industries Ltd. vs. Bank of Baroda & Anr,</i> <i>Innoventive Industries Ltd. v. ICICI Bank</i>
SECTION/REGULATION REFERRED	Section 7 & 238 of IBC

Brief of the case:

An appeal was filed before Hon’ble NCLAT against impugned order dated 9th August, 2018 passed by the NCLT, Mumbai Bench admitting an application under Section 7 of IBC, 2016 filed by JM Financial Asset Reconstruction Co. Ltd. (Financial Creditor) against ‘Veer Gurjar Aluminium Industries Pvt. Ltd.’ (Corporate Debtor). Appellant being the suspended director of Corporate Debtor raised the question of limitation and submitted that the ‘default’ was committed on 8th July, 2011 whereas the petition under Section 7 of the I&B Code was filed in March, 2018, the application was not maintainable being barred by limitation.

Decision:

Hon’ble NCLAT placing reliance on Section 238A of Insolvency and Bankruptcy Code, 2016 and Part V (First Division) of Limitation Act relating to ‘Suits relating to immovable property’, held as follows:

“30. In view of the aforesaid position of law, the property having mortgaged, we also hold that the claim is not barred by limitation as the period of limitation is 12 years with regard to mortgaged property and in terms of Section 5 (7) read with Section 5(8) as the property is mortgaged, Respondent No. 2 also comes within the meaning of ‘Financial Creditor’.”

In the result, Hon’ble NCLAT held that the application under Section 7 was not barred by limitation nor the claim of Financial Creditor was barred by limitation and dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



Expenses fixed by the Adjudicating Authority will be borne by the creditor who moved the application

CASE TITLE	S3 Electricals and Electronics Private Limited Vs. Brian Lau & Anr.
CASE CITATION	CIVIL APPEAL NO. 103 OF 2018
DATE OF ORDER	05.08.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC and Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Brief of the case:

A civil appeal was preferred before the Hon'ble Supreme Court of India, impugning order dated 02nd August, 2017 issued by Hon'ble NCLAT, wherein application admitted under Section 7 of the Code against 'S3 Electrical and Electronics Private Limited' was dismissed and Adjudicating Authority (AA) was directed to fix the 'fee of Interim Resolution Professional' and the fees fixed by the AA of the IRP for the period he has functioned will be borne by the corporate debtor.

Decision:

Hon'ble Supreme Court observed from Regulation 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 that the **applicant** is to bear expenses incurred by the IRP, which shall then be reimbursed by the Committee of Creditors to the extent such expenses are ratified. In a case like this where a CoC was never appointed, as the interim resolution process did not reach that stage, the Hon'ble Supreme Court held that the Adjudicating Authority will fix the expense which will be borne by the creditor who moved the application.

In view of the aforesaid observation, Hon'ble Supreme Court of India set aside the impugned judgment dated 02.08.2017 issued by Hon'ble NCLAT to the extent that the expenses as fixed by the AA are to be paid by the corporate debtor and allowed the appeal to this extent.

QR CODE FOR FULL ORDER/JUDGEMENT:



Financial Creditor cannot challenge the order of admission of CIRP filed by another Financial Creditor merely on the ground that it has a superior claim over the claim of the other Financial Creditors

CASE TITLE	L&T Infrastructure Finance Company Ltd. Vs Gwalior Bypass Project Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 676 of 2019
DATE OF ORDER	19.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. v. ICICI Bank Innoventive Industries Limited vs. ICICI Bank & Anr.
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

An appeal was preferred before the Hon'ble NCLAT, impugning order dated 29th May, 2019 passed by the NCLT, New Delhi, Principal Bench, wherein Adjudicating Authority admitted the application under Section 7 preferred by the ICICI Bank Limited and initiated CIRP against '*Gwalior Bypass Project Limited*' (Corporate Debtor).

Decision:

Hon'ble NCLAT held that L&T claiming to be one of the financial creditor and not being a Member/ Shareholder of the Corporate Debtor Gwalior Bypass has no right to intervene to oppose admission of the application under Section 7 preferred by the ICICI Bank against the Corporate Debtor.

In view of the aforesaid observation, NCLAT further held that if the Appellant claims to be one of the Financial Creditor, it can file claim before the Resolution Professional, but it cannot challenge the order of admission in absence of any challenge by the Corporate Debtor, on the ground that it has first charge on the asset of the Corporate Debtor or has superior claim over the claim of the other Financial Creditors. Accordingly Hon'ble NCLAT dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



To initiate CIRP, three years period of limitation should be counted from the date of cause of action and not from the date of filing of application under section 9 of Insolvency and Bankruptcy Code

CASE TITLE	Synergy Property Development Service Pvt Ltd. Vs. Bellona Estate Developers Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No.371 of 2019
DATE OF ORDER	28.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. v. ICICI Bank and Anr
SECTION/REGULATION REFERRED	Section 9 of the IBC

Brief of the case:

An appeal was moved by ‘Synergy Property Development Services Pvt. Ltd.’- (Operational Creditor) before the Hon’ble NCLAT, impugning order dated 22nd January, 2019 issued Hon’ble NCLT, Mumbai Bench (AA) wherein the claim filed by the Operational Creditor was rejected on the ground that the claim was barred by limitation. The AA held that the invoices were issued in the year 2014 and the petition was filed on 22nd March, 2018 and, therefore, the claim was time barred. The Demand Notice under Section 8(1) was issued on 24th May, 2017 to which the ‘Corporate Debtor’ replied on 5th June, 2017 disputing the debt.

Decision:

Hon’ble NCLAT held that:

‘6. The Demand Notice under Section 8(1) having been issued by the Appellant on 24th May, 2017, we hold that the claim was not barred by limitation. The Adjudicating Authority failed to calculate the period of three years which was to be calculated for ascertaining the date of cause of action i.e. the last date of Demand Notice dated 1st September, 2014. The Demand Notice was issued on 24th May, 2017 to which denial was made by the ‘Corporate Debtor’ on 5th June, 2017. It was wrongly calculated on the basis of date of filing of application under Section 9.’

In view of the aforesaid observation, NCLAT vide its order dated 28.08.2019, had set aside the impugned order dated 22nd January, 2019 and remitted the case to the Adjudicating Authority, Mumbai Bench to admit the application under Section 9.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT held that there is no procedure for restoration of the Company Petition available under Insolvency and Bankruptcy Code

CASE TITLE	Tata Power Trading Co. Ltd. V. Indusar Global Limited
CASE CITATION	MA 601/2017 in CP (IB)-1097(MB)/2017
DATE OF ORDER	15.02.2018
COURT/TRIBUNAL	NCLT, Mumbai
CASES REFERRED	-
SECTION/REGULATION REFERRED	N/A

Brief of the case:

A restoration application was moved by the Petitioner before the Hon’ble National Company Law Tribunal (NCLT), Mumbai Bench for restoration of Company Petition already dismissed in terms of consent terms arrived between the parties.

Decision:

In the present case, Hon’ble NCLT held that there is no procedure for restoration of the Company Petition available under Insolvency and Bankruptcy Code, 2016 or Rules there to.

NCLT vide its order dated 15.02.2018, dismissed the application, granting liberty to the Petitioner to file a fresh Company Petition.

QR CODE FOR FULL ORDER/JUDGEMENT:



An application under Section 7 of Insolvency and Bankruptcy Code being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the Corporate Debtor

CASE TITLE	Neeraj Jain Vs. Yes Bank Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No.323 of 2019
DATE OF ORDER	10.04.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of the IBC

Brief of the case:

An appeal was preferred by Mr. Neeraj Jain, Shareholder of ‘M/s. Namo Alloys Pvt. Ltd.’- (‘Corporate Debtor’) against the order dated 25th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, initiating the ‘Corporate Insolvency Resolution Process’ in the matter of M/s. Namo Alloys Pvt. Ltd admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

The Appellant submitted that the Bank officials fraudulently withdrew the amount from the account of the ‘Corporate Debtor’ for which FIR No. 222/2018 has been lodged in Palwal Police Station alleging Applicant Bank’s involvement in defrauding the ‘Corporate Debtor’. Pursuant to the said FIR, charge sheet was already filed. Further the Appellant informed that actually the Chief Financial Officer of the ‘Corporate Debtor’ was involved who duly signed forged cheques and had withdrawn from the account.

Decision:

NCLAT held that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the ‘Corporate Debtor’ and the employees of the Banks. The Bank which is the ‘Financial Creditor’ is a separate entity from the Chief Financial Officer of the ‘Corporate Debtor’ or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an application under Section 7 if the application is complete and there is a debt and default.

QR CODE FOR FULL ORDER/JUDGEMENT:



Application under Sections 7 and 9 of Insolvency and Bankruptcy Code will be maintainable against the Corporate Debtor, even if the name of a Corporate Debtor has been struck-off

CASE TITLE	Hemang Phophalia Vs The Greater Bombay Co-operative Bank Limited, M/s. Penguin Umbrella Works Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 765 of 2019
DATE OF ORDER	05.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC and Section 248 of the Companies Act, 2013

Brief of the case:

An appeal was preferred by against the order dated 12th June, 2019 passed by NCLT, Mumbai Bench initiating the ‘Corporate Insolvency Resolution Process’ against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016. Appellant submitted that name of the Corporate Debtor was struck off from the Registrar of Companies under Section 248 of the Companies Act, 2013, therefore the application under section 7 against non-existent Company (Corporate Debtor) is not maintainable.

Decision:

Hon’ble NCLAT held that:

‘23. In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of ‘Corporate Insolvency Resolution Process’ under Sections 7 and 9 of the I&B Code based on the application, if filed by the ‘Creditor’ (‘Financial Creditor’ or ‘Operational Creditor’) or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the ‘Corporate Debtor’ and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act.’

NCLAT vide its order dated 5th September, 2019 held that the name of the Company having been struck off, the Corporate Person cannot file an application under Section 59 for Voluntary Liquidation. In such a case and in view of the provisions of Section 250(3) read with Section 248(7) and (8), NCLAT further held that the application under Section 7 and 9 will be maintainable against the Corporate Debtor, even if the name of the Corporate Debtor has been struck off and dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



At the stage of admission of Application under section 7, AA is not required to consider if Resolution for a given Company would be possible or not and whether or not it would be possible to keep it a going concern

CASE TITLE	Mr. Vineet Khosla Shareholders and (ex) Director Margra Industries Ltd. Vs. Edelweiss Asset Reconstruction
CASE CITATION	Company Appeal (AT) (Ins) No. 441 of 2019
DATE OF ORDER	06.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	M/s. Innoventive Industries Ltd. Vs ICICI Bank & Anr. Y. Shivram Prasad Vs. S. Dhanapal & Ors
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

An appeal was preferred by Mr. Vineet Khosla Shareholders and (ex) Director of the Corporate Debtor before the Hon’ble NCLAT, impugning order dated 15th March, 2019 issued by Hon’ble NCLT, New Delhi (AA) wherein the application filed by Edelweiss Asset Reconstruction Company Ltd. u/s Sec 7 against M/s Margra Industries Ltd. was admitted. One of the questions raised by the Appellant in the appeal was - Whether the provisions of the IBC can be invoked when it is already known to the financial creditor that there is no possibility whatsoever of keeping the Company as a “going concern” while finding any resolution, and its sole aim is to liquidate the remaining assets?

Decision:

Hon’ble NCLAT held that:

“12. The Adjudicating Authority at that stage is not required to consider if or not Resolution for a given Company would be possible or not and whether or not it would be possible to keep it a going concern as the Corporate Debtor is trying to claim. When efforts are being made to resort to Section 230 of the Companies Act, 2016 even at the stage of liquidation, to see if there could be compromise or arrangements with creditors as can be seen from the Judgement of this Tribunal in the matter of “Y. Shivram Prasad Vs. S. Dhanapal & Ors.” in Company Appeal (AT) (Insolvency) No. 224 of 2018 dated 27th February, 2019, there is no substance in this claim made by the Appellant that if it appears that there is no possibility of keeping the Company a going concern, IBC cannot be invoked. We reject the argument.”

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 38

An operational creditor cannot raise its claim under Section 9 of the code under a joint venture agreement

CASE TITLE	Akshar Properties v/s. Reliable Exports (India) Private Limited
CASE CITATION	CP(IB) 3312/MB/2018
DATE OF ORDER	30.07.2019
COURT/TRIBUNAL	NCLT, Mumbai
CASES REFERRED	Kavita Anil Taneja vs. ISMT Limited
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

An application was moved under Section 9 of the Code. The applicant had entered into a joint venture agreement with the respondent for developing certain properties in an agreed ratio among themselves. As per the agreement the applicant had paid Rs. 19,80,00,000/- to Reliable Exports, a related firm to the corporate debtor towards a refundable deposit. The agreement was later revised and it was agreed that the applicant would get a full payment of fifteen crores upon cancellation of the agreement. The applicant contended that the firm failed to honour the cheques provided, which made them liable to pay interest as agreed upon. This firm was later taken over by the corporate debtor. The applicant also sent a demand notice claiming the unpaid money. The applicant claimed the interest to be paid by the respondent as per the joint venture agreement entered into by the parties.

Decision:

The application was declared to be not maintainable by the tribunal as an operational creditor cannot raise its claim for interest under Section 9 of the Code under a joint venture agreement. Further, in the facts and circumstances of this case, the claim of the Petitioner for interest alone would not be covered under section 9 of the Code as it does not amount to Operational Debt as defined in the Code.

NCLT, Mumbai Bench vide its order dated 30.07.2019, set aside the application as not maintainable.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 39

The question of whether the promissory notes are void or not cannot be determined by AA at the time of admission of application

CASE TITLE	Ashish Manik Vs. SR Marine & Offshore Engineering Pvt. Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Ins.) No. 927 of 2019
DATE OF ORDER	09.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

An appeal was preferred by Mr. Ashish Manik (Director/shareholder of the Corporate Debtor) against the impugned order dated 23rd July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, wherein an application u/s 7 filed by SR Marine & Offshore Engineering Pvt. Ltd. (Financial Creditor) was admitted.

The Appellant submitted that the promissory notes being void, transaction was not binding on the Corporate Debtor and, therefore, the Application under Section 7 was not maintainable.

Decision:

Hon'ble NCLAT held as follow:

“It is also not in dispute that the Corporate Debtor has shown the amount as loan borrowed from the Financial Creditor (first Respondent). For the said reason, while we leave it open as to whether promissory notes are void or not, as the fact remains that the Corporate Debtor has borrowed the loan amount and defaulted to pay the amount, we hold that the Application under Section 7 was maintainable and rightly admitted by the Adjudicating Authority.”

Hon'ble NCLAT vide its order dated 09.09.2019 dismissed the Appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 40

NCLAT allowed group insolvency of group companies for Adel Landmarks Limited

CASE TITLE	Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd. & ors.
CASE CITATION	Company Appeal (AT) (Ins.) No. 927 of 2019
DATE OF ORDER	09.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 5(7) & Section 7 of the Code

Brief of the case:

An appeal was preferred by Edelweiss Asset Reconstruction Company Limited (EARCL) against an order passed by the NCLT, Special Bench, New Delhi wherein Corporate Insolvency Resolution Process of Adel Landmarks Limited was admitted by order dated 5th December, 2018. Resolution Professional of Adel Landmarks Limited also submitted that in the given circumstances, the resolution process would not succeed if the whole project was not taken over by the Resolution Professional for a consolidated Resolution Plan as to keep the project a going concern.

Decision:

Hon'ble NCLAT held that:

“33. We find that it is a case of joint consortium of different ‘Corporate Debtors’ and thereby a group insolvency is required to develop the township on the land of ‘Sachet Infrastructure Pvt. Ltd.’; ‘Magad Realtors Pvt. Ltd.’; ‘Mehak Realtech Pvt. Ltd.’; ‘Sameeksha Estate Pvt. Ltd.’ and ‘Jamvant Estates Pvt. Ltd.’ and others along with ‘Corporate Insolvency Resolution Process’ as initiated against ‘Adel Landmarks Limited’ who is the sole Developer.”

Hon'ble NCLAT vide its order dated 20.09.2019 set aside the impugned order dated 7th March, 2019 passed by Adjudicating Authority and remitted the case to the Adjudicating Authority with direction to admit the applications under Section 7 filed by ‘Edelweiss Asset Reconstruction Company Limited’ against the five above mentioned companies and to appoint the Resolution

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 41

NCLAT directed to restore the application filed under section 9 of the Insolvency and Bankruptcy Code which was dismissed by AA for non-prosecution

CASE TITLE	Saran Equipments & Engineers Pvt. Ltd. Vs. Pioneer Fabricators Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 865 of 2019
DATE OF ORDER	19.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

An appeal was preferred by Saran Equipments & Engineers Pvt. Ltd. (Appellant) against impugned order dated 25th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi. By the impugned order, the Adjudicating Authority rejected the application filed by the Appellant/ Applicant, whereby the Appellant prayed for restoration of the petition by recalling the order dated 11th April, 2019, which was dismissed for non-prosecution.

Decision:

NCLAT held:

“2. It is not the question of stage at which the Appellant filed application for restoration as the application under Section 9 was never decided on merit. The Section 9 application has been dismissed for non-prosecution. It is always open to the Appellant/ Applicant to file a fresh application under Section 9. However, that will amount to increasing the number of cases. Therefore, on hearing the counsel for the parties, we are of the view that instead of giving opportunity to the Appellant to file another application under Section 9, it was desirable to recall the order dated 11th April, 2019 and to restore the application as was filed by the Appellant/ Applicant.”

For the aforementioned reason, Hon’ble NCLAT vide its order dated 19.09.2019 set-aside the impugned order dated 25th July, 2019 of the Adjudicating Authority and restored the said

petition to its original file with direction to the Adjudicating Authority to consider the application under Section 9 on merit after notice and hearing the parties.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 42

NCLAT allowed the Dutch Bankruptcy Administrator to attend the meeting of CoC in the ongoing Jet Airways Insolvency proceedings

CASE TITLE	Jet Airways (India) Ltd (Offshore Regional Hub/Offices Through its Administrator Mr. Rocco Mulder) v. State Bank of India & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 707 of 2019
DATE OF ORDER	26.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

In the ongoing Insolvency of Jet Airways, the Administrator of Jet Airways (India) Limited (Offshore Regional Hub) and the Resolution Professional of Jet Airways (India) Limited have filed their ‘Terms & Conditions’ of agreement termed as ‘*Cross Border Insolvency Protocol*. All the clauses have been accepted by each party except ‘Clause No. 6.1.2’ which relates to participation of the ‘Dutch Trustee’ (Administrator) in the meeting of the ‘Committee of Creditors’.

Decision:

NCLAT held that since the Dutch Administrator is equivalent to the Resolution Professional in India, and as per our law also he has the right to attend CoC meetings. NCLAT also Clarified that the Dutch Administrator would work in cooperation with the Resolution Professional and gives its suggestions. However, NCLAT suggested that there should not be any Overlap between the powers between the Administrators.

NCLAT disposed part of the appeal vide order dated 26.09.2019 and has allowed the Dutch Bankruptcy Administrator to attend the meeting of CoC in the ongoing Jet Airways Insolvency Proceedings. NCLAT concluded by saying that the agreement be treated as direction of this Appellate Tribunal and it would be mandatory to comply with the order of this Appellate

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 43

Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application under Section 7 of the Code, Pre-existing dispute cannot be a subject matter of Section 7 of the IBC, though it may be relevant under Section 9 of the IBC

CASE TITLE	Karan Goel Vs M/s Pashupati Jewellers & Anr.
CASE CITATION	Company Appeal (AT)(Insolvency) No.1021 of 2019
DATE OF ORDER	01.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Ltd. Vs. ICICI Bank and Anr.
SECTION/REGULATION REFERRED	Section 7 of the IBC

Brief of the case:

An appeal was preferred by Mr. Karan Goyal, Promoter of M/s Marigold Overseas Limited (Corporate Debtor) against impugned order dated 20th September, 2019 passed by Adjudicating Authority (National Company Law Tribunal), Special Bench, New Delhi, wherein the adjudicating authority admitted the application under Section 7 of the Code preferred by M/s Pashupati Jewellers (financial creditor).

Decision:

Hon’ble NCLAT relied upon the judgement of Hon’ble Supreme Court in the matter of Innoventive Industries Ltd. Vs. ICICI Bank and Anr. and held:

“From the aforesaid finding of the Hon’ble Supreme Court, it is clear that once the Adjudicating Authority is satisfied on the basis of records that the debt is payable and there is default, the Adjudicating Authority is required to admit the application. The Respondent – M/s Pashupati Jewellers having enclosed the copy of the ‘Corporate Guarantee and Undertaking’ Agreement dated 7th April, 2017 instituted on e-Stamp, issued by Government of National Capital Territory of Delhi, it was not open to the Adjudicating Authority to deliberate on the issue whether e-Stamp is a forged document or not. Merely because a suit has been filed by the Appellant and pending, cannot be a ground to reject the application

under Section 7 of the I&B Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the I&B Code.”

Hon’ble NCLAT vide its order dated 01.10.2019 dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 44

NCLAT set aside a Section 9 application against the Corporate Debtor after finding malicious intent of the Operational Creditor

CASE TITLE	Radha Mohan Khandelwal Vs. Rajdhani Trading Company
CASE CITATION	Company Appeal (AT) (Insolvency) No.360 of 2019
DATE OF ORDER	01.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

Rajdhani Trading Company was an operational creditor of Romesh Power Products which had filed an application before NCLT, Jaipur Bench. The Jaipur Bench on December 20, 2018 passed an ex parte order admitting the Section 9 application to initiate insolvency against the Romesh Power Products (Corporate Debtor). Pursuant to another application made before the Adjudicating Authority by the Corporate Debtor, the NCLT, Jaipur Bench had also refused to recall its ex parte order on February 21, 2019.

In an appeal made before NCLAT, it was found that the application was made on basis of default in goods supplied to South Bihar Power Distribution Company (third party), wherein the operational creditor was already aware that the amount would be paid directly by Discom.

Decision:

NCLAT held that,

“In the circumstances, we hold that the application u/s 9 was filed against M/s. Romesh Power Products Pvt. Ltd. with malicious intent for purpose other than the Resolution of Insolvency or liquidation of the ‘Corporate Debtor’ and in fact the application u/s 9 was not maintainable. For the reason aforesaid, we set aside both the impugned orders dated 20th

December, 2018 which was passed ex-parte and the order refusing recalling dated 21st February, 2019.”

NCLAT also directed that the Resolution fee and costs is to be borne by the Corporate Debtor and the Operational Creditor equally i.e. 50.50% to be paid to the Interim Resolution Professional / Resolution Professional within 30 days of the date of the order.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 45

Only because the person receiving notice at the address of the Corporate Debtor does not put its designation, is not a ground dismiss an application for initiation of CIRP

CASE TITLE	IL & FS Financial Services Ltd. V. Emerald Lands (India) Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No.955 of 2019
DATE OF ORDER	22.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC

Brief of the case:

An appeal was preferred by IL&FS Financial Services Limited (Financial Creditor) against impugned order dated 27th August, 2019 passed by Adjudicating Authority (National Company Law Tribunal), Court-III, New Delhi , wherein the application filed by IL&FS Financial Services Limited (petitioner) under Section 7 of the Code was dismissed stating that it was not sufficient for the petitioner to state that the notice served in person was questionable as the person who signed the receiving did not divulged as to in which capacity he/she has received the notice on behalf of the Corporate Debtor.

Decision:

Hon’ble NCLAT held:

“3. Having heard learned counsel for the Appellant and being satisfied with the grounds, we are of the view that the Adjudicating Authority has given a wrong ground to dismiss the application under Section 7 of the ‘I&B Code’. Only because the person receiving notice at

the address of the ‘Corporate Debtor’ does not put designation by itself is no reason to straight away dismiss the application of the ‘Financial Creditor’.”

Hon’ble NCLAT vide its order dated 22.10.2019 set aside the impugned order dated 27th August, 2019 and remitted the case IB-1466/ND/2019 to the Adjudicating Authority (National Company Law Tribunal) Court-III, New Delhi to decide the application on its merit.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 46

If a matter is being heard by a NCLT bench consisting of two Hon’ble Members, the final order cannot be passed by a single member.

CASE TITLE	Raj Singh Gahlot, Director of Ambience Pvt. Ltd. Vs. Vistra ITCL (India) Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No.971 of 2019
DATE OF ORDER	25.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7 of IBC, Section 419(3) of the Companies Act and Rule 152(4) of NCLT Rules, 2016

Brief of the case:

An appeal was preferred by Raj Singh Gehlot, Director of Ambience Pvt. Ltd. challenging the impugned order dated 27th August, 2019 of admission being heard by two Hon’ble Members but the final order of admission was only passed by Hon’ble Member (Judicial).

The order of ‘admission’ was challenged on the ground that the matter having been heard by two Hon’ble Members, the final order could not have been passed by Hon’ble Member (Judicial).

Decision:

In view of Section 419(3) of the Companies Act and Rule 152(4) of NCLT Rules, 2016, Hon’ble NCLAT remitted the matter back to NCLT for fresh hearing on merit relating to admission of application under Section 7 of the Code after giving liberty to the parties.

Hon’ble NCLAT vide its order dated 25.10.2019 set aside the impugned order dated 27.08.2019 and remitted the matter back to National Company Law Tribunal Bench III, New Delhi.



CASE NO. 47

The claim of the creditor cannot be determined by the Arbitral Tribunal during the period of Moratorium passed by the Adjudicating Authority

CASE TITLE	Subodh Kumar Agrawal. Vs. EIH Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No.1122 of 2019
DATE OF ORDER	24.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Jharkhand Bijli Vitran Nigam Ltd. vs. IVRCL Ltd. & Anr K.S. Oils Ltd. vs. The State Trade Corporation of India Ltd. & Anr
SECTION/REGULATION REFERRED	Section 14(1)(a) of the IBC and Section 37 of Arbitration Act

Brief of the case:

In the appeal matter before Hon’ble NCLAT, the question before the Hon’ble Appellate Tribunal was whether in view of the fact that claim and counter claim stands on the same footing, no distinction can be drawn with regard to pendency of the Arbitral proceeding by the claimant and pendency of the arbitration in the same proceeding by the Respondent (Counter claimant).

Decision:

During the course of the proceedings the appellant relied on judgement passed by Hon’ble NCLAT in the matter of *Jharkhand Bijli Vitran Nigam Ltd. vs. IVRCL Ltd. & Anr*, and held:

“8. ...in the facts and circumstances, the order dated 3rd August, 2018 passed in ‘Jharkhand Bijli Vitran Nigam Ltd.’ is not applicable to a ‘Corporate Debtor’ not being the claimant and the claim petition of the Respondent cannot proceed during the period of ‘Moratorium’.”

Further, Hon’ble NCLAT relied upon its decision in *K.S. Oils Ltd. vs. The State Trade Corporation of India Ltd. & Anr* and held:

“6. It is true that the ‘Counter-claim’ made by the ‘Corporate Debtor’ is a ‘separate proceedings’ than that of the ‘Arbitral proceedings’ filed by the ‘Claimant’. However, they cannot be segregated and can go on simultaneously together. The claim of the Respondent cannot be

determined by the ‘Arbitral Tribunal’ during the period of ‘Moratorium’ passed by the Adjudicating Authority. In such situation, as it cannot be decided as to what amount can be taken, we hold that the ‘counter-claim’ filed by the ‘Corporate Debtor’ also cannot proceed”.

Hon’ble NCLAT vide its order dated 24.10.2019 dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 48

Demand notice issued under Sec. 8 against the Corporate Debtor for the dues of sister concern/group companies having different CIN Numbers and registered addresses is not a valid notice u/s 8 of the Code

CASE TITLE	Anil Syal Vs. Sanjeev Kapoor (Proprietor Kapoor Logistics) & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 961 of 2019
DATE OF ORDER	08.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC

Brief of the case:

An appeal was preferred by Anil Syal, Ex. Director and Shareholder of the Company ‘Flywheel Logistics solutions Pvt. Ltd’ before NCLAT against the impugned order dated 2nd September 2019, passed by the NCLT, New Delhi Bench wherein an application u/s 9 was admitted. The invoices were issued against ‘M/s Flywheel Logistics Pvt. Ltd’. bearing a separate CIN. However, demand notice issued u/s 8 of the Code had been issued to the M/s Flywheel Logistics Solutions Pvt. Ltd. bearing separate CIN.

Decision:

Hon’ble NCLAT held:

“It is also on record that the mandatory primary requirement for filing petition U/S 9 of the ‘Insolvency and Bankruptcy Code, 2016’ is the service of the Demand Notice U/S 8 of the Code. The demand notice should have been served along with the copy/bill(s) / invoice(s) on the ‘Corporate Debtor’. But in the present case, the Bill / Invoice was raised against, M/s Flywheel Logistics Private Limited, having CIN No. U60200DL2009PTC192531, whereas the mandatory demand notice under Section 8 of the ‘IBC’ has been served against the ‘Flywheel Logistics Solutions Pvt. Ltd.’ having CIN No. U60232DL2015PTC288609. Therefore, on the

above basis, it is clear that the demand notice issued against the ‘Corporate Debtor’ is not a valid notice U/S 8 of the Code...”

Hon’ble NCLAT vide its order dated 08.11.2019 set aside the impugned order dated 02.09.2019 and directed the Adjudicating Authority to fix the CIRP cost and fees to be paid to IRP / RP which was initially to be paid by the ‘Corporate Debtor’.

**QR CODE FOR FULL ORDER/JUDGEMENT:
CASE NO. 49**

The corporate debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code as a blanket cover to claim exclusion from IBC proceedings on the ground that it is a Financial Service Provider

CASE TITLE	Apeejay Trust Vs. Aviva Life Insurance Company India Limited
CASE CITATION	(IB)-1885(ND)2019
DATE OF ORDER	04.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 3(16), (17), 3(18), Section 8 and Section 9 of IBC

Brief of the case:

A petition u/s 9 of the Code was filed by Apeejay Trust to initiate CIRP against Aviva Life Insurance Company India Ltd. (the Corporate Debtor). Aviva Life Insurance and the Operational Creditor, Apeejay Trust had entered into an agreement of Leave and License for office premises and other services for the former. However, in spite of several requests, the CD defaulted in making payments towards service tax and license fee to be paid to Apeejay Trust.

Decision:

The NCLT observed that definition of financial service under section 3(16) of IBC, clearly includes the transactions effecting contract of insurance. However, in the present case, the OC did not have any claim in respect of contract of insurance, the claim was in respect of the outstanding license fees and service tax amounts.

Thus, NCLT opined:

“Hence, the Corporate Debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code, 2016 as a blanket cover to claim an exclusion from IBC proceedings on the ground that it is a financial service provider.”

Hon’ble NCLT, New Delhi Bench-vide its order dated 04.11.2019 admitted the section 9 petition and initiated a corporate insolvency resolution process against the Corporate Debtor.



CASE NO. 50

The period of limitation for filing application u/s 7 of the Code starts from the date of accrual of right i.e. from the date of confirmation or acknowledgment of the debt & to be read along with Sec. 18 of the Limitation Act, 1963

CASE TITLE	K.R.V. Uday Charan Rao Vs. Bank of India and Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 731 of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Gaurav Hargovindbhai Dave V. Asset Reconstruction Company (India) Ltd. & Anr.
SECTION/REGULATION REFERRED	Section 7 of IBC, Section 13(2) of SARFAESI Act, 2002 and Section 25 of Indian Contract Act, 1872

Brief of the case:

An appeal was preferred by K.R.V. Uday Charan Rao (Appellant) before the Hon'ble NCLAT, wherein the appellant submitted that the application under Section 7 was barred by limitation. Appeal was preferred against the impugned order dated 8th July, 2019 passed by Hon'ble NCLT, Hyderabad Bench wherein Adjudicating Authority admitted an application under Section 7 of the Code filed by M/s. Bank of India (Financial Creditor) against M/s. Sainath Estates Private Limited.

Decision:

Hon'ble NCLAT relied upon Part II of Third Division of Schedule of Limitation Act, 1963 i.e. Article 137 and held as follow:

“9. From the aforesaid provisions, it is clear that the limitation will start from the date of accrual of right. The accrual of right is also to be noticed from the date of confirmation or acknowledgment of the debt and to be read along with Section 18 of the Limitation Act, 1963.”

Hon'ble NCLAT vide its order dated 13.11.2019 dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT:



If a matter is pending before the Hon’ble High Court and before the Hon’ble Supreme Court because of interim order of stay, it is a fit case for exclusion of certain period u/s Sec 12 of the Code

CASE TITLE	R.P. of SEL Manufacturing Company Ltd. V. Committee of Creditors of SEL Manufacturing Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1062 of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. & Ors
SECTION/REGULATION	Section 7 of IBC

Brief of the case:

CIRP was initiated against ‘SEL Manufacturing Company Limited’ (Corporate Debtor) on 11th April, 2018. During the pendency of the case, the ‘Promoters’ moved before the High Court of Punjab and Haryana. For certain reasons the matter could not proceed or has been stayed for one or other order passed by the Hon’ble Punjab and Haryana High Court and the Hon’ble Supreme Court. For the said reason, at the instance of ‘Committee of Creditors’, the ‘Resolution Professional’ filed an application before the NCLT, Chandigarh Bench for exclusion of more than 100 days. The Adjudicating Authority by impugned order dated 10th October, 2019 rejected the prayer.

An appeal was preferred by RP of the Corporate Debtor against the order of AA rejecting the prayer with the NCLAT.

Decision:

Hon’ble NCLAT held:

“Taking into consideration the fact that the matter was pending before the Hon’ble High Court of Punjab and Haryana and before the Hon’ble Supreme Court for about more than one year and because of interim order of stay, the matter could not proceed, we hold that it is a fit case for exclusion of certain period. Out of 90 days, 60 days’ time is allowed to the ‘Resolution Professional’ and ‘Committee of Creditors, who may call for the fresh plan or revised plan from eligible ‘Resolution Applicant’ and will consider the same and pass appropriate order and will place the matter before the Adjudicating Authority. The Adjudicating Authority is allowed approximately 10 days’ time to pass final order.”

Hon’ble NCLAT vide its order dated 13.11.2019 allowed the appeal.

QR CODE FOR FULL ORDER/JUDGMENT:



Once the claim of a creditor is taken into consideration in Resolution Plan and has been given the same treatment as other Creditors, the Creditor thereafter cannot take the benefit of sub-section (6) of Section 60 of the Code nor they can pray to pursue the suit or arbitration proceeding or file a fresh suit or arbitration proceeding for the same claim

CASE TITLE	Kotak Mahindra Prime Ltd. v. Mr. Bijay Murmuria & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No.47, 48, 49 & 50 of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 30 & 31 & Section 60& 61 of IBC

Brief of the case:

The Arbitration Proceeding was pending and an application u/s 7 of the Code was preferred by the IDBI Bank for initiation of the CIRP against the Corporate Debtor, which was admitted on 1st May, 2018. For the said reason, Learned Arbitrator by order dated 11th August, 2018 adjourned the Arbitration Proceedings sine die. The Adjudicating Authority by impugned order dated 7th December, 2018 approved the Resolution Plan u/s 31 of the Code. An appeal was preferred by M/s. Kotak Mahindra Prime Ltd against impugned order.

The Appellant contended that the Resolution Plan was against the provisions of Section 30(2) of the Code, further suggested that they should be allowed to continue with the Arbitration Proceeding.

Decision:

Hon'ble NCLAT in view of Sec 60 (6) of the Code held that:

"21. ..it is always open to a Creditor to proceed with the suit or arbitration proceeding, if pending, on completion of the Moratorium. However, once a Creditor/'Financial Creditor' or 'Operational Creditor' files its claim before the 'Resolution Professional' and the same is taken into consideration by the 'Successful Resolution Applicant' and while submitting the plan or the revised plan providing them same treatment as has been given to the other similarly situated 'Financial Creditors'/'Operational Creditors', the 'Financial Creditors'/'Operational Creditors', thereafter cannot take the benefit of sub-section (6) of Section 60 of the 'I&B Code' nor they can pray to pursue the suit or arbitration proceeding or to file a fresh suit or arbitration proceeding for the same claim."

Hon'ble NCLAT vide its order dated 13.11.2019 disposed of the appeal.

QR CODE FOR FULL ORDER/JUDGMENT:



NCLT held that usage of license/spectrum in a telecom business is similar to "Essential Goods or Services" mentioned under sub-sec. (2) of Section 14 of the Code

CASE TITLE	Dishnet Wireless Limited. In Vijaykumar V. Iyer Vs. Union of India
CASE CITATION	MA-337/2018 in C.P.(IB)-298/(MB)/2018 & MA-336/2018 In C.P. (IB)-302/(MB)/2018
DATE OF ORDER	27.11.2019
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 14 of IBC & Section 4 of Indian Telegraph Act, 1885

Brief of the case:

Two applications were preferred by Mr. Vijaykumar V. Iyer, Resolution Professional of Aircel Limited and Dishnet Wireless before Hon'ble National Company Law Tribunal, Mumbai Bench seeking directions to Union of India (Respondent) to refrain from suspending/terminating and/or taking any other action against the Petitioner Company in relation to the Telecom Licenses and Spectrum allocation. The present applications revolve around the fundamental question of Telecom License granted by Department of Telecommunication/ DoT (Licensor) to the Petitioner /Aircel (Licensee) under the provisions of Section 4 of Indian Telegraph Act, 1885. The Telecom Licenses and Spectrum are required for operation of the Petitioner Company as a going concern.

Decision:

Hon'ble NCLT held:

"7.7 ... through agreements only 'right to use' is granted and not the 'right to ownership'. Therefore, 'right to use' should remain, during the period agreed upon, with the Corporate Debtor which is always beneficial for the company as well as for all stake holders. This argument can further be buttressed by placing reliance on Sub-sec. (2) of Section 14 of the I&B Code which prescribes that the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during Moratorium Period. The usage of license/spectrum is akin to "Essential Goods or Services" because without usage the Company cannot run its Telecom Business. This prohibition shall, therefore, also applicable on DoT."

QR CODE FOR FULL ORDER/JUDGMENT:



Parties forming a joint venture cannot be said to be providing services to each other or be operational creditors to each other

CASE TITLE	Sree Sankeshwara Foundation and Investments Vs. Dugar Housing Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 515 of 2019
DATE OF ORDER	25.11.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC

Brief of the case:

An appeal was preferred by M/s. Sree Sankeshwara Foundation against impugned order dated 10th April, 2019 wherein Adjudicating Authority (NCLT) Chennai Bench rejected the application filed by Sree Sankeshwara Foundation & Investments for initiation of the Corporate Insolvency Resolution Process against M/s. Dugar Housing Limited u/s 9 of the Code on the ground that the Appellant does not come within the meaning of Operational Creditor and, therefore, cannot be treated as Creditor.

Decision:

Hon'ble NCLAT held:

“6. Having gone through the records and stand taken by the Appellant, we hold that the Appellant along with Respondent ('Corporate Debtor') had executed Joint Development Agreement in the year 2012 for construction of structure and allotment to allottees. Both of them being parties to a joint venture project, we hold that the Appellant cannot claim to be 'Operational Creditor' as it does not relate to supply of goods nor service rendered by the Appellant. If joint venture under any service to the allottees and for that to pay service tax it does not mean that the parties of the joint venture will render service to each other.”

Accordingly, Hon'ble NCLAT vide its order dated 25.11.2019 dismissed the appeal and held that the Appellant is not an Operational Creditor and the application under Section 9 at the instance of the Appellant was not maintainable.

QR CODE FOR FULL ORDER/JUDGMENT:



If an application under Section 7 of Insolvency and Bankruptcy Code against the Principal Borrower is admitted, the application against the Corporate Guarantor is not maintainable for the same set of claim and default

CASE TITLE	SEW Infrastructure Ltd. v. Mahendra Investment Advisors Pvt. Ltd
CASE CITATION	Company Appeal (AT)(Insolvency) No.1500 of 2019
DATE OF ORDER	13.01.2020
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.
SECTION/REGULATION	Section 7 of IBC

Brief of the case:

An appeal was preferred by M/s. SEW Infrastructure Ltd. (Appellant) against impugned order dated 24th October, 2019 passed by the Adjudicating Authority (NCLT), Hyderabad Bench wherein, Appellant claimed to be Financial Creditor of M/s. Mahendra Investment Advisors Private Limited- (Corporate Debtor) and moved application under Section 7 which was rejected on the ground that the Corporate Debtor was a Guarantor in respect of the loan given to the Principal Borrower- ‘M/s. Amrit Jal Ventures Private Limited’ and the Appellant claimed amount as Financial Creditor, already moved a petition under Section 7 against Principal Borrower which was duly admitted.

Decision:

While putting reliance on the decision of this Appellate Tribunal in “*Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.*”, Hon’ble NCLAT held that:

“5. Once it is alleged that the ‘Principal Borrower’ has defaulted, it cannot trigger against both the ‘Principal Borrower’ (as ‘Corporate Debtor’) and ‘Corporate Guarantor’ (as ‘Corporate Debtor’). For same set of claim, two companies cannot go for liquidation which will be against the principles of ‘I&B Code’.”

Hon’ble NCLAT *vide* its order dated 09.01.2020 dismissed the appeal and declined to interfere with the impugned order of rejection of the application under Section 7 passed by the NCLT.

QR CODE FOR FULL ORDER/JUDGMENT:



If the delay in possession of property is not due to the Corporate Debtor but force majeure, it cannot be alleged that the Corporate Debtor defaulted in delivering the possession

CASE TITLE	Navin Raheja v. Shilpa Jain and Others
CASE CITATION	Company Appeal (AT) (Insolvency) No. 864 of 2019
DATE OF ORDER	22.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Raheja Developers Limited & Anr. v. Union of India & Ors.</i> <i>Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors</i>
SECTION/REGULATION	Section 5(8)(f), Section 7, Section 21(6A)(b) and Section 25A of the 'I&B Code'

Brief of the case:

In this matter the question that arose for consideration was whether the “Corporate Debtor ”can be held to have committed default, if apartment/flat/premises is otherwise ready but offer of possession was delayed due to the reasons beyond the control of 'Corporate Debtor' such as absence of clearance by the Competent Authorities/Government(s), etc.

Decision:

Hon’ble NCLAT observed that,

“46. Apart from the fact that the ‘Corporate Debtor’ has offered the possession of flat on 15th November, 2016 and obtained completion certificate immediate thereafter. Therefore, delay in granting approval by the Competent Authority cannot be taken into consideration to hold that the ‘Corporate Debtor’ defaulted in delivering the possession. The Adjudicating Authority failed to appreciate the fact and also ignored the decision of the Hon’ble Supreme Court though rendered prior to the admission of the application which is binding on all the Court(s) and Tribunal(s).

...55. If the delay is not due to the ‘Corporate Debtor’ but force majeure, as noticed above, it cannot be alleged that the ‘Corporate Debtor’ defaulted in delivering the possession.”

The appeal was allowed without cost.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 57

If the CIRP is initiated against the Corporate Debtor (real estate company), it will be confined to that particular project and will not affect any other project(s) of the same real estate company in other places.

CASE TITLE	Flat Buyers Association Winter Hills – 77, Gurgaon v. Umang Realtech Pvt. Ltd through IRP & Ors
CASE CITATION	Company Appeal (AT) (Insolvency) No. 926 of 2019
DATE OF ORDER	04.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.</i> <i>Pioneer Urban Land and Infrastructure Limited & Anr. v. Union of India & Ors</i>
SECTION/REGULATION	Section 7 & 30 of IBC

Brief of the case:

In the aforementioned matter, the Tribunal noted specific problems that crop up in the matters of CIRP of real estate companies. The Tribunal suggested a reverse CIRP where no allottee can approach the Tribunal to seek refund for the project. They also noted why maximisation of all the assets of the CD is not to be done in such CIRPs.

Decision:

Hon'ble NCLAT held that,

"21. In Corporate Insolvency Resolution Process against a real estate, if allottees (Financial Creditors) or Financial Institutions/Banks (Other Financial Creditors) or Operational Creditors of one project initiated Corporate Insolvency Resolution Process against the Corporate Debtor (real estate company), it is confined to the particular project, it cannot affect any other project(s) of the same real estate company (Corporate Debtor) in other places where separate plan(s) are approved by different authorities, land and its owner may be different and mainly the allottees (financial creditors), financial institutions (financial creditors, operational creditors are different for such separate project. Therefore, all the asset of the company (Corporate Debtor) are not to be maximized..."



CASE NO. 58

Decree passed by Debts Recovery Tribunal only suggests that debt become due and payable. It does not shift forward the date of default as decree has to be executed within a specified period.

CASE TITLE	Sh G Eswara Rao Vs. Stressed Assets Stabilisation Fund
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1097 of 2019
DATE OF ORDER	07.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>B.K. Educational Services Private Limited vs. Parag Gupta and Associates; Vashdeo R. Bhojwani vs. Abhyudaya Co-operative Bank Limited and another; Jignesh Shah and another vs. Union of India and another; Gaurav Hargovindbhai Dave vs. Asset Reconstructions Company (India) Limited and another; Sagar Sharma & Anr. vs. Phoenix ARC Pvt. Ltd. & Anr.; V Hotels Limited vs. Asset Reconstruction Company (India) Limited; Sampuran Singh and Ors. v. Niranjana Kaur and Ors.; Binani Industries Limited vs. Bank of Baroda & Anr.</i>
SECTION/REGULATION	Section 7 of the IBC and Section 18 & 137 of Limitation Act, 1963

Brief of the case:

In the aforementioned matter, an application under Section 7 of the Code was filed by Stressed Assets Stabilisation Fund. the Adjudicating Authority by impugned order dated 01.10.2019 initiated CIRP against Saritha Synthetics and Industries Ltd. (Corporate Debtor). The Appellant Mr. G Eswara Rao, Shareholder, Director challenged the order on the ground that Application under Section 7 of the Code was barred by limitation. The question raised was whether the order of Decree passed by the DRT-I, Hyderabad on 17.08.2018 can be taken into consideration to hold that application under Section 7 of the Code is within period of three years as prescribed under Article 137 of Limitation Act, 1963.

Decision:

Hon'ble NCLAT allowed the appeal by holding that,
“24. ..A Decree passed by the Debts Recovery Tribunal or any suit cannot shift forward the date of default. On the other hand, the judgment and Decree passed by Debts Recovery Tribunal on 17th August, 2018, only suggests that debt become due and payable. It does not shifting forward the date of default as Decree has to be executed within a specified period. ..in absence of any acknowledgement under Section 18 of the Limitation Act, 1963, the date of default/ NPA was prior to 2004 and does not

shift forward, therefore, the period of limitation for moving application under Section 7 of the I&B Code was for three years, if counted, to be completed in the year 2007. As date of passing of Decree is not the date of default, we hold that the application under Section 7 of the I&B Code was barred by limitation, though the claim may not be barred.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 59

The retention money, which is the part of the main bill, comes under the definition of operational debt.

CASE TITLE	Aashish Mohan Gupta v. Hind Inn and Hotels Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1282 of 2019
DATE OF ORDER	12.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 5(21) and Section 9 of IBC

Brief of the case:

In the aforementioned matter, the admission order under Section 9 was challenged on the grounds that the Retention Money does not fall within the definition of Operational Debt as defined in Section 5(21) of IBC and that the claim is time barred as the default accrued on 01.04.2013.

Decision:

Hon’ble NCLAT stated that,

“17. We do not find any record or document to establish that there exists any dispute nor raised any dispute by the Corporate Debtor, hence, we conclude that there is no pre-existing of dispute. The Operational Creditor had awarded the work and the retention money cannot be treated as separate money. The retention money is a part of main bill which was retained by the Corporate Debtor as per the terms of the Work Order and the same shall be released after completion of the work and issuance of the Completion Certificate. Further the Defect Liability Period completed on 01.04.2015 and thereafter the Operational Creditor had requested the Corporate Debtor to release money. We are of the view that it is not barred by limitation. Learned Adjudicating Authority rightly observed and held that the debt fell due from 27.07.2015 when the mail was sent by Ginjar Hotel of the Corporate Debtor stating that the Operational Creditor had attended to all the concerns and rectified the same. The other submission of the learned Counsel for the Appellant that debt does not fall within the definition of Section 5(21) of IBC is concerned, the Operational Creditor had rendered services and there is no dispute with regard to the said services and we cannot accept that the said claims will not fall under the definition of Operational Debt.”

Hon’ble NCLAT dismissed appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



If foreign subsidiary of Corporate Debtor qualifies all tests for lifting of corporate veil, then the corporate veil may be lifted and the assets of the foreign subsidiaries be treated as assets of the Corporate Debtor, which is under CIRP.

CASE TITLE	SBI v. Videocon Industries Limited and Ors.
CASE CITATION	MA 2385/2019 in C.P.(IB)-02/MB/2018
DATE OF ORDER	12.02.2020
COURT/TRIBUNAL	NCLT, Mumbai
CASES REFERRED	<i>LIC v. Escorts Ltd. and Ors.; State of U.P. and others Appellants v. Renusagar Power Co. and others; Arcelomittal India (P) Ltd. vs. Satish Kumar Gupta</i>
SECTION/REGULATION	Section 60(5)(c) of IBC

Brief of the case:

In the aforementioned matter, the prayer was for a direction to the Resolution Professional of the Corporate Debtor, Videocon Industries Ltd to consider and treat all assets, properties (tangible and intangible), rights, claims, and benefits of the foreign oil & gas subsidiaries as assets and properties of Videocon Industries Ltd. for the purpose of the CIRP.

NCLT relied on the 13 parameters laid down in its order dated 08.08.2019 to determine whether consolidation could be done. These 13 parameters were: Common control, common directors, common assets, common liabilities, inter-dependence, interlacing of finance, pooling of resources, co-existence for survival, Intricate link of subsidiaries, intertwined accounts, Inter-looping of debts, Singleness of economics of units and common financial creditors.

Decision:

Hon'ble NCLT held that since these 13 parameters are met and satisfied, the assets are to be considered assets of a single economic entity for effective resolution. NCLT, Mumbai Bench *vide* order dated 12.02.2020 allowed the application and concluded that the corporate veil be lifted and the assets of the foreign subsidiaries be treated as assets of the Corporate Debtor, which is under CIRP.

QR CODE FOR FULL ORDER/JUDGEMENT:



If the order is reserved by the Adjudicating Authority, the Appellant/ Respondent cannot be categorised as an aggrieved or affected person under section 61 of Insolvency and Bankruptcy Code till the final order is passed.

CASE TITLE	Doshion Private Limited Vs. Phoenix ARC Private Limited
CASE CITATION	Company Appeal (AT)(Ins) No. 254 of 2020
DATE OF ORDER	11.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 61 of IBC, 2016

Brief of the case:

In the aforementioned matter, an appeal was filed against impugned order dated 18.12.2019 passed by the Adjudicating Authority (NCLT), Ahmedabad Bench, which was reserved on 18.12.2019 after hearing the respective Learned Counsels appearing for the parties.

Decision:

Hon'ble NCLAT held that ordinarily a 'Right to Appeal' is a statutory one. It is to be pointed out that although Section 61(2) of the Code speaks of filing of every Appeal under sub Section 1 of Section 61 within 30 days before the National Company Law Appellate Tribunal, in the considered view of this Tribunal, it does not speak of 'starting period of Limitation' for filing of an Appeal. However, Section 61 of the Code can be interpreted in such a manner that an 'Aggrieved person' must file an Appeal from the date of 'pronouncement of the order'.

Hon'ble NCLAT observed:

"... admittedly, in the instant case in main matter 'order' was reserved by the Adjudicating Authority and in as such the Appellant/ Respondent cannot be characterised as an 'aggrieved or affected' person because of the fact that no final order is passed till date.."

Accordingly, the appeal was dismissed vide order dated 11.02.2020

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 62

The choice of issuance of demand notice under section 8(1) of Insolvency and Bankruptcy Code, 2016, either in Form 3 or Form 4, under the Application to Adjudicating Authority Rules, 2016, depends on the nature of Operational Debt

CASE TITLE	Neeraj Jain Director of M/s Flipkart India Private Limited vs. Cloudwalker Streaming Technologies Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No.1354 of 2019
DATE OF ORDER	24.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., Innoventive Industries Ltd. vs. ICICI Bank</i>
SECTION/REGULATION REFERRED	Section 9 of the IBC and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016.

Brief of the case:

In the aforementioned matter, the AA admitted the application under Section 9 and held that there was no pre-existing or post existing dispute, and the petition is complete, as per the second proviso to Section 9 of the Code..

The question raised in the appeal is whether it is the discretion of the Operational Creditor, or the nature of the Operational Debt, that determines the issuance of notice in Form 3 or Form 4 under Sec 8 (1) of the Code?

Decision:

NCLAT allowed the appeal by holding that,

“47. Thus, it is clear that the choice of issuance of demand notice u/s 8(1) of the Insolvency and Bankruptcy Code 2016, either in Form 3 or Form 4, under the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules 2016, depends on the nature of Operational Debt. Section 8(1) does not provide the Operational Creditor, with the discretion to send the demand notice either Form 3 or Form 4, as per its convenience. The applicability of Form 3 or Form 4 depends on whether the invoices were generated during the course of transaction or not. It is also made clear that the copy of the invoice is not mandatory if the demand notice is issued in Form 3 of the Insolvency and Bankruptcy Code Application to Adjudicating Authority Rules

2016 provided the documents to prove the existence of operational debt and the amount in default is attached with the application.”

QR CODE FOR FULL ORDER/JUDGEMENT:



Application under section 10 of Insolvency and Bankruptcy Code, 2016 can be rejected on the ground that the Corporate Debtor is earning sufficient income.

CASE TITLE	Vyomit Shares Stock & Investments Pvt. Ltd. Vs. Securities and Exchange Board of India (SEBI)
CASE CITATION	Company Appeal (AT) (Insolvency)No.258 of 2019
DATE OF ORDER	15.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Pr. Director General of Income Tax (Admn. & TPS) Vs. M/s. Synergies Dooray Automotive Ltd. & Ors. etc.
SECTION/REGULATION	Section 10 of IBC, 2016

Brief of the case:

In the aforementioned matter, the ‘Corporate Applicant’ filed an application u/s 10 of IBC for initiation of CIRP against it. NCLT, Mumbai Bench by impugned order dated 12th February, 2019 rejected the application on the ground that the CD is earning sufficient income. Therefore, prima facie, it appeared that there was no reason for the Appellant (CD) to declare it eligible for filing an application u/s 10 of IBC.

Decision:

Hon’ble NCLAT also observed that AA (NCLT, Mumbai Bench) had refused to accept SEBI as an Operational Creditor. NCLAT refused to accept this issue in light of the case of *Pr. Director General of Income Tax (Admn. & TPS) v. M/s. Synergies Dooray Automotive Ltd. & Ors. etc.*, *Company Appeal (AT)(Insolvency) No. 205 of 2017 etc.* wherein it was stated that ‘Operational Debt’ in normal course means a debt arising during the operation of the Company (Corporate Debtor).

NCLAT concluded that,

“However, from the record, it appears that there is income and profit generated by the Company in the financial year 31st March, 2017, we are not inclined to interfere with the impugned order. The appeal is dismissed. No Costs.”

The appeal was thereby dismissed *vide* order dated 15.05.2019.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 64

Even without resorting to CIRP against the Principal Borrower, it is always open to the Financial Creditor to commence CIRP under section 7 of Insolvency and Bankruptcy Code against the Corporate Debtor / Guarantor.

CASE TITLE	Bijay Kumar Agarwal, Ex-Director of M/s Genegrow Commercial Pvt. Ltd. Vs. State Bank of India and Anr.
CASE CITATION	Company Appeal (AT) Insolvency No.993 of 2019
DATE OF ORDER	23.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr.; Ram Kishun Vs. State of U.P. (2012) 11 SCC, 511
SECTION/REGULATION	Section 7 of IBC, Article 137 and Section 5 of Limitation Act

Brief of the case:

In the aforementioned matter, the Bank filed an application u/s 7 of the Code before the AA against the Principal Borrower (Gee Pee Infotech Pvt. Ltd.) as well as the Corporate Debtor (M/s. Genegrow Commercial Pvt. Ltd.) for the same set of Claim and Default primarily committed by the Principal Borrower. AA had admitted the claim based on the fact that the Principal Borrower had admitted the claim and had no defence, and initiated CIRP against the Principal Borrower and Corporate Guarantor on the basis of it. The contention raised in the present appeal was that the AA while admitting the claim had failed to appreciate that the liability of the Principal Borrower and the Guarantor is co-extensive for the purpose of recovery and section 7 application cannot be initiated against both Principal Borrower and the Guarantor for same set of claims/debts.

Decision:

Hon'ble NCLAT allowed the appeal and thus stated that,

“21. A contract of Guarantee is a contract to perform the promise or discharge the liability of 3rd party, in case of his default. In this connection, it is to be pointed out that it may not be necessary to start ‘Corporate Insolvency Resolution Process’ against the ‘Principal Borrower’ before initiating against the ‘Corporate Debtor’. Even without resorting to ‘Corporate Insolvency Resolution Process’ against the ‘Principal Borrower’ it is always open to the ‘Financial Creditor’ to commence ‘Corporate Insolvency Resolution Process’ u/s 7 of the ‘I&B’ Code against the ‘Corporate Debtor’ / Guarantor.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 65

The provisions regarding a moratorium cannot apply to cash deposits made in High Court

CASE TITLE	Nahar Builders Ltd Vs. Housing Development and Infrastructure Ltd
CASE CITATION	Interim Application No.1 of 2019 in Comm Arbitration Petition No. 74 of 2017
DATE OF ORDER	21.01.2020
COURT/TRIBUNAL	High Court, Mumbai
CASES REFERRED	-
SECTION/REGULATION	Section 14 of IBC

Brief of the case:

There were disputes between the two parties under a MoU. That MoU had an arbitration clause. Nahar Builders filed the present Arbitration Petition and sought inter alia an order against HDIL(Respondent) to provide security. HDIL furnished a Pay Order for Rs. 8 crores in favour of the Prothonotary & Senior Master. The deposit was accepted. The present application by Nahar Builders was for leave to withdraw the deposited amount of Rs. 8 crores. Since there is an Award in favour of Nahar Builder of this amount plus interest, clearly the withdrawal of this amount and accrued interest will be in partial or perhaps even complete satisfaction of Nahar Builders' award.

HDIL contended that since there is a moratorium that has come in to play in view of the insolvency proceedings under the Insolvency & Bankruptcy Code, 2016, the amount of Rs. 8 crores deposited in this Court is 'the property of HDIL' within the meaning of Section 14 of the IBC.

Decision:

Hon'ble High Court of Bombay stated:

"Once an amount is deposited in this Court, it is placed beyond the reach of either party without permission of the Court. It is, therefore, not 'the property' of either party pending an adjudication as to entitlement by the Court. Once the Arbitrator held that it was Nahar Builders that was entitled to this amount, and that award became enforceable as a decree of this court, then no question remained of the amount being claimed by HDIL. In another

manner of speaking, from the time the deposit was made until the time withdrawal is ordered, that amount is not the property of either party to the dispute.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 66

The definition of preferential transactions as per Section 43 of the Code refers to an opinion of a liquidator or Resolution Professional, that was reached during the Resolution stage.

CASE TITLE	K.L.Jute Products Private Limited. v. Tirupti Jute Industries Ltd.
CASE CITATION	Company Appeal (AT)(INS) No.277 of 2019
DATE OF ORDER	20.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 43, 44 & 45 of the I&B Code and Section 13(2) of SARFAESI Act

Brief of the case:

In the aforementioned matter, an appeal was preferred against the impugned order dated 13.02.2019. The question raised in the appeal was whether at the stage of Liquidation, the question of preferential transactions (with regard to a lease agreement entered into with a creditor) under Section 43 of Code can be decided by an AA.

Decision:

Hon’ble NCLAT stated:

An action under Section 43 of the I&B Code can lie only when the ‘Liquidator’ or ‘Resolution Professional’ arrived an opinion that an ‘undue preference’ was given to a particular ‘Creditor’ or ‘Guarantor’ or ‘Surety’ with a view to place a beneficiary in a profitable pedestal in regard to other creditors position in regard to other ‘Creditors’ when the Corporate Debtor entered into transaction with any individual. Section 43 of the Code speaks of ‘avoidance of preference’ given by a Corporate Debtor in the run up to ‘Insolvency’. Section 43 (2) of I&B Code mentions the circumstances when a Transactions entered into by a Corporate Debtor shall be treated as a deemed preference on a fiction of Law. The ‘Term’, ‘Transfer’ includes ‘sale’, ‘Relinquishment’, ‘Exchange’, and an Adjudicating Authority under Section 49 of the Code can restore a status quo ante in a given matter by protecting a person’s interest. Section 49 of the I&B Code prescribes no time limit for securing an order in respect of a transaction entered into which were meant for defrauding the ‘creditors’



CASE NO. 67

Withdrawal of money by Director during CIRP can prima facie be treated as criminal misappropriation and criminal breach of trust.

CASE TITLE	Manoj K. Daga Vs. ISGEC Heavy Engineering Limited
CASE CITATION	Company Appeal (AT) (Ins) No.1113 of 2019 & I.A. No. 3878 of 2019, I.A. No.516 of 2020 & I.A. No.1075 of 2020
DATE OF ORDER	12.03.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Sections 14, 17 and 19 of IBC

Brief of the case:

In the aforementioned matter, the appeal was filed for there being violation of Sections 14, 17 and 19 of IBC. The IRP contended that Directors of CD had made huge withdrawals including cash withdrawals started within two days of taking Interim Orders of the Tribunal. IRP contended that the CD could not remain a going concern if all the cash in the accounts of the CD had been withdrawn by the Directors.

Decision:

Hon'ble NCLAT held that,

“The acts of the two Directors have obstructed the proceedings of CIRP, the proceedings before Adjudicating Authority and this Tribunal. The acts prima facie disclose serious Contempt, violating mandate of law of IBC applied by Orders of Adjudicating Authority and this Tribunal and breach of undertaking given on oath, actionable as NCLT established under the Companies Act, 2013 acts as Adjudicating Authority and this Tribunal is empowered under Section 425 of Companies Act, 2013 read with enabling provisions to take action.

23. At the same time, considering record which shows that Appellant violated Orders of Adjudicating Authority and this Tribunal and looking to the apparent default on record where undertakings were given and not honoured, we find that the Appeal deserves to be dismissed in default. We dismiss the Appeal in default while permitting the IRP to move the Adjudicating

Authority or any other authorities including Police authorities to pursue the matter with regard to money illegally withdrawn from the accounts of the Corporate Debtor so as to trace the money and get it back in the Company accounts. Prima facie, it appears to us that the illegal withdrawals can, inter alia, be treated as criminal misappropriation and criminal breach of trust.

QR CODE FOR FULL ORDER/JUDGEMENT:



Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the AA.

CASE TITLE	Tata Steel BSL Limited & Anr.v. Union Of India & Anr.
CASE CITATION	W.P.(CRL) 3037/2019 and CRL.M.A. 39126/2019
DATE OF ORDER	16.03.2020
COURT/TRIBUNAL	High Court, Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 32A of IBC

Brief of the case:

The present petition was filed against an order passed by the Trial Court on 16/08/19 whereby it had taken cognizance of the offences punishable under Companies Act, 2013 and Indian Penal Code. Tata Steel Limited's Resolution Plan for Bhushan Steel Limited was accepted by the National Company Law Tribunal (NCLT) under IBC. The management of the Bhushan Steel was taken over by new promoters and the company came to be known as Tata Steel BSL Ltd.

Decision:

In view of the Insolvency and Bankruptcy (Amendment) Code, 2020 wherein Section 32A is inserted, Hon' ble High Court stated that,

“It is clear from the express language of the aforementioned provision that a Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the Adjudicating Authority.”

Hon' ble High Court of Delhi vide order dated 16.03.2020 set aside the complaint and held that since the resolution plan has been approved, petitioner cannot be prosecuted and is liable to be discharged. The Court also concluded that this order would not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences in relation to the affairs of the petitioner company.

QR CODE FOR FULL ORDER/JUDGEMENT:



A Financial Creditor can file application under section 7 of the Code against a Company who is guarantor to an individual/Sole Proprietorship firm.

CASE TITLE	Laxmi Pat Surana v. Union Bank of India and Ors.
CASE CITATION	Company Appeal (AT) (Ins) No. 77 of 2020
DATE OF ORDER	19.03.2020
COURT/TRIBUNAL	NCLAT
CASES REFERRED	<i>Gaurav Hargovind Bhai Dave V/s Asset Reconstruction Company (India) Ltd. &Anr.</i> <i>B.K. Educational services Ltd. V/s Parag Gupta and Associates</i>
SECTION/REGUALTION REFERRED	Section 5A of IBC,2016

Brief of the case:

The present appeal was preferred against the impugned order of NCLT admitting a Section 7 application on the ground that since M/s. Surana Metals Ltd. is guarantor to the individual and not to the corporate person, no proceeding can lie against it under IBC,2016. Moreover, the application filed by the first Respondent/Bank/ 'Financial Creditor' was barred by 'Limitation' since the 'Account' was admittedly declared as 'Non-Performing Asset' on 30.10.2010 by the First Respondent/Bank and that the application under Section 7 of the Code was filed on 13.02.2019

Decision:

Hon'ble NCLAT placed reliance on the orders passed by the Hon'ble Supreme Court in the matters of *Gaurav Hargovind Bhai Dave V/s Asset Reconstruction Company (India) Ltd. &Anr.* and *B.K. Educational services Ltd. V/s Parag Gupta and Associates* to hold that,

"23. It may not be out of place for this tribunal to make a relevant mention that the 'Financial Debt' includes a 'Debt' owed to a Creditor by a 'Principal' and 'Guarantor'. A just Omission or failure to pay on the part of a Guarantor to pay the 'Financial Creditor', when the Principal sum is claimed/demanded certainly, will come with the scope of 'Default' under Section (3),(12) of the Code. The proceedings under Section 7 of the Code can be triggered by a 'Financial Creditor' who had taken Guarantee in respect of 'Debt' against 'Guarantor' for failure to repay the money borrowed by the 'Principal Borrower'. To put it explicitly (Ms/ Surana Metals Ltd.) is the 'Corporate Debtor' and that the Appellant is the proprietor of the Firm of M/s Mahaveer Construction.

Hon'ble NCLAT dismissed the appeal and clarified that by virtue of Deed of Guarantee Corporate Debtor being a 'Corporate Person' owes debt to the Bank.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 70

Mere finding on an Interlocutory Application that the debt claimed by the Creditor constituted a financial debt would not ipso facto justify admission or rejection of the application to initiate CIRP.

CASE TITLE	Kerala Ayurveda Ltd. v. Tata Global Beverages Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 429 of 2020
DATE OF ORDER	16.03.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7 and Section 60 of IBC

Brief of the case:

An appeal was preferred by the appellant opposing the finding of Adjudicating Authority that the money advanced in the matter, constituted a ‘financial debt’.

Decision:

Hon’ble NCLAT observed that the Section 7 application had not been dealt with at the stage of admission and no order had been passed either admitting or rejecting the application yet. Held that,

“Mere finding on an Interlocutory Application that the debt claimed by the Creditor constituted a ‘financial debt’ would not ipso facto justify admission or rejection of the application as learned Adjudicating Authority is required to consider the debt along with default and unless there is a finding in respect of default and an order of admission is passed, ‘Corporate Insolvency Resolution Process’ does not commence. Viewed in this perspective, it is futile to contend that the appeal in terms of Section 60(1) shall be maintainable”

Hon’ble NCLAT dismissed the appeal as premature.

QR CODE FOR FULL ORDER/JUDGMENT:



COMMITTEE OF CREDITORS

CASE NO. 71

Any party can approach NCLT directly for the settlement or withdrawal of Corporate Insolvency Resolution Process before the constitution of Committee of Creditors

CASE TITLE	Coal India Limited Vs. Gulf Coil Lubricants India Limited & Others
CASE CITATION	Company Appeal (AT) (Insolvency) No. 807 of 2018
DATE OF ORDER	11.02.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.
SECTION/RULE/ REGULATION REFERRED	Rule 11 of the NCLT Rules, 2016

Brief of the case:

The NCLAT set aside the admission order of the Adjudicating Authority on the request made by the Corporate Debtor that the parties have settled the claims before the constitution of the Committee of Creditors.

Decision:

NCLAT referred the matter of *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018*, dated 25.01.2019 wherein the Hon’ble Supreme Court observed that at any stage where the committee of creditors is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 72

An act of “Appointment of Forensic Auditor” during Corporate Insolvency Resolution Process has to be approved by Committee of Creditors with a minimum of 51% voting share.

CASE TITLE	Asset Reconstruction (India) Private Limited Vs. Mr. Koteshwara Rao Karchola and Viceroy Hotels Limited
CASE CITATION	IA No. 344 of 2018 in CP (IB) No. 219/7/HDB/2018
DATE OF ORDER	26.02.2019
RELEVANT AUTHORITY	NCLT, Hyderabad Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 28 of the IBC

Brief of the case:

In the present matter, the instant application was filed by Asset Reconstruction Company (India) Limited (Applicant) against Resolution Professional praying to declare resolution of CoC put for E-voting to have been passed/approved by requisite majority under the provisions of IBC, 2016.

Decision:

It was held that, since the act of “appointment of a forensic auditor” does not fall within the language of section 28(1)(m) of IBC, which reads as “*make changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor.*”, the requirement of 66% of voting share in a CoC meeting, as laid down under Section 28(3) which pertains to the actions taken under section 28(1), is not applicable.

Explaining the statutory position, NCLT held that the case would fall under Section 21(8), and thus, the requirement is only of a voting share of 51%.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 73

Committee of Creditors is not vested with an absolute power to change the Interim Resolution Professional.

CASE TITLE	Ms. Rama Subramaniam v. M/s Sixth Dimensions Project Solution Limited
CASE CITATION	M.A. No. 1626/2018 in C.P. No. 587/I&BP/2018
DATE OF ORDER	13.03.2019
RELEVANT AUTHORITY	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC

Brief of the case:

A brief background of the case is that, the CoC in its meeting held on 3rd October 2018 had resolved to appoint one Mr. X (Name changed) as the RP, to replace the current IRP, Mr. Y (Name changed). Subsequently, the application was filed by CoC on 19th December 2018 followed by an affidavit dt. 29th January 2019 filed by the sole FC, Axis Bank, wherein several grounds for such change of IRP were provided.

Decision:

The NCLT while disposing of an application filed by the CoC held that, “*the COC has no absolute power to change the IRP / RP at their whims and fancies without any valid or tenable reasons.*” The proceedings pertained to the Corporate Debtor, M/s Sixth Dimensions Project Solution Limited.

The NCLT observed as, “*Having noticed the fair and humble conduct of the IRP, we felt that the allegations caste against him is frivolous and the Bank in order to find a ruse to appoint their own person, had filed the subsequent affidavit only as an afterthought.*”

The NCLT also examined the language of Section 22(3)(b) and 22(4) and came to a legal finding that the legislation gives NCLT the power to exercise its discretion in the appointment or change of the RP. It held that, “*If the intention of the legislation is to give absolute power to the COC, there would not have been a provision under Section 22 (3)(b) making it mandatory to file an application before the Adjudicating Authority seeking change of the IRP /RP.*”



CASE NO. 74

Where a member of Committee of Creditors who is not present in meeting, either directly or through video conferencing, their voting shares cannot be counted for the purpose of counting voting shares of members of Committee of Creditors.

CASE TITLE	Tata Steel Limited v. Liberty House Group Pte. Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 198 of 2018
DATE OF ORDER	04.02.2019
COURT/ TRIBUNAL	NCLAT
CASES REFERRED	<i>Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors</i> <i>Binani Industries Limited Vs. Bank of Baroda & Anr.</i>
SECTION/REGULATION	Section 31 of IBC

Brief of the case:

Tata Steel Ltd., one of the Resolution Applicants for Bhushan Power & Steel Ltd. (CD) challenged the order passed by AA, Principal Bench, New Delhi, wherein directions were given to CoC to also consider the Resolution Plan submitted by Liberty House Group Pte. The main plea behind the appeal was that the AA cannot provide numerous opportunities to Liberty House Group at a belated stage.

Decision:

The relevant extract of the order passed by the NCLAT are reproduced below:

“45. A member of the ‘Committee of Creditors’ who is not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares, therefore, cannot be counted for the purpose of counting the voting shares of the members of the ‘Committee of Creditors’. Therefore, we hold that only the members of the ‘Committee of Creditors’ who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. Those members of the ‘Committee of Creditors’ who are absent, their voting shares cannot be counted.”

The NCLAT, while dismissing the appeal, held that a Resolution Applicant has no vested right to have its resolution plan considered or approved. The case was accordingly remitted to the AA for passing appropriate order under Section 31.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 75

Element of reliability under the Resolution Plan or liquidation is an important aspect which the Committee of Creditors has to consider while taking decisions. The Resolution Professional, Adjudicating Authority or the Appellate Authority are not empowered to reverse commercial decision of the Committee of Creditors.

CASE TITLE	Liberty House Group Vs. R. Venkatakrishnan
CASE CITATION	MA. No. 416 of 2018 in CP. No. 558/IB of 2017
DATE OF ORDER	12.03.2019
COURT/ TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	K. Sashidhar v. Indian Overseas Bank
SECTION/REGULATION REFERRED	Section 60(5) of IBC

Brief of the case:

In the proceedings initiated against M/s Infinitas Energy Solutions Pvt. Ltd. (CD) by Indian Bank (FC), an application was filed by one of the Resolution Applicants, liberty house group, under section 60(5) of IBC, challenging rejection of its Resolution Plan by the CoC. The contentions raised inter alia were that the CoC, while rejecting the Resolution Plan, relied on extraneous considerations which do not find any place in either the “*Evaluation Matrix*” or the “*Expression of Interest*”.

Decision:

Upon hearing the contentions raised as also perusing the records, NCLT vide its order found that under the Resolution Plan submitted, there has been a significant haircut to which the creditors would be subjected to, and that the offer was materially lower than the OTS offer made earlier. Concluding that the Resolution Plan is commercially unviable, NCLT held that, “*element of realisability under the Resolution Plan or liquidation is an important aspect which the CoC has to keep in mind at the time of making decisions. The Resolution Applicant or the promoters of the CD cannot thrust their will on the creditors*”.

While underlining the role of CoC, NCLT also referred to the Apex Court dicta passed in the matter of *K.Sashidhar v. Indian Overseas Bank* and Ors.

The application challenging rejection of resolution plan was thereby rejected as being devoid of merit.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 76

RP’s application for Corporate Debtor’s Liquidation allowed on the basis of CoC’s resolution.

CASE TITLE	Mrs. Malathi Gopi RP in the matter of M/s Tanjara Trading (P) Limited
CASE CITATION	MA/519/2019 in CA/126/IB/2018 in TCP/46/IB/CB/2017
DATE OF ORDER	25.06.2019
COURT/TRIBUNAL	NCLT, Chennai
CASES REFERRED	-
SECTION/REGULATION	Section 33(2) of IBC, 2016

Brief of the case:

In respect of the proceedings initiated against a CD (M/s Tanjara Trading (P) Ltd.) under section 7 of IBC, an application was filed by the RP u/s 33(2), IBC, seeking orders for liquidation of the CD based on a resolution passed by the CoC with 100% voting share. It is interesting to note that the CoC which consisted of one member only, *i.e.*, Federal Bank Limited, had, after taking into account the fact that there are no other assets available with the CD except for some scrap (valuing a particular sum), straight away passed a resolution with 100% voting share suggesting for liquidation of the CD.

Decision:

The AA, upon perusing the averments made in the application coupled with the resolution passed by the CoC, arrived to a considered view that the CoC has rightly decided suggesting for liquidation of the company since no asset worth enough to propose for resolution are there with the CD.

Keeping the above in view, the AA, vide its order dt. 25th June 2019, directed for issuance of public notice stating that CD is in liquidation with a direction to the liquidator to send a copy of

the order to concerned RoC. Further, RP was appointed as Liquidator with directions to the personnel of CD to extend all cooperation to the liquidator. Also, directions were issued that no suit or other legal proceedings shall be instituted by or against the CD without prior approval of the AA (save as provided in sub-section (6) of s. 33 of IBC).

Thus, the application (M.A./519/2019 in CA/126/IB/2018 in TCP/46/IB/CB/2017) was allowed.

QR CODE FOR FULL ORDER/JUDGEMENT:



Committee of Creditors cannot delegate its powers to a Sub-Committee or Core-Committee for negotiating with the Resolution Applicants

CASE TITLE	Standard Chartered Bank & Ors. Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Ins.) No. 242 of 2019
DATE OF ORDER	04.07.2019
COURT/TRIBUNAL	NCLAT, New Dehi
CASES REFERRED	-
SECTION/REGULATION	Section 60 of IBC, 2016

Brief of the case:

In the insolvency proceedings initiated in respect of M/s Essar Steel India Ltd. (CD), while hearing a bunch of appeals filed by different parties against the common order dt. 8th March, 2019 passed by Hon'ble NCLT (Ahmedabad Bench), Hon'ble NCLAT was informed by one of the Appellants, Standard Chartered Bank (SCB), that despite its opposition, CoC constituted a Core Committee/Sub-Committee to negotiate with the H1 Resolution Applicant (M/s Arcelor Mittal India (P) Ltd.). Regarding the arrangement as inconsistent with the Code, SCB argued that negotiation with an RA on a Resolution Plan is a substantive function of the CoC, and due to constitution of such a sub-committee, SCB has been denied its right to participate in the decision making process.

Decision:

Taking into account the aforementioned contentions, Hon'ble NCLAT, in its order dt. 4th July, 2019, framed an issue (for its decision) as to whether the '*Committee of Creditors*' can delegate its power to a '*Sub Committee*' or '*Core Committee*' for negotiation with the '*Resolution Applicant*' for revision of plan', and after hearing the parties and taking into account the law on the subject, Hon'ble NCLAT concluded:

"130. A 'Sub-Committee or 'Core Committee' is unknown and against the provisions of the 'I&B Code'. There is no provision under 'I&B Code' which permits constitution of a 'Core Committee' or 'Sub-Committee' nor the 'I&B Code' or Regulations empowers 'Committee of Creditors' to delegate the duties of the 'Committee of Creditors' to such 'Core Committee'/'Sub Committee'."

QR CODE FOR FULL ORDER/JUDGEMENT:

AA cannot interfere with Committee of Creditor's decision to remove the Resolution Professional, unless it is shown that such decision is perverse or without jurisdiction.

CASE TITLE	Punjab National Bank V. Mr. Kirah Shah, IRP of ORG Informatics Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 749 of 2019
DATE OF ORDER	06.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 22 of IBC, 2016

Brief of the case:

In the present case, the CoC with a majority voting share of 88% had decided to replace the RP and had moved an application before the Adjudicating Authority (AA) seeking its consent for replacing the RP.

The AA, however, had, vide the impugned order inter alia held that since no ground is given showing the cause of replacement of the IRP coupled with the fact that the CoC has already passed a Resolution for Liquidation of the CD, there is no reason for it to pass orders for replacing the IRP/RP. Further, taking cognizance of RP's statement that he has not been paid his professional fee as also the expenditure incurred by him during the CIRP, the AA had directed the CoC to take necessary steps towards payment of RP's remuneration and the expenditure incurred by him.

Decision:

In an appeal filed against an order dt. 27th June, 2019 passed by AA (NCLT, Ahmedabad Bench) in the CIRP proceedings initiated in respect of M/s ORG Informatics Ltd. (CD), Hon'ble NCLAT, held a view that the CoC is not required to record any reason or ground for replacing of the Resolution Professional. It further held that for the purposes of proceedings reported to the IBBI, the CoC cannot await the decision of the IBBI for the purposes of replacement. With the aforementioned observations, the Appellate Tribunal, while allowing the appeal, had set aside the impugned order.

QR CODE FOR FULL ORDER/JUDGEMENT:



On completion of 270 days of CIRP period, Resolution Professional has not been discharged, CoC cannot be treated to be a *functus officio* until a liquidation order is passed

CASE TITLE	Rana Saria Poly Pack Pvt Ltd Vs Uniword sugars Pvt. Ltd.
CASE CITATION	CA No.146/2019 in CP No.(IB) 120/ALD/2017
DATE OF ORDER	04.06.2019
COURT/TRIBUNAL	NCLT, Allahabad
CASES REFERRED	-
SECTION/REGULATION	Section 9 & 60(5) of IBC, 2016

Brief of the case:

An application was moved by Resolution Professional before the Hon'ble National Company Law Tribunal (NCLT), Allahabad Bench to seek urgent directions from the Court by way of permitting the CoC to conduct further meetings to discuss and decide the urgent Agenda, although the period of 270 days was over and the application filed for liquidation of the Company was under consideration of the AA.

Decision:

Considering the peculiar circumstances, Hon'ble NCLT was of the view that since the RP was not discharged, hence, CoC cannot be treated to be a functus officio until a formal order of liquidation is passed.

In view of the aforesaid observation, NCLT directed that RP and CoC to continue with the CIRP with a view to safeguard the paramount interest of the company.

QR CODE FOR FULL ORDER/JUDGEMENT:



A creditor against whom a money laundering case has been initiated cannot be allowed to be a member of the Committee of Creditors for a CIRP

CASE TITLE	Asset Reconstruction Company (I) Limited (ARCIL) v. Mahal Hotel Private Limited and Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 633 of 2018
DATE OF ORDER	18.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 24 of IBC, 2016

Brief of the case:

A Business Transfer Agreement was entered into between Viceroy Hotels Limited (CD) and Mahal Hotel Private Limited (Respondent) pursuant to which the Corporate Debtor was paid part of the consideration amount of Rs.122.23 crores. Subsequently, Mahal Hotel Private Limited cancelled the Business Transfer Agreement and the amount paid by Mahal Hotel Private Limited was shown as forfeited and reflected in the Balance Sheet of the CD. CIRP was initiated against the CD in March 2018 and the Committee of Creditors was constituted without Mahal Hotel Private Limited as its member. On July 11, 2018, the RP circulated an email with the "updated list" of members of the Committee of Creditors which included Mahal Hotel Private Limited as a FC.

ARCIL moved in appeal before the NCLAT and made a prayer that the formation of the new CoC could not be sustained as Mahal Hotel Private Limited was guilty of money laundering while investigation by Enforcement Directorate is still going on.

Decision:

While deciding on the issue, NCLAT held,

"...we hold that after constitution of the 'Committee of Creditors', without its permission, the 'Resolution Professional' was not competent to entertain more applications after three months to include one or other person as 'Financial Creditor'....Further, money laundering case having been initiated against Mahal Hotel Private Limited, the said Hotel cannot be allowed to be the Member of the 'Committee of Creditors'."

The Appeal was thus allowed vide order dated 18.11.2019.

QR CODE FOR FULL ORDER/JUDGMENT:



A dissent, even if treated as a commercial wisdom of the dissenting Financial Creditor, cannot be questioned before Adjudicating Authority if the decision is taken as per the requisite voting share in the CoC

CASE TITLE	Edelweiss Asset Reconstruction Company Limited v. Sai Regency Power Corporation Pvt. Ltd. and Ors
CASE CITATION	Company Appeal (AT) (Ins) No.887 of 2019
DATE OF ORDER	20.12.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	K. Sashidhar v. Indian Overseas Bank, 2019 SCC OnLine SC 25
SECTION/REGULATION REFERRED	Section 60(5) (c) read with Sections 25(1), 25(2) (c) and 28(1) (a) of IBC, 2016

Brief of the case:

In the present matter, the Resolution Professional had filed an MA, under Section 60(5) (c) read with Sections 25(1), 25(2) (c) and 28(1) (a) of the Insolvency and Bankruptcy Code, 2016, before the Adjudicating Authority (NCLT, Chennai Bench) to issue a certification approving Interim Finance and any costs related to it, as it forms part of the insolvency resolution process cost and has to be shared between all the members of the Committee of Creditors, in the proportion of their voting rights. This application was allowed and the COC members were directed to release the Letter of Comfort in favour of the CD.

Edelweiss Asset Reconstruction Company Limited (EARC) being an unsecured creditor filed an appeal claiming in view of the amendment to Section 30(4) of IBC read with Section 52(8) of IBC; Insolvency Resolution Process costs which include interim finance can only be recovered from secured creditors and not from unsecured creditors like Appellant. The appellant also contested on the grounds that by not being heard before passing the order violates principles of natural justice.

The Tribunal opined that the appellant has the right to dissent in a COC meeting, but if the decision is still taken by the majority provided under the statute, all of COC members are duty-bound to abide by the decision.

Decision:

The NCLAT vide its order dated 20.12.2019, held that:

“The dissenting Financial Creditor in COC cannot be allowed to scuttle CIRP process otherwise the provision permitting COC to take decisions with regard to subjects stated in Section 28(1) by given majority of 66% under Section 28(3) would be rendered nugatory.”

QR CODE FOR FULL ORDER/JUDGMENT:



CoC is to pay the fees & cost incurred by IRP, who also acted during the resolution process beyond 30 days till the date of liquidation having not allowed to continue as Liquidator

CASE TITLE	M/s. Smartec Build Systems Private Limited Vs. B. Santosh Babu
CASE CITATION	Company Appeal (AT) (Insolvency) No. 48 of 2020
DATE OF ORDER	10.01.2020
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

Committee of Creditors of M/s. Smartec Build Systems Pvt. Ltd. preferred an appeal against impugned order 13th November, 2019 passed by the Adjudicating Authority (NCLT, Hyderabad Bench) wherein the Adjudicating Authority while passing the order of liquidation, directed the Committee of Creditors to pay the fees and cost incurred by the Interim Resolution Professional. The Appellant submitted that the fees and costs of the ‘Interim Resolution Professional’ was to be borne by the Applicant who filed application under Section 9 of the Code.

Decision:

Hon’ble NCLAT was of the view that such submission cannot be accepted as Operational Creditor who moved application, may not receive any amount during liquidation being not ‘Secured Creditor’ cannot be asked to pay the dues. Hon’ble NCLAT further held:

“6. Admittedly, Mr. B. Santosh Babu performed the duty of the ‘Interim Resolution Professional’ and constituted the ‘Committee of Creditors’ and thereafter, continued to function even beyond 30 days with designation of the ‘Interim Resolution Professional’ and as he moved an application for liquidation (though designated “continue as Interim Resolution Professional”), we agree with the observations made by the Adjudicating Authority that the ‘Committee of Creditors’ is to pay the fees and cost incurred by Mr. B. Santosh Babu, ‘Interim Resolution Professional’, who also acted during the resolution process beyond 30 days till the date of liquidation having not allowed to continue as Liquidator.”

Hon’ble NCLAT vide its order dated 10.01.2020 held that the plea taken by the Committee of Creditors was frivolous and therefore dismissed the appeal with a cost of Rs.1,00,000/- .

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 83

In case of liquidation, before taking steps to sell to the assets of Corporate Debtor, the liquidator shall take steps in terms of Section 230 of Companies Act, 2013.

CASE TITLE	Ajay Agarwal & Others Vs. Ashok Magnetic Limited & Others
CASE CITATION	Company Appeal (AT) (Insolvency) No. 792 of 2018
DATE OF ORDER	22.02.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	S.C. Sekaran v. Amit Gupta & Ors.
SECTION/REGULATION	Section 29A and 240A of IBC, 2016

Brief of the case:

In the present matter, NCLT orders dated 9th November 2018 were impugned *inter alia* on the grounds that the orders for ‘*Rejection of the Resolution Plan*’ and ‘*liquidation of corporate debtor*’ passed by the NCLT, were not in accordance with law.

Decision:

While disposing of the Appeal and relying in *SC Sekaran (Supra)*, the NCLAT held the following propositions of law:

- (a) If a case is not considered by the ‘Committee of Creditors’ in accordance with law, it is the duty of the Adjudicating Authority to remand the matter to the ‘Committee of Creditors’ for reconsideration;
- (b) In case of liquidation of the CD, the liquidator is required to act in accordance with law and the observations made by NCLAT in the matter of *S.C. Sekaran v. Amit Gupta & Ors.*

QR CODE FOR FULL ORDER/JUDGMENT:



Once a company goes into liquidation, only the Liquidator appointed can apply for a scheme of arrangement/ compromise.

CASE TITLE	Rajesh Balaubramanian Vs. Everon Casting Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 182-183 of 2019
DATE OF ORDER	25.02.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	S.C. Sekaran vs. Amit Gupta & Ors. Swiss Ribbons vs. Union of India
SECTION/REGULATION REFERRED	Section 29A & Section 60 of IBC, 2016 and Section 230 of the Companies Act, 2013

Brief of the case:

While disposing of an appeal filed by promoters of CD against NCLT(Chennai Bench) orders whereby the AA had declined to grant the relief for exclusion of 120 days from the CIRP and had passed orders for liquidation of CD, the NCLAT directed the liquidator to take steps under section 230 of companies act 2013.

The matter pertains to the CD, *M/S Precision Machine And Auto Components Pvt. Ltd.*, wherein CoC had unanimously rejected the resolution plans submitted, and subsequently, the RP had applied for liquidation to AA.

Decision:

The NCLAT, after making a reference to its own orders in the matter of *S.K.Sekaran v. Amit Gupta and Ors.* and Supreme Court decisions in ‘*Meghal Homes Pvt. Ltd.*’ and ‘*Swiss Ribbons Pvt. Ltd.*’, “*If the members of the ‘Corporate Debtor’ or the ‘creditors’ approach the company through the liquidator for compromise or arrangement... the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the National Company Law Tribunal*”

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 85

NCLT, Principal Bench upheld maintainability of proceedings under section 7 of Insolvency and Bankruptcy Code, 2016 while winding up proceedings are pending against the Corporate Debtor and a liquidator appointed.

CASE TITLE	Mohit Kumar Arora Vs. MVL Limited
CASE CITATION	CP No. IB-67(PB)/2019
DATE OF ORDER	13.06.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	PSL Limited v. Jotun India Pvt. Limited M/s Forech India Limited v. Edelweiss Assets Reconstruction Company Limited.
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case:

In an application filed under section 7 of IBC wherein Hon'ble NCLT (Principal Bench) was informed that a winding up petition has been filed against the CD and is pending disposal before Hon'ble Delhi High Court and wherein a Provisional Liquidator has already been appointed, the Tribunal was called upon to decide on the issue of maintainability of section 7 application during the pendency of a winding up petition.

Decision:

The NCLT, while holding that the question is no more a *res integra* (question of law without a precedent), reiterated the principle laid down by Hon'ble Bombay High Court in *PSL Limited v. Jotun India Pvt. Limited* which received approval of Hon'ble Supreme Court in the matter of *M/sForech India Limited v. Edelweiss Assets Reconstruction Company Limited*.

Concluding on the said issue, Hon'ble NCLT, vide its order dt.13th June, 2019, held:

"It is patent from the aforesaid paras that the Code would prevail and the Official Liquidator would answer all the queries of the Resolution Professional who is to take over the process. He is

subjected to all the directions of the NCLT and Resolution Professional...Therefore, it cannot be said that a petition is not maintainable merely because Official Liquidator has been appointed.

QR CODE FOR FULL ORDER/JUDGEMENT:

CASE NO. 86



Finding that Corporate Debtor’s Ex-Directors have failed to co-operate with the Liquidator (as well as Adjudicating Authority) and Contempt Proceedings already initiated against them, Hon’ble NCLAT directs appellants to appear and raise their grievances (against Liquidator) before the AA itself.

CASE TITLE	Mahesh Kumar Panwar Vs. Mega Soft Infrastructure Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 617 of 2019
DATE OF ORDER	10.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 60(5) and Section 70 r/w 72 of IBC and Section 425 of the Companies Act, 2013

Brief of the case:

In an appeal, Hon’ble NCLT’s (Delhi Bench) order dated 22nd April, 2019 (impunged order) was sought to be challenged. Vide the impunged order, Hon’ble NCLT, upon noticing the conduct and continued absence from Court as also the reluctant attitude of CD’s Ex-Directors in assisting the proceedings, had dismissed their application seeking recall of non-bailable warrants issued against them in the contempt proceedings. Accordingly, the provisions of s. 425, Companies Act (r/w ss. 70 and 72 IBC) were sought to be invoked by the Liquidator. The Liquidator had also brought it to Hon’ble Tribunal’s notice that the Ex-Directors had filed a collusive petition seeking mandatory injunction over the property in order to keep it out of the arena of Liquidation proceedings against the CD.

Decision:

Considering the aforementioned circumstances, Hon’ble NCLAT disposed-off the appeals with the following orders:

“7. In the present case, as we find that the Appellant has not cooperated with the ‘Resolution Professional/Liquidator’ and is still not co-operating and the AA has already initiated the contempt proceedings under Section 425 of the Companies Act and intends to order for penal action under Section 70 and 72 of the I & B Code, we allow the Appellant to raise all the issues before the Adjudicating Authority...”

QR CODE FOR FULL ORDER/JUDGEMENT



In an application made by Workmen and Employees, a claim over their Gratuity and Provident Fund cannot be made subject to determination by RP/Liquidator as the same are not the Assets of the Corporate Debtor.

CASE TITLE	Sunil Kumar Jain Vs. Sundaresh Bhatt
CASE CITATION	Company Appeal (AT) (Insolvency) No. 605 of 2019
DATE OF ORDER	31.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	NA

Brief of the case:

In an appeal, Corporate Debtor's (CD's) workmen had challenged the validity of Hon'ble NCLT (Ahmadabad Bench) order dt. 25th April, 2019 (impugned order) wherein AA had declined to grant relief to the Appellants claiming their salary for the CIRP period and the prior period. Submissions were made by the Appellants claiming that AA vide its order dated 25th April, 2019 had directed RP to deposit a sum of Rs. 2.75 crores (out of approximately Rs.9.55 crores) with the Registrar by way of fixed deposits and it was contented that Appellants' claim should be settled out of the said amount.

Decision:

Hon'ble NCLAT, however observed that an order of liquidation has already been passed in the matter and that a disputed question of fact as to whether the Appellants actually worked during the CIRP or the period earlier to that, cannot be dealt with by AA till such information could be obtained from the RP or the claim is decided by the liquidator. Hon'ble NCLAT, while declining to interfere with the impugned order, allowed the Appellants (272 workmen and employees) to file their individual claims before the Liquidator for determination of their claims.

As regards Appellant's claim over Gratuity and Provident Fund, Appellate Tribunal held that such funds cannot be treated as asset of the CD, and thus, they are to be disbursed amongst the employees/workmen as per their entitlement.

The Appeal was accordingly dismissed with the aforesaid observations.

QR CODE FOR FULL ORDER/JUDGEMENT:



The pension fund, the provident fund and the gratuity fund do not come with the meaning of liquidation estate for the purpose of distribution of assets under section 53 of Insolvency and Bankruptcy Code.

CASE TITLE	State Bank of India v. Moser Baer Karamchari Union & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 605 of 2019
DATE OF ORDER	19.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REGULATION	Section 53 of IBC, 2016 and Section 326 & 327 of the Companies Act, 2013

Brief of the case:

An appeal was filed before Hon'ble NCLAT, impugning order dated 19th March, 2019 issued by Hon'ble NCLT Principal Bench, New Delhi, wherein AA held that the 'Provident Fund Dues', 'Pension Fund Dues' and 'Gratuity Fund Dues' cannot be part of Section 53 of the Code. State Bank of India (Appellant) placed its reliance on the explanation to Section 53, that 'workmen's dues', which are mentioned under Section 53(1)(c), shall have the same meaning as assigned to it in Section 326 of the Companies Act, 2013 and would thus include Provident Fund. Appellant also relied on Section 327 of the Companies Act, 2013 which relates to 'Preferential Payments' and submitted that the sums due to the workman from the provident fund or any other fund for the welfare of the workmen, maintained by the Company, be treated as 'workmen dues'.

The question arose for consideration in the appeal was whether the provident fund, pension fund and gratuity fund come within the meaning of assets of the 'Corporate Debtor' for distribution under Section 53 of the Code.

Decision:

Hon'ble NCLAT held that since 'workmen's dues' is specifically mentioned in Section 53(1)(b)(i) as dues for the period of twenty-four months preceding the liquidation commencement date, its meaning could not be derived through Section 326 of the Companies Act, 2013. Hon'ble NCLAT dismissed the appeal with the finding that the provident fund, the pension fund, and the gratuity fund do not come within the meaning of 'liquidation estate' for the purpose of distribution of assets under Section 53.



CASE NO. 89

Liquidator can accept the Resolution Plans which were not accepted in CIRP as schemes or arrangements in liquidation process

CASE TITLE	Kautilya Industries Pvt. Ltd. V Parasrampuriya Synthetic Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 282 of 2019
DATE OF ORDER	31.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Y. Shivram Prasad Vs. S. Dhanapal & Ors
SECTION/REGULATION	Section 33 of the IBC, 2016

Brief of the case:

An appeal was filed before Hon’ble NCLAT impugning order dated 15th February, 2019 passed by the NCLT, Jaipur Bench, in which the order of liquidation of the CD u/s 33(2) was approved by the AA. The appellant claimed that there was an interim order passed by Hon’ble HC of Rajasthan on 27th September, 2018 which was vacated on 3rd January, 2019. So the period of 97 days should be excluded for the purpose of counting the period of 270 days.

Decision:

The NCLAT held as follows:

“The Liquidator is also required to ensure that during the liquidation the ‘Corporate Debtor’ remains a going concern and in case no Scheme is approved under Section 230 of the Companies Act, 2013, then to sell the Company as going concern alongwith employees as ordered in “Y. Shivram Prasad Vs. S. Dhanapal & Ors. (Supra) before taking recourse of final liquidation. It is open to the Liquidator/class of creditors such as, ‘Committee of Creditors’ and ‘Financial Creditors’ or members or class of members of the ‘Corporate Debtor’ to consider the ‘Resolution Plans’ as were filed by one or other ‘Resolution Applicants’ but were not taken up for the purpose of preparation of Scheme, but ensure that such Scheme should not violate the Statement of Objects and Reasons of the ‘I&B Code’ which is the maximization of the assets of the ‘Corporate Debtor’, feasibility and viability of the Scheme and balancing the stakeholders as observed in “Y. Shivram Prasad Vs. S. Dhanapal & Ors.” (Supra) ”

As conclusion, it is derived that the liquidator can consider the ‘Resolution Plan’ which was previously rejected by CoC during CIRP, unless it violates the objective of the Code, i.e. maximization of the wealth of the CD or its stakeholders.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 90

Corporate Debtor which is under Liquidation cannot file any application to initiate CIRP against any other Corporate Debtor

CASE TITLE	Abhay N. Manudhane Vs Gupta Coal India Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 786 of 2019
DATE OF ORDER	01.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 9, 11, 33, 52, & Section 60(5) of the IBC, 2016

Brief of the case:

In the present case, the Appellant intended to file an application under Section 9 against different companies, there being a debt payable to the present Corporate Debtor against other companies or against other Corporate Debtors.

Decision:

Hon’ble NCLAT held as below:

“4. From clause (d) of Section 11, it is clear that a ‘Corporate Debtor’ in respect of whom a liquidation order has been made is not entitled to make application to initiate ‘Corporate Insolvency Resolution Process’ under Chapter II. That means, it cannot file any application under Sections 7 or 9 of the I&B Code. Therefore, no application under Chapter II can be filed by the ‘Corporate Debtor’, which is under Liquidation of which the Appellant is Liquidator. In so far as, sub-section (5) of Section 33 is concerned, it is subject to Section 52. Section 52 relates to right of secured creditor in liquidation proceedings. However, in case where matter does not relate to any secured asset and recovery of any money by the ‘Corporate Debtor’, which is not under Liquidation, a suit or other legal proceedings may be instituted by the Liquidator on behalf of the ‘Corporate Debtor’, but not an application under Section 9 of the I&B Code.”

Hon’ble NCLAT vide order dated 01.10.2019 dismissed the appeal and refused to grant permission to Appellant to file application under Section 9 of the I&B Code.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 91

An application under Section 230 to 232 of the Companies Act, 2013 for Compromise and Arrangement with creditors is maintainable during the pendency of the liquidation proceedings under Insolvency and Bankruptcy Code

CASE TITLE	Jindal Steel and Power Limited v. Arun Kumar Jagatramka and Ors.
CASE CITATION	Company Appeal (AT) No. 221 of 2018
DATE OF ORDER	24.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Y. Shivram Prasad vs. S. Dhanapal & Ors. S.C. Sekaran v. Amit Gupta & Ors.
SECTION/REGULATION REFERRED	Section 29A of IBC, 2016 and Section 30 to 232 of Companies Act, 2013

Brief of the case:

In the aforementioned matter, the issue raised was whether in a liquidation proceeding under IBC, the Scheme for Compromise and Arrangement can be made in terms of Sections 230 to 232 of the Companies Act and if so permissible, whether the Promoter is eligible to file an application for Compromise and Arrangement, while he is ineligible under Section 29A of IBC to submit a Resolution Plan.

Decision:

In response to the above issues, NCLAT held that during the liquidation stage, the Liquidator is required to take steps to ensure that the company remains a going concern and instead of liquidation, must take steps for the revival of the Corporate Debtor. The answer to the first question is affirmative, i.e., to say that in a Liquidation proceeding under I&B Code, a petition under Section 230 to 232 of the Companies Act is maintainable.

NCLAT stated that,

“...it clear that even during the period of Liquidation, for the purpose of Section 230 to 232 of the Companies Act, the ‘Corporate Debtor’ is to be saved from its own management, meaning thereby the Promoters, who are ineligible under Section 29A, are not entitled to file application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act.”



CASE NO. 92

Capital gain tax payable to Tax authorities is to be treated as Operational Debt and thus Capital gain tax payable during the period of liquidation would be covered under Section 53 of the IBC

CASE TITLE	Shree Ram Lime Products Pvt. Ltd V. Gee Ispat Pvt. Ltd
CASE CITATION	CA-666/2019 in (IB)-250(ND)/2017
DATE OF ORDER	22.10.2019
COURT/TRIBUNAL	NCLT, New Delhi Bench
CASES REFERRED	-
SECTION/REGULATION	Section 60(5) of IBC, 2016

Brief of the case:

Liquidation proceedings against Gee Ispat Pvt. Ltd was initiated vide order dated 05.10.2018 as no resolution plan was proposed. An application u/s 60(5) was filed by Ms. Pooja Bahry, Liquidator of the CD to seek directions/clarifications in respect of certain steps required to be taken after liquidating the assets of the Corporate Debtor before the Hon'ble NCLT, New Delhi Bench. The Liquidator sought clarification about that, whether Capital Gain Tax is applicable and payable on the sale of the fixed assets on which the secured creditors have relinquished their rights and the sale is conducted by the Liquidator.

Decision:

Hon'ble NCLT held that :

"8. ... a secured creditor is entitled to effect sale under the SARFAESI Act and appropriate the entire amount towards its dues, without any liability to first pay capital gain. It is only upon residual liquidity that the distribution of the assets has to be made according to the Operational Creditors (in this case the tax authorities) in terms of the provisions of Section of the Code..."

"9. We therefore hold that the tax liability arising out of the sale shall be distributed in accordance with the provision of Sec 53 of the Code. The applicability of Section 178 or 194 IA of the IT Act will not have an overriding effect on the water fall mechanism provided under Section 53 of the Code, which is a complete code in itself, and the capital gain shall not be taken into consideration as the liquidation cost."

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 93

After the liquidation, the Committee of Creditors has no role to play and they are simply claimants whose matters are to be determined by the Liquidator

CASE TITLE	Punjab National Bank v. Mr. Kiran Shah Liquidator of ORG Informatics Ltd
CASE CITATION	Company Appeal (AT) (Insolvency) No. 102 of 2020
DATE OF ORDER	21.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 33& 34 of IBC, 2016

Brief of the case:

In the CIRP of M/s. ORG Informatics Limited (Corporate Debtor), the 'Punjab National Bank' is the lead Bank in the CoC of CD. The CoC decided to move application for liquidation of the Corporate Debtor. The Resolution Professional was asked to move an application for liquidation u/s 33 & 34 of the Code. The said application has been accepted by the Adjudicating Authority, Ahmedabad Bench by impugned order dated 20.11.2019 and asked Resolution Professional to continue as Liquidator.

Decision:

NCLAT held that *after the liquidation the Committee of Creditors has no role to play and they are simply a claimant whose matters are to be determined by the Liquidator and cannot move an application for removal of Liquidator in absence of any provisions under the law.*

QR CODE FOR FULL ORDER/JUDGEMENT:



At the liquidation stage recourse can be had, for an arrangement/ compromise which may protect/ save the Corporate Debtor and turn it around as a commercially viable company

CASE TITLE	Mrs. Anuja Beri Vs. I.E. Trading Company Pvt. Ltd. & Ors
CASE CITATION	Company Appeal (AT) (Insolvency) No. 162 of 2020
DATE OF ORDER	28.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 230 and 232 of the Companies Act, 2013

Brief of the case:

In the aforementioned matter, the CoC in its 3rd meeting held on 20th October, 2018 recommended liquidation of the CD. This was done with 100% voting share after taking into consideration that the CD did not have any employees or business operations for last more than 5 years and there is no operating revenue. NCLT, New Delhi Bench- IV accepted the application of the Resolution Professional and ordered for liquidation of the CD.

The present appeal by the Appellant is that they are eligible to submit an arrangement / compromise in terms of provisions of Section 230 and 232 of the Companies Act.

Decision:

Hon'ble NCLAT held that,

“It is well settled by now that even at the liquidation stage recourse can be had to provisions of Section 230 and 232 of the Companies Act, 2013 for an arrangement / compromise which may save / protect the ‘Corporate Debtor’ and turn it around as a Commercially viable Company. If the Appellant is eligible, he will be entitled to float proposal for such arrangement / compromise.”

Since the liquidator submitted that the Appellant is eligible for submitting a plan, NCLAT advised the Appellant to submit a compromise/arrangement plan within timelines.

Hon'ble NCLAT disposed off the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 95

The Liquidator shall hold the Liquidation Estate in fiduciary for the benefit of all the Creditors. The Liquidator has no domain to deal with any other property of the Corporate Debtor, which is not the part of the Liquidation Estate.

CASE TITLE	Mr. Savan Godiwala, the liquidator of Lanco Infratech Limited Vs Mr. Apalla Siva Kumar
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1229 of 2019
DATE OF ORDER	11.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	State Bank of India v Moser Baer Karamchari Union and Another
SECTION/REGUATION REFERRED	Sec 36(2) & 53 of the I& B Code 2016 and Sec 4 of the Payment of Gratuity Act, 1972

Brief of the case:

In the aforementioned matter, the Appeal was against the order passed by the Adjudicating Authority, whereby the AA had directed the Liquidator to pay the Gratuity to the employees, and further observed that the Liquidator could not avoid the liability to pay Gratuity to the employees on the ground that the Corporate Debtor didn't have separate funds for payment of gratuity. The AA directed the Liquidator to provide sufficient provision for payment of Gratuity, according to the eligibility of the employees

Decision:

NCLAT held that,

“Thus it is the settled position of law, that the provident fund, the pension fund and the gratuity fund, do not come within the purview of liquidation estate’ for the purpose of distribution of assets under Section 53 of the Code. Based on this, the only inference which can be drawn is that Pension Fund, Gratuity Fund and Provident Fund can’t be utilised, attached or distributed by the liquidator, to satisfy the claim of other creditors. Sec 36(2) of the I B Code 2016 provides that the Liquidator shall hold the Liquidation Estate in fiduciary for the benefit of all the Creditors. ...the Liquidator cannot be directed to make the payment of gratuity to the employees because the Liquidator has no domain to deal with the properties of the Corporate Debtor, which are not part of the liquidation estate.”



CASE NO. 96

The liquidator is armed with requisite powers to remove the Nominee Directors and is entitled to nominate the Directors of Corporate Debtor.

CASE TITLE	Rajive Kaul and Ors. v. Vinod Kumar Kothari and Ors.
CASE CITATION	Company Appeal (AT) (INS) No.44 of 2020
DATE OF ORDER	20.03.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 33(7), 238 of the Code and Section 169 of the Companies Act, 2013

Brief of the case:

The present appeal was filed against the decision of the AA wherein it was held that the Liquidator has the power to remove the ‘Nominee Directors’ and can nominate ‘Directors’. The contention of the Appellants was such that they can only be removed by adhering to the procedure specified in terms of Sec 169 of the Companies Act, 2013 and not by the Liquidator in terms of their power under IBC.

Decision:

Hon’ ble NCLAT pulled focus on Section 238 of the Code which has an ‘overriding effect of other Laws’. Hon’ ble NCLAT held that,

“..As a matter of fact, the proposal submitted by the Liquidator in terms of the power bestowed on him under the I&B Code, read with Rule, Article 140 (4) of the ‘Articles of Associations’ cannot be ignored and a self-serving decision being arrived at in this regard. The Appellant (‘Nikko Parks and Resorts Pvt. Ltd’) is not required to be informed of the reasons behind the replacement of existing ‘Nominee Directors’ by the ‘Liquidator’, although the said ‘Directors’ were elected as ‘Directors’ because of the fact that they had secured the shares of ‘Nikko Parks and Resorts Pvt. Ltd’, in an individualistic manner. No wonder, unless and until the ‘Liquidator’ permits the ‘Nominee Directors’ to continue, they do not have any right in this regard.”

The appeals are dismissed vide order dated 20.03.2020.



RESOLUTION PROFESSIONAL

CASE NO. 97

Insolvency Resolution Professional (IRP) powers of a Court Officer.

CASE TITLE	Asset Reconstruction company Ltd. vs. Shivam Water Treaters Pvt Ltd
CASE CITATION	CP(IB)-1882/MB/2018
DATE OF ORDER	16.01.2019
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 19 of the IBC

Brief of the case:

An application was filed under Section 19 of IBC by the Resolution Professional seeking direction against the Corporate Debtor and ex-directors of the Corporate Debtor to assist and cooperate with the interim resolution professional.

Decision:

NCLT vide its order dated 2nd Jan 2019 had clarified that IRP is acting as a Court Officer and any hindrance in the work of CIRP will amount to contempt of court. The NCLT directed the promoter/ director, officials and auditor the Corporate Debtor Company to fully co-operate the RP in the completion of CIRP.

Further in the aforesaid matter the NCLT ordered that Police assistance to be given to the Resolution Professional so that the RP can take full control of the company without any interference from Ex- Director's or his officials. The Police Commissioner, Ahmadabad is directed to provide police assistance to RP and his team, so that the Resolution Professional can take control of the entire unit.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 98

Task of Resolution Professional is to limit itself to confirm that claims received by him are true and correct. Resolution Professional is not required to enquire into facts inter se parties to determine their rights and liabilities.

CASE TITLE	Dr. Ramakant Suryanath Pande v. CS Prakash K. Pandya
CASE CITATION	MA 1453/2018 & IA 76/2018 in CP No. 870/IBC/NCLT/MB/MAH/2017
DATE OF ORDER	05.02.2019
RELEVANT AUTHORITY	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Regulation 13 & 14 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

Brief of the case and Decision:

In the matter pertaining to Corporate Debtor, M/s Chaubey Realities Private Limited, while disposing of an application filed by the FC, *inter alia* challenging rejection of his claim by the RP, the NCLT (Mumbai Bench) held that *the RP is not an adjudicating authority and is not required to enquire into the factual scenario between parties and determine their rights and liabilities. The task of the RP is to limit itself to confirm that the claims received by him are true and correct.*

Referring to the language of regulation 13 & 14 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Tribunal came to a finding that *the scope of a resolution professional (RP) is limited to verifying the claims received.*

The application was accordingly allowed with directions to RP to consider the applicant as a Financial Creditor and treat his claim as a Financial Debt.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 99

RP's application seeking recovery of money from a Debtor to the Corporate Debtor was allowed, rejecting debtor's defence for non-payment of the consideration sum.

CASE TITLE	Kavitha Surana Vs. Vimal Nayan Bothra
CASE CITATION	MA/309/2018 in CP/229/IB/CB/2018
DATE OF ORDER	09.04.2019
COURT/TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 9 of IBC, 2016; sections 73 and 74, Indian Contract Act, 1872 and section 61 of Sale of Goods Act, 1930

Brief of the case:

In the present matter application was filed by the RP inter alia seeking orders for recovery of Rs.10,36,91,319 from M/s Devmata Exim (P) Ltd. (respondent) as an amount pending from the respondent to the CD (*M/s Shrei Veerganapathi Steels private Limited*). Hon'ble NCLT (Chennai Bench), vide its order dt. 9th April, 2019, while dismissing the objections raised by the respondent, and concluding that the applicant/RP has established its case against the Respondent, allowed the application and directed the respondent to make payment to the CD.

The respondent had alleged that there was a breach of contract (inter se the CD and the respondent) due to non-compliance of promises made under the purchase order (placed by respondent on the CD) and a claim for damages under sections 73 and 74, Indian Contract Act, 1872 and section 61, Sale of Goods Act, 1930 was accordingly made by the Respondent alleging that there were quality issues in the goods supplied by the CD.

Decision:

Upon pursuing all the documentary evidence produced, as also the averments made by both the parties, NCLT concluded, *"From the above quoted texts of the submission of the Respondent, it has become very clear that the goods supplied by the Corporate Debtor to the Respondent were accepted and sold for which the consideration was received. Therefore, once the material supplied is accepted, the contentions of the Respondent that the goods supplied were defective; and the contract was breached do not hold the water."*

Applying the common law principle of *Affirmation* (Law of Contract), the NCLT held that the right to reject is lost if the customer keeps the goods after discovering the defect in them and further sells the same. Thus, the defence of the Respondent for non-payment of the consideration to the CD was rejected as spurious and self-serving.

CASE NO. 100



NCLT directs Resolution Professional not to reject a claim merely on the ground of being filed after prescribed period of 90 days as the CIRP is still under progress and no Resolution Plan approved by CoC.

CASE TITLE	Twenty First Century Wire Rods Limited
CASE CITATION	CP(IB) 737(PB)/2018
DATE OF ORDER	20.05.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Regulation 12(2) of CIRP Regulations

Brief of the case:

In the insolvency proceedings initiated under Section 10 of IBC pertaining to *M/s Twenty First Century Wire Rods Ltd.* (Corporate Debtor), Hon’ble NCLT, Principal Bench, New Delhi, while disposing-off an application filed by M/s Noble Resources Ltd. (applicant) seeking directions to RP to consider its claim which was filed with some delay, held that since the CIR process is still under progress and no resolution plan has been approved by the CoC, the RP cannot reject the claim on the ground of delay.

Decision

While considering the aforementioned application, Hon’ble NCLT also took into account the fact that it had earlier condoned delay while disposing-off a similar application (CA 727(PB)/2019) filed in the instant proceedings. Thus, while giving notice to the RP, Hon’ble NCLT observed that “*keeping in view nature of the controversy and the view already taken by us we do not feel that any reply would be necessary.*”

In the aforementioned circumstances, Hon’ble NCLT held, “*We pass the same order in the instant matter and dispose of the application with a direction to the Resolution professional to take into consideration the claim made by the applicant on the basis of the award passed by the Arbitrator. The Resolution Professional shall not reject the claim on the ground of delay as the CIR Process is still under progress and no resolution plan has been approved by the CoC so far.*”



Professional fee of Resolution Professional and cost incurred by the Resolution Professional, if approved by the ‘Committee of Creditors’, it should be allowed as resolution cost by the Liquidator

CASE TITLE	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 876 of 2019
DATE OF ORDER	11.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 40 & 53 of the Code

Brief of the case:

An appeal was preferred by Mr. Sanjay Kumar Ruia, the Resolution Professional (Appellant) with prayer for direction to pass appropriate order relating to his fees and cost of ‘Resolution Process’ in the light of decision of the Appellate Tribunal dated 3rd January, 2019 in Company Appeal (AT) (Insolvency) No.560 of 2018.

Decision:

Hon’ble NCLAT remitted the matter to the Liquidator, in view of the fact that liquidation proceeding has already been started. Further held that *if the amount based on bills and ledger have been approved by the Committee of Creditors, the Liquidator cannot reject, the same being the ‘resolution cost’ and not claim of any creditor.*

Hon’ble NCLAT disposed off the appeal and made it clear that the *fee of the Resolution Professional and the cost incurred by Resolution Professional, will be treated as ‘resolution cost’*, Further allowed the Liquidator to determine the claim under Section 40 of the Code. Once the amount is shown as ‘fees’ and ‘resolution cost’ the same to be paid in terms of Section 53 of the Code.

QR CODE FOR FULL ORDER/JUDGEMENT



Resolution Professional has no jurisdiction to determine the claim filed by Financial Creditor, he can only collate the claim

CASE TITLE	S. Rajendran v. Jonathan Mouralidarane
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1018 of 2019
DATE OF ORDER	01.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 60(5) of the IBC, 2016

Brief of the case:

An appeal was preferred by Mr. S. Rajendran, Resolution Professional of PRC International Hotels (P) Ltd. against the decision of the National Company Law Tribunal, Chennai whereby it had accepted the claim of the Financial Creditor where Resolution Professional, S. Rajendran, collated the claim of the Financial Creditor and held that the claimed amount was “Nil”.

Decision:

Hon’ble NCLAT held:

“3. Having heard learned Counsel for the Appellant, we are of the opinion that the ‘Resolution Professional’ had no jurisdiction to “determine” the claim as pleaded in the Appeal. He could have only “collated” the claim, based on evidence and the record of the ‘Corporate Debtor’ or as filed by Jonathan Mouralidarane (‘Financial Creditor’). If an aggrieved person thereof moves before the Adjudicating Authority and the Adjudicating Authority after going through all the records, comes to a definite conclusion that certain claimed amount is payable, the ‘Resolution Professional’ should not have moved in Appeal, as in any manner, he will not be affected.”

Hon’ble NCLAT vide its order dated 01.10.2019 with aforesaid observation dismissed the appeal. Further, the Appellate Tribunal was inclined to impose costs, but on request of counsel for the Resolution Professional, no costs were imposed.

QR CODE FOR FULL ORDER/JUDGEMENT:



If a company undergoing CIRP has outstanding export obligations/liabilities under any of the schemes under Foreign Trade Policy, it is the duty of Resolution Professional to inform the concerned Regional Authority and NCLT

TITLE	Amendment in Foreign Trade Policy
DATE OF NOTIFICATION	18.10.2019

Brief:

The Central Government amended the Foreign Trade Policy, 2015-20 by way of Notification No.25/2015-2020 issued on 18th October, 2019.

A new paragraph no. 2.15 A is added in Chapter 2 of Foreign Trade Policy 2015-20 as under:

“2.15 A. Any firm / company coming under the adjudication proceedings before the National Company Law Tribunal (NCLT) shall inform the concerned Regional Authority (RA) and NCLT of any outstanding export obligations/liabilities under any of the schemes under FTP. The total outstanding duty saved amount / dues along with interest, and any penalty imposed under FTD&R Act, or any other dues, shall be counted as part of the dues to the government against the said firm / company.”

Therefore, if a company undergoing CIRP has outstanding export obligations/liabilities under any of the schemes under Foreign Trade Policy, it is the duty of RP to inform the concerned Regional Authority (RA) and NCLT.

QR CODE FOR FULL NOTIFICATION:



NCLT imposed a penalty of Rs.1 Lakh on Resolution Professional for abuse of his dominant position

CASE TITLE	BMW India Financial Services Private Limited v. SK Wheels Private Limited
CASE CITATION	MA NO. 2319/2019 in C.P. (IB) 4301/2018
DATE OF ORDER	16.10.2019
COURT/TRIBUNAL	NCLT, Mumbai
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 7, 14, 60(5) of the Code and Regulation 7 of Insolvency and Bankruptcy Board of India, Regulations, 2016.

Brief of the case:

The Applicant submitted that the Corporate Debtor in June 2015 had approached him to occupy the Premises owned by the Applicant. Accordingly, the parties entered into a Leave and License Agreement dated 07.08.2015. The Applicant was aggrieved by the default in the payment of license fees committed by the Corporate Debtor. Further, the Resolution Professional did not accept the claim of the Applicant against the Corporate Debtor and did not even cite any reasons for the same.

Decision:

Hon'ble NCLT held:

“15. It is trite law that this tribunal has been provided with vast powers under section 60 (5) of the Code. Therefore, based on the above this bench is of the view that the actions or rather inaction on the part of the Resolution Professional in not taking a decision with respect to the claim of the Applicant is an abuse of the powers given to him under the code and contrary to justice and public policy. His actions are nothing more but an abuse of his dominant position.

18. This kind of injustice carried out by the Resolution Professional herein is completely unacceptable. The landowner is just not entitled to receive the license fee but also, he has to right to receive the possession of the said premises. The tenancy rights automatically get terminated, the moment default in payment of rent is committed.”

Hon'ble NCLT vide its order dated 16.10.2019 allowed the application.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 105

NCLT imposed a cost of Rs. 1 Lakh each on the applicants for unwarranted behaviour towards Resolution Professional

CASE TITLE	Suresh Narayan Singh v. Tayo Rolls Ltd.
CASE CITATION	CP(IB) No.840, 970 & 1008/KB/2019 in CP (IB) No.701/KB/2017
DATE OF ORDER	30.10.2019
COURT/TRIBUNAL	NCLT, Kolkata
CASES REFERRED	-
SECTION/REGULATION REFERRED	-

Brief of the case:

In the aforementioned matter, Jharkhand Bijli Vitran Nigam Limited (Applicant) preferred a company application before NCLT, Kolkata Bench for replace of Resolution Professional (RP). The applicant raised an objection with regard to the irregularities in CoC's meetings and reduction of claims by the RP.

Decision:

Hon'ble NCLT, Kolkata Bench was of the view that the reason for filing this application for removal of RP is mainly that their claims have not been admitted in full and all other allegations seem to have been made to support their main grievance of non acceptance of their claim in full.

Hon'ble NCLT, Kolkata Bench allowed replacement of RP, as the CoC at its meeting by a vote exceeding 66% resolved to replace the RP. However, no weightage was given to baseless allegations leveled by applicant in taking the decision.

Hon'ble NCLT, Kolkata Bench vide its order dated 30.10.2019 dismissed the application.



CASE NO. 106

Resolution Professional is entitled to move to the Adjudicating Authority, if he has any difficulty regarding CIRP costs after withdrawal of application

CASE TITLE	Ruchita Modi v. Mrs. Kanchan Ostwal & Anr.
CASE CITATION	Company Appeal (AT) (Ins) No.1000 of 2019
DATE OF ORDER	15.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

An appeal was preferred, to set aside the impugned order dated 18th September, 2019 passed by Adjudicating Authority (NCLT) Jaipur initiating CIRP u/s 9 filed by Mrs. Kanchan Ostwal against MEC Shot Blasting Equipment Private Limited.

This appeal was preferred to request recording of settlement deed between the OC and the CD executed on 02.11.2019 and the CoC was also not constituted.

Decision:

Hon'ble NCLAT held:

“As the IRP is functioning since 18th September, 2019 on admission of Section 9 Application, we compute the fees of IRP @ Rs.1,50,000/-. The IRP would be entitled to also recover CIRP costs as may have been incurred. The Appellant – for CD undertakes to contact IRP and pay fees as above and CIRP costs as may have been incurred by the IRP in 3 weeks, after deducting amount already received by IRP under the Impugned Order. In case IRP has any difficulty regarding CIRP costs, he would be entitled to move the Adjudicating Authority and the Appellant will be bound to pay the CIRP costs concerned, as may be directed by Adjudicating Authority.”

Hon'ble NCLAT vide its order dated 04.11.2019 set aside the impugned order dated 18th September, 2019 passed by NCLT, Jaipur bench for initiation of CIRP and disposed of application u/s 9 of the code as withdrawn. Further, NCLAT also directed that if there is default

in payment in terms of the settlement, it will be open for the Operational Creditor to move to the Appellate Tribunal for recall of this Order and to revive the CIRP process against the CD

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 107

Resolution Professional can take possession of Corporate Debtor’s assets which are subject matter of litigation to facilitate CIRP

CASE TITLE	Goa Auto Accessories v. Suresh Saluja
CASE CITATION	CP IB – 3863 (MB) 2018
DATE OF ORDER	12.12.2019
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	Liberty House Group Pte Ltd. Vs. State Bank of India and Ors.
SECTION/REGULATION	Section 60(5), section 63, section 231 and section 238 of IBC

Brief of the case:

A miscellaneous application was filed by the Applicant, challenging the direction of the IRP, wherein the IRP had called upon the Applicant to hand over the possession of the property owned by Goa Auto in view of the commencement of CIRP, the IRP had also alleged that the Applicant was in illegal occupation of the property. The applicant pointed out that the issue of possession/occupation of the property was sub judice before a Civil Court and therefore, the IRP should be directed to refrain from acting in furtherance of his direction.

The core issue in the instant case, according to the NCLT was that whether adjudication of a pending suit has an effect on the powers of the Resolution Professional to take possession of the property of the Corporate Applicant.

Decision:

The Hon’ble NCLT, Mumbai Bench held:

“Upon conjoint reading of section 60(5), section 63, section 231 and section 238, the jurisdiction of Civil Court is excluded related to the matters related to I & B code. Therefore, it can be held that NCLT can order possession of the property of Corporate Applicant to facilitate the CIRP process and allow the Resolution Professional to take possession of the assets of Corporate Applicant.”



“29. Therefore, in view of the overriding powers under section 238 of the Code and Rule 11 of NCLT Rules 2016, and it is directed that Resolution Professional/ Liquidator shall be allowed to take possession of the Shed from the Applicant.”

Hon’ble NCLT, Mumbai Bench disposed off the application.

QR CODE FOR FULL ORDER/JUDGMENT:

RESOLUTION PLAN

CASE NO. 108

NCLT has no jurisdiction to analyze the Resolution Plan.

CASE TITLE	K. Sashidhar Vs. Indian Overseas Bank & Others
CASE CITATION	CIVIL APPEAL NO.10673 OF 2018
DATE OF ORDER	05.02.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	ArcelorMittal India Private Limited Vs. Satish Kumar Gupta and Others B.K. Educational Services Private Ltd. Vs. Parag Gupta & Associates
SECTION/REGULATION	Section 33(1) of the I&B Code.

Brief of the case:

The Hon'ble Supreme Court while deciding the Civil Appeal in the matter K. Sashidhar vs Indian Overseas Bank &ors. observed that the National Company Law Tribunal has no jurisdiction and authority to analyze or evaluate the commercial decision of the Committee of Creditors (COC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.

Decision:

The Hon’ble Apex Court held that “upon receipt of a “rejected” resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-



justicia ble. In the report of the Bankruptcy Law Reforms Committee of November 2015, primacy has been given to the CoC to evaluate the various possibilities and make a decision.”

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 109



An objection by the Shareholders (Promoters) claiming “Discrimination” cannot be sustained even when no amount is provided for them under the Resolution Plan.

CASE TITLE	Lalit Mishra Vs. Sharon Bio Medicine
CASE CITATION	Company Appeal (AT) (Insolvency) No. 164 of 2018
DATE OF ORDER	19.12.2018
RELEVANT AUTHORITY	NCLAT
CASES REFERRED	-
SECTION/REGULATION REFERRED	Section 30 (6) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”) read with Regulation 39(4) of the ‘Insolvency and Bankruptcy Board of India (Insolvency Resolution Process of Corporate person) Regulations, 2016

Brief of the case:

The order of approval of the Resolution Plan was challenged on 2 grounds: No amount was provided to the promoters under the Resolution Plan and Personal Guarantors were discriminated in the Resolution Plan. NCLAT concluded that the restructuring of the financial debt as a part of the Resolution Plan approved by the AA, Mumbai Bench, does not envisage complete discharge of the liability of personal guarantors of the CD. The liability of the Guarantors is co-extensive with the Borrower and the Code is not a recovery suit. Therefore any right available to the surety under the Law of Contract will not be applicable in the case of an approved resolution plan.

Decision:

NCLAT concluded that the shareholders and promoters are not the creditors and thereby the Resolution Plan cannot balance the maximization of the value of the assets of the CD at par with the Financial Creditors or Operational Creditors or Secured Creditors or Unsecured Creditors. If no amount is given to the promoters/ shareholders and the other equity shareholders who are not the promoters have been separately treated by providing certain amount in their favour, the Appellant cannot claim to have been discriminated.

QR CODE FOR FULL ORDER/JUDGMENT:



Preference Shares may be redeemed without obtaining the approval of Shareholders if it is mentioned in the Resolution Plan.

CASE TITLE	Brij Bhusan Singhal Vs. Bhusan Steel Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No 175 of 2018
DATE OF ORDER	10.08.2018
RELEVANT AUTHORITY	NCLAT
CASES REFERRED	<i>Standard Chartered Bank and Ors. Vs. Directorate of Enforcement and Ors</i> <i>S.P.K. Dhamodhar Vs. Narayanasamy</i>
SECTION/REGULATION REFERRED	Section 31(1) of the IBC and Section 55 of the Companies Act 2013

Brief of the case:

Question in the matter was whether Preference shares can be redeemed without obtaining the prior approval of Shareholders of the Company,

Decision:

NCLAT in the matter decided that the preference shares can be redeemed outside the purview of Section 55 of the Companies Act 2013 as required in the resolution plan since as per Section 31(1) of the IBC, a resolution plan once approved by the Committee of Creditors and the Adjudicating Authority becomes binding on all the stakeholders, including the ‘Corporate Debtor’, ‘Members’ (shareholders), ‘Financial Creditors’, ‘Operational Creditors’ etc.

Section 55 of the Companies Act, 2013 which deals with issue and redemption of Preference Shares states that a company may redeem its preference shares only after due approval of shareholders. *According to Section 30(2)(e) of the IBC, a resolution plan cannot be approved if it contravenes any provision of law but as decided in present case, Appellate Authority held that Resolution Plan may cause contravention of any law in force with full immunity if it received an approval for the plan. Since before approval a resolution plan is considered a proposal, and after the approval, it cannot be challenged as it becomes binding.*

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 111

NCLAT imposed a cost of Rs. 10 Lakhs on successful resolution applicant for failure to implement the Resolution Plan approved by CoC and Adjudicating Authority and also directed Ministry of Corporate Affairs to take appropriate steps against resolution applicant and its Managing Director and other Directors.

CASE TITLE	Ingen Capital Group LLC. v. Ramkumar S. V. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 795 of 2018
DATE OF ORDER	30.04.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION REFERRED	-

Brief of the case and decision:

In an appeal preferred by Ingen Capital Group (Successful resolution applicant), Hon’ble NCLAT imposed a cost of Rs. 10,00,000/- to be paid by Ingen for failure to implement its resolution plan of Orchid Pharma Limited (Corporate Debtor) as approved by the CoC and AA. The Hon’ble Appellate Tribunal directed the matter to MCA with the following observation:

“4. The Central Government is directed through the Ministry of Corporate Affairs to take appropriate steps against ‘Ingen Capital Group LLC.’ and its Managing Director and other Directors who tried to take advantage of the resolution process but later on failed to implement its proposal without any basis. If Appellant has no office in India then the Central Government through Ministry of Corporate Affairs may take up the matter with USA, where the Appellant Company is situated.”

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 112

NCLAT stops closure of Burn Standard and retrenchment of its employees directing for removal of portion of approved Resolution Plan which proposed closure of the Company.

CASE TITLE	Industrial Services Vs. Burn Standard Company Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 141 of 2018
DATE OF ORDER	13.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. Y. Shivram Prasad Vs. S. Dhanapal & Ors.
SECTION/REGULATION	Section 30(2)(e) of IBC

Brief of the case:

In the matter, the CoC had approved a resolution plan without analyzing as to whether the plan in question is in conformity with Section 30(2)(e) of IBC, and as to whether it achieves the objectives of the Code. Under the Code, during CIRP, and thereafter, the RA is required to ensure that the company remains as a going concern but contrary to the provisions of the Code, closure of the CD was proposed and approved by NCLT, Kolkata Bench. An order of Closure and Retrenchment was issued by Burn Standard (CD) immediately thereafter.

Decision:

While hearing an appeal, the NCLAT, after inter alia finding that the resolution plan submitted by the RA did not provide for revival of CD and instead proposed its closure by discharging its debts to all stakeholders, including its staff and workmen, has directed the case to be remitted to NCLT, Kolkata Bench with directions to remove portion of the plan which proposed closure of CD.

Relying on the judgment of *Swiss Ribbons v. Union of India*, the Hon'ble Appellate Authority concluded as follows:

“29. In view of the aforesaid fact, as the ‘Resolution Plan’ is against the object of the Code and the application under Section 10 was filed with intent of closure of the ‘Corporate Debtor’ for a purpose other than for the resolution of insolvency, or liquidation, we hold that the part of the ‘Resolution Plan’ which relates to closure of the ‘Corporate Debtor’/ ‘Corporate Applicant’

being against the scope and intent of the ‘I&B Code’ is in violation of Section 30(2)(e) of the ‘I&B Code’.”

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 113

Resolution plan providing for equal treatment of Financial Creditors and Operational Creditors approved

CASE TITLE	Maruti Ferrous Private Limited Vs. Sunil Ispat& Power Limited
CASE CITATION	Company Appeal (AT) (Insolvency) Nos. 250-251 of 2019
DATE OF ORDER	30.05.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Binani Industries Limited vs. Bank of Baroda &Anr; Swiss Ribbons &Anr. v. UOI &Ors.
SECTION/REGULATION	Section 31 of IBC, 2016

Brief of the case:

An appeal was filed against NCLT (Kolkata Bench) orders dt. 8th February, 2019 and 11th February, 2019, wherein while approving a Resolution plan u/s 31 of IBC in respect of the CD (*Sunil Ispat & Power Limited*) providing for payment of 9% of dues to FCs the NCLT had directed the RA to make a provision for payment of 100% dues of Operational Debts (consisted of Government Dues/taxes). Such conditional approval of the Resolution Plan by NCLT was challenged before Hon'ble NCLAT on the grounds that, while the FCs have been provided with 9% of their dues, the OCs, particularly those who have not supplied the goods nor provided the services, have been directed by the NCLT to be paid 100%.

Decision:

Considering merits of the appeal, Hon'ble NCLAT recollected its own orders passed in the matter of *Binani Industries Limited vs. Bank of Baroda &Anr.* wherein it was held that "*a Resolution Plan cannot discriminate between those who are similarly situated*" as also a reference was made to the Hon'ble Supreme Court's dicta passed in the matter of *Swiss Ribbons &Anr. v. UOI &Ors.* (para 71) wherein it was held that an FC cannot be discriminated against an OC.

Allowing the appeal, Hon'ble NCLAT agreed to the modified Resolution Plan submitted by the RA wherein same treatment was provided for the FCs (9% of their dues) and the OCs (9% of their dues). The impugned orders were, thus, upheld subject to the modification mentioned above.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 114

Resolution Applicant has no vested right to claim that his Resolution Plan must be approved.

CASE TITLE	Mrs. Pavithra Vs. Mr. A. Arumugam
CASE CITATION	MA/393/2019 in CP/762/IB/2018
DATE OF ORDER	11.06.2019
COURT/TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	<i>Arcelor Mittal India (P) Ltd. v. Satish Kumar Gupta</i> <i>Swiss Ribbons (P) Ltd. v. UOI</i> <i>K Sashidhar v. Indian Overseas Bank &Ors</i>
SECTION/REGULATION	Section 29A of IBC, 2016

Brief of the case:

While entertaining an application filed in the matter of *Mrs. Pavithra & Anr.v. Mr. A. Arumugam & Anr.* wherein one of the Resolution Applicants (RA) had challenged RP's decision rejecting its Resolution Plan on the grounds that the Applicant falls with the purview of Section 29A (I & B Code) and thus ineligible to file a Resolution Plan.

Decision:

Hon'ble NCLT (Chennai Bench), after taking cognizance of facts and circumstances of the case as also applying the ratio delivered in Hon'ble Supreme Court's judgments delivered in the matters of *Arcelor Mittal India (P) Ltd. v. Satish Kumar Gupta*, *Swiss Ribbons (P) Ltd. v. UOI*, and *K Sashidhar v. Indian Overseas Bank &Ors.* , has vide its order dt. 11th June, 2019, held as follows:

"10. In the light of the facts, circumstances and legal position stated above, it is an admitted fact that the Applicants are close relatives of the majority shareholders of the Corporate Debtor and holding the position of the suspended directors in the Corporate Debtor and have been representing the same in the meetings of the COC during CIR Process. Therefore, they are falling within the purview of Section 29A of the I&B Code, 2016. Moreover, the Applicants have not failed any response to the invitation of the EOI, even they did not bother to deposit EMD and filed the Resolution Plan straightaway on the last day just in order to stall the CIR Process and approval of the Resolution Plan submitted by the other Resolution Applicant(s)

Thus, the application was rejected as devoid of any merit.

QR CODE FOR FULL ORDER/JUDGEMENT:



Resolution Applicant is required to provide the same treatment to all the Operational Creditors, who are equally situated.

CASE TITLE	Jagmeet Singh Sabharwal and Others Vs. Rubber Products Limited and Others
CASE CITATION	Company Appeal (AT)(Ins) No. 405 of 2019
DATE OF ORDER	11.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 5(20) of IBC, 2016

Brief of the case:

An appeal was filed before Hon'ble NCLAT impugning order dated 19th February, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench whereby the 'resolution plan' submitted by the Appellant was approved.

Decision:

NCLAT while directing the 'Resolution Applicant' to prepare a chart of redistribution amount to all the stakeholders including the debt payable to the Central Government, State Government or local authorities, observed as follows:

"7. From the definition of the 'Operational Debt' it is clear that there are 3 types of 'Operational Creditors', namely:- (i) Those who supplied goods and/or rendering services to the 'Corporate Debtor'; (ii) Employees of the 'Corporate Debtor'; and (iii) The debt payable under the existing law to the Central Government or State Government or local authority.

8. ...Resolution plan cannot be arbitrary or discriminatory amongst class of such 'Operational Creditors'. Only the same treatment is to be made."

In view of the aforesaid position of law, Hon'ble NCLAT was of the view that based on the 'Revised Redistribution Chart' classification between the 'employees', 'Operational Creditors' who have supplied goods or rendered services and the 'Operational Creditors' like Government dues i.e. debt payable to the Central Government or State Government etc. is rational and correct. Further held that 'Resolution Applicant' is required to provide the same treatment to all the 'Operational Creditors', who are equally situated.

With the aforementioned observations, the Appeal was allowed.

QR CODE FOR FULL ORDER/JUDGEMENT:



Shareholders and promoters who are ineligible to file the Resolution Plan under section 29A of Insolvency and Bankruptcy Code have no right to raise their grievance with regard to the Expression of Interest.

CASE TITLE	JM Financial Asset Reconstruction Limited and Others Vs. Sevenhills Healthcare Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 134 of 2019
DATE OF ORDER	08.04.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 31 of IBC, 2016

Brief of the case:

An appeal was filed before Hon'ble NCLAT dated 23rd January, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench, whereby the Adjudicating Authority disposed of all the applications, and instead of approving the 'resolution plan' already approved by the 'Committee of Creditors' and passing the order under Section 31 of the Insolvency and Bankruptcy Code, 2016, remitted the matter with direction which amounted to initiation of resolution process de novo from the stage of calling of 'Expression of Interest'.

Decision:

Hon'ble NCLAT on the issue that whether the shareholders and promoters who are ineligible to file the 'resolution plan' under Section 29A, have the right to raise their grievance with Company regard to Expression of Interest observed as follows:

- "20. The shareholders and promoters being ineligible to file the 'resolution plan' under Section 29A, they have no right to raise their grievance with regard to the 'expression of interest' published on 14th May, 2018 fixing 'earnest money deposit' of Rs.100 Crores.*
- 21. In this background, it was not open for the Adjudicating Authority to entertain Interlocutory Application Nos. 409/2018 and Interlocutory Application Nos. 450/2018, which were filed by the 'shareholders' and 'promoters', who were ineligible to submit the 'resolution plan' and that too after approval of the 'resolution plan' by the 'Committee of Creditors'."*

With the aforementioned observations, the Appeal was allowed

QR CODE FOR FULL ORDER/JUDGEMENT:



Appeal against the approved Resolution Plan Lies only under section 61(3) of IBC, 2016

CASE TITLE	Securities and Exchange Board of India, Vs. Assam Company India Ltd. & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 629 of 2018
DATE OF ORDER	29.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 61 of IBC, 2016

Brief of the case:

An appeal was filed before the Hon'ble NCLAT impugning order dated 20th September, 2018 passed by the NCLT, Guwahati Bench in which the AA approved the Resolution Plan submitted by 'BRS Ventures Investment Ltd.'

The Appellant has challenged the order of approval of the resolution plan which was approved by 100% voting share of the CoC. The Resolution Plan involved delisting of shares of the CD to which SEBI (the appellant) objected stating that the CD was a shell company which was undergoing an investigation by Forensic Auditor on an interim order of WTM of SEBI.

Further the CD challenged the investigation before the Hon'ble High Court, Guwahati which set aside the investigation by order dated 7th March, 2019. The appellant moved to Division Bench against the said order; however no order of stay was passed.

Decision:

The NCLAT stated that Section 61(3) shows the limited grounds on which an appeal can be preferred against an approved Resolution Plan,

Thus NCLAT held that the appeal is not maintainable on merit, in absence of any violation of the provisions of the Code or any existing law or material irregularity.

The NCLAT also stated that the order passed by the NCLT/ NCLAT will not come in the way of the SEBI or any competent authority taking steps against erstwhile promoters, directors or officers or others, if any or all of them had violated any of the provisions under the SEBI Act or rule framed there under or any other law.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 118

NCLAT instead of setting aside the Resolution plan, gave opportunity to Resolution Applicant to modify the plan

CASE TITLE	Hero Fincorp Ltd. V. Rave Scans Pvt. Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 745 of 2018
DATE OF ORDER	17.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 30(2)(e) of the IBC, 2020

Brief of the case:

An appeal was preferred by Hero Fincorp Limited- (Financial Creditor/ Appellant) challenging the resolution plan approved by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 17th October, 2018.

The Appellant challenged that the plan was discriminatory, as the Secured Financial Creditor' has been discriminated with other 'Secured Financial Creditors' on the ground of dissenting vote.

Decision:

Hon'ble NCLAT held that 'Resolution Plan' was violative of Section 30(2) (e) of the Code but did not set aside the approved plan on such ground.

Hon'ble NCLAT vide its order dated 17.09.2019 gave an opportunity to Successful Resolution Applicant to remove the discrimination of Appellant by providing similar treatment as provided to other similarly situated Financial Creditors and allowed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT



If Resolution Plan is prepared and approved before the amendment to Regulation 38, then the plan cannot be challenged on the basis of it.

CASE TITLE	Rahul Jain v. Rave Scans Pvt. Ltd. and Ors.,
CASE CITATION	Civil Appeal No. 7940 of 2019
DATE OF ORDER	08.11.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	-
SECTION/REGULATION REFERRED	Regulation 38 of the ‘Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016’

Brief of the case:

In the aforementioned matter, the financial creditor (M/s Hero Fincorp Ltd.) appealed against the NCLT’s order, on grounds of discrimination between financial creditors, which resulted in the NCLAT modifying NCLT’s final order. The question urged by the appellant is whether the finding that the financial creditor was discriminated against, leading the NCLAT to modify the adjudicating authority’s directions, and consequently imposing greater financial burdens on the resolution applicant.

Decision:

The Apex Court while discussing the applicability of amendment to Regulation 38 of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides for the Resolution Plan justifying the amounts allotted to all financial and Operational Creditors, observed that ,

“Given that the resolution process began well before the amended regulation came into force (in fact, January, 2017) and the resolution plan was prepared and approved before that event, the wide observations of the NCLAT, requiring the appellant to match the payout (offered to other financial creditors) to Hero, was not justified.”

The Hon’ble Supreme Court concluded that since the Resolution Plan had attained finality except for the objections of the appellant, NCLAT’s orders for modifying the plan was not justified and hence the order of NCLAT was set aside and the order of NCLT approving the Resolution Plan was restored.



CASE NO. 120

If the ‘Resolution Plan’ placed before the Adjudicating Authority under Section 13 has been approved, it is not possible for the Appellate Tribunal to decide the claim on the basis of the disputed question of fact.

CASE TITLE	Encote Energy (India) Pvt. Ltd. Vs. V. Venkatachalam
CASE CITATION	Company Appeal (AT)(Insolvency) No. 1226 of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 60(5) of the IBC, 2016

Brief of the case:

The Appellant (Encotec Energy (India) Pvt. Ltd.) filed a claim as OC before the Resolution Professional on the ground that it has not been paid for the period July & August, 2017 and some amount relating to previous Contract, for the services rendered by it to Sai Wardha Power Generation Ltd (CD). The RP rejected the claim, against which the Appellant preferred application under Section 60(5) of the Code, which stands disposed of by the impugned order dated 27.09.2019 passed by the Adjudicating Authority (NCLT) Hyderabad Bench wherein the AA affirmed the rejection of claim by RP.

Decision:

Hon’ble NCLAT held :

“3. It is brought to our notice that ‘Resolution Plan’ submitted by a Consortium of Siri City Pvt. Ltd. and KCR Enterprise LLP, ‘Resolution Applicant’ has been approved by the ‘Committee of Creditors’ with 75.91% voting shares. The ‘Resolution Plan’ was placed before the Adjudicating Authority under Section 13 and the Adjudicating Authority has approved the same. Therefore, it is not possible for this Appellate Tribunal to decide the claim on the basis of the disputed question of fact, which can only be decided by a Court of competent jurisdiction.”

Hon’ble NCLAT vide its order dated 13.11.2019 disposed off the appeal by allowing the Appellant to make a claim before the ‘Successful Resolution Applicant’ or to avail the remedy of ‘Suit’ in terms of sub-section (6) of Section 60 of the Code, if prayer is not allowed.

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 121

If the amount offered in favour of stakeholders including the Financial Creditors & the Operational Creditors is being much less than the Liquidation Value, such Plan cannot be accepted.

CASE TITLE	Accord Life Spec Private Limited Vs. M/s. Orchid Pharma Limited
CASE CITATION	I.A. No. 3976 of 2019 in Company Appeal (AT) (Insolvency) No. 761 of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 30(2) of the Code

Brief of the case:

In the CIRP against M/s. Orchid Pharma Limited, the Resolution Plan submitted by M/s. Dhanuka Laboratories Ltd. was accepted by the CoC and approved by the NCLT, Chennai Bench, by its impugned order dated 25th/27th June, 2019. One of the unsuccessful Resolution Applicant filed application for direction on the ‘Resolution Professional’ to reconsider the ‘Resolution Plan’ submitted by M/s. Dhanuka Laboratories Ltd. The AA by impugned order dated 25th/27th June, 2019 dismissed the application on the ground that ‘Resolution Plan’ was considered on merit, based on viability and feasibility of the ‘Plan’.

The question before the Appellate Tribunal was whether the Resolution Plan submitted was viable or not.

Decision:

While deciding on the issue, Tribunal observed,

“12. Infusions of fund for maximization of the assets of the ‘Corporate Debtor’ cannot be counted for the purpose of the amount, which is being kept for distribution amongst the stakeholders, including the ‘Financial Creditors’ and ‘Operational Creditors’, if it is less than the ‘Liquidation Value’, such ‘Plan’ cannot be upheld, being against the object of the I&B Code and Section 30(2) of the said Code. 13. Admittedly, the amount offered in favour of stakeholders including the ‘Financial Creditors’ and the



‘Operational Creditors’ is being much less than the ‘Liquidation Value’, such ‘Plan’ cannot be accepted.”

The Appeal was thus dismissed vide order dated 13.11.2019.

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 122

To challenge approved Resolution Plan, appeal should be under grounds as provided in Sec. 61(3) of the Code

CASE TITLE	Mr. Kaushal Ramesh Mehta Vs. Metallica Industries Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No.1437 of 2019
DATE OF ORDER	02.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 61(3) of IBC, 2016

Brief of the case:

Appeals were preferred by Mr. Kaushal Ramesh Mehta in the present case against impugned order dated 16th October, 2019 passed by the Adjudicating Authority (NCLT, Mumbai Bench), whereby the Resolution Plan approved with 85.89% voting share of the ‘Committee of Creditors’ was approved by the Adjudicating Authority.

The Appellant had made an arrangement/ agreement with the corporate debtor for purchase of a part of the Gala (Project) in their favour which was rejected by the RP and also RP didn’t accepted them as ‘Secured Financial Creditor’ and accordingly being aggrieved by the resolution plan of the corporate debtor an appeal was preferred by the a before NCLAT thereby challenging the approved resolution plan.

Decision:

In this matter NCLAT held that in order to challenge an approved resolution plan, appeal should be under grounds provided in Section 61(3) of IBC, 2016. Hon’ble NCLAT placed its reliance upon Sec 61 (3) of the Code and held:

“4. In both the appeals as the Appellant(s) have failed to make out any of the grounds as mentioned in Section 61(3), we are not inclined to interfere with the plan approved by the Adjudicating Authority. This apart, in



absence of any privity of contract between the Appellant(s) and the ‘Corporate Debtor’, no relief can be granted.”

Hon’ble NCLAT *vide* its order dated 02.01.2020 dismissed the appeals.

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 123

When the Resolution Plan is approved and has reached finality, all the dues stand cleared in terms of the plan and no issue can be raised before any Court of Law or Tribunal.

CASE TITLE	S.A. Pharmachem Pvt. Ltd. Vs. Alok Industries Ltd. & Ors.
CASE CITATION	Company Appeal (AT)(Insolvency) No.66-74 of 2020
DATE OF ORDER	22.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	-

Brief of the case:

In this appeal the issue is that the Operational Creditors supplied goods during the CIRP to keep the Company as a going concern. It was after the approval of the Resolution Plan that for the first time that the Appellant(s) came to know a sum had been set aside for payment of CIRP and thereafter on the basis of verbal information, it had an apprehension that the amounts due against the goods supplied during the CIRP period, ‘Interim Resolution Professional’ cost would not be paid to him and in fact the payments made against Pre-CIRP invoices would be set-off against the same.

Decision:

Hon’ble NCLAT observed that,

“After the plan has reached finality, it is binding on all the stakeholders including the ‘Operational Creditors’, ‘Financial Creditors’ and others. How the distribution is to be made on the basis of the approved plan is for the Monitoring Committee to see. No individual decision can be given either by the Adjudicating Authority or by this Appellate Tribunal on the basis of individual claim of one or other ‘Operational Creditors’, ‘Financial Creditors’ and others after such approval, once the matter is brought to the notice of the Adjudicating Authority and this Appellate Tribunal by the



‘Resolution Professional’ on behalf of the Monitoring Committee that the ‘Corporate Insolvency Resolution Process Costs’ have been paid.

7. The ‘Resolution Plan’ once approved and reached finality, all the dues stand cleared in terms of the plan and now no issue can be raised before any Court of Law or Tribunal.”

QR CODE FOR FULL ORDER/JUDGEMENT

CASE NO. 124



There is no provision in the Code or Regulations under which the bid of any Resolution Applicant has to match liquidation value

CASE TITLE	Maharashtra Seamless Ltd. (MSL) v Padmanabhan Venkatesh and others
CASE CITATION	CIVIL APPEAL NO. 4242 OF 2019
DATE OF ORDER	22.01.2020
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	Swiss Ribbons, Supreme Court Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta
SECTION/REGULATION	Section 12A and 30 of the IBC, 2016

Brief of the case:

In the aforementioned matter, the Hon'ble Apex Court was deciding on the legality of an order of the NCLAT wherein the resolution applicant (MSL) was directed to modify the resolution Plan on the ground that it was below the liquidation value and that it did not maintain parity between operational creditors and financial creditors. The Resolution Applicant also sought withdrawal under Section 12A citing financial difficulties.

Decision:

Hon'ble Supreme Court observed that,

"No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

... It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan. "

"The exit route prescribed in Section 12-A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the code. In this case, having appealed against the NCLAT order with the object of implementing the resolution plan, MSL cannot be permitted to take a contrary stand in an application filed in connection with the very same appeal."

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 125

Adjudicating Authority has no jurisdiction under section 31 of Insolvency and Bankruptcy Code, 2016 to allow the ratification in the approved Resolution Plan

CASE TITLE	QVC Exports Pvt. Ltd. Vs. United Tradeco FZC
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1351 of 2019
DATE OF ORDER	28.01.2020
COURT/TRIBUNAL	NCLAT, Principal Bench, New Delhi
CASES REFERRED	Rahul Jain v. Rave Scans (P) Ltd
SECTION/REGULATION	Section 31 of IBC, 2016

Brief of the case:

In the aforementioned matter, the issue that arose for consideration was whether the AA had jurisdiction to entertain an application for rectification of Resolution Plan and making substantial changes in the Plan, after a lapse of 13 months of the completion of CIRP, even after the approval and implementation of the Resolution Plan.

Decision:

Hon'ble NCLAT relied on the case of Rahul Jain v. Rave Scans (P) Ltd., wherein Hon'ble Supreme Court has not permitted the change in resolution plan after attaining the finality. Hon'ble NCLAT observed that,

“However, the Adjudicating Authority had no jurisdiction under Section 31 to allow the rectification in the approved Resolution Plan. It is pertinent to mention that Rule 11 National Company Law Tribunal Rules gives inherent power, but powers under this section cannot be used to dehor the statutory provision of law.

...Since rectification of the resolution Plan does not involve the question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code, therefore it is not Code, therefore it is not permitted to modify the Resolution Plan under the guise of inherent powers of the Tribunal.”

Hon'ble NCLAT allowed the appeal and set aside the impugned order without costs.



CASE NO. 126

Fault cannot be found in an approved Resolution Plan, where CoC in its wisdom accepted the plan which allows Resolution Applicant to take over with a clean state and not be forced to continue with any long term arrangement of the Corporate Debtor.

CASE TITLE	Maharashtra State Electricity Transmission Company Limited (MSETCL) Vs. Sri City Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1401 of 2019
DATE OF ORDER	03.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta</i>
SECTION/REGULATION	Section 238 of the Code

Brief of the case:

In the aforementioned matter, the contention of the Appellant was that in the approved Resolution Plan there is an arbitrary provision of ending the agreement between the Appellant and the Corporate Debtor which was against the provisions of Electricity Act, 2003 and Electricity Regulatory Commission Act, 1998. The contention was that Maharashtra Electricity Regulatory Commission is the only and appropriate forum to adjudicate matters pertaining Energy Agreements including termination of the Agreement.

Decision

Hon'ble NCLAT relied on Section 238 of the Code and the Supreme Court judgment in the case of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta*, to hold that,

"...the Successful Resolution Applicant is entitled to take over with a clean state and could not be forced to continue with such long term arrangement. It is slate the CoC in its commercial wisdom accepted the plan so as not to saddle the Respondents No.1 & 2 with a liability of such long term Agreement.

5. We find ourselves in agreement with submission made by the Learned Counsel for the Respondents. Keeping in view the judgment in the matter of "Essar Steel India Limited" (supra) and provisions of Section 238 of IBC, we find that the Resolution Plan, which has been accepted cannot be found fault where COC in its wisdom accepted the Plan which terminated the long time agreement. The plan made provision that the Bulk Power Transmission Agreement with Maharashtra State Electricity Transmission Company Limited – Corporate Debtor shall be terminated without any obligation, liabilities or penalties, to or on the Corporate Debtor or the Resolution Applicant. We do not find any fault on this count. There is no substance in the Appeal."

Hon'ble NCLAT dismissed the appeal *vide* order dated 03.02.2020.



CASE NO. 127

The legislative intent behind the amendment in Section 31(1) of the IBC is that the government will not raise any further claim of its dues after the resolution plan is approved.

CASE TITLE	Ultra Tech Nathdwara Cement Ltd., (formerly known as Binani Cements Ltd.) v. Union of India through Joint Secretary, Department of Revenue, Ministry of Finance and Ors.
CASE CITATION	Civil Writ Petition No. 9480/2019
DATE OF ORDER	07.04.2019
COURT/TRIBUNAL	High Court, Jodhpur
CASES REFERRED	Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Ors
SECTION/REGULATION	Section 31(1) of IBC

Brief of the case:

In the aforementioned matter, the facts at hand are that the resolution plan of Ultra Tech Cement was accepted by the COC in the ongoing CIRP of Binani Cements. After the approval of the resolution plan by the NCLT, the operational creditors i.e. the Commercial Taxes Department of Govt. of Rajasthan as well as the respondent (Commissioner of Goods and Service Tax) assailed the resolution plan by filing appeals before Hon’ble the Supreme Court with a specific plea that their dues have not been accounted for by the COC in the resolution plan. The present writ petition has been filed seeking relief from the same.

Decision:

Hon’ ble High Court relied on the legislative intent of amended Section 31(1) of IBC and Supreme Court judgment in the matter of *Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta & Ors*, to hold that,

“The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to a resolution applicant to take over the same and begin the operation on a clean slate. For that purpose, the evaluation of all dues and liabilities as they exist on the date of finalization of the resolution plan have been left in the exclusive domain of the resolution professional with the approval of the COC.

The High Court of Rajasthan therefore held that the respondents would be acting in a totally illegal and arbitrary manner while pressing for these demands and thus allowed the writ petition vide order dated 07.04.2020.

QR CODE FOR FULL ORDER/JUDGEMENT:



Resolution plan in relation to a corporate debtor would not extinguish/reduce the liability of a guarantor of such corporate debtor.

CASE TITLE	Gouri Shankar Jain vs. Punjab National Bank and Anr.
CASE CITATION	W.P. No. 10147 (W) of 2019
DATE OF ORDER	13.11.2019
COURT/TRIBUNAL	High Court, Calcutta
CASES REFERRED	Maharashtra State Electricity Board Bombay vs. Official Liquidator High Court, Ernakulum and Anr.
SECTION/REGULATION	Section 13(2) of SARFAESI Act, 2002

Brief of the case:

Petitioner was a director of a Corporate Debtor/CD’. CD enjoyed credit facilities secured inter alia by the personal guarantee given by the petitioner, from various banks including the first respondent herein. The petitioner has given a personal guarantee to the first respondent for due repayment of the credit facilities enjoyed by the company from the first respondent. The company faced proceedings before the National Company Law Tribunal under the Insolvency and Bankruptcy Code, 2016. By an order dated March 13, 2018, the Tribunal approved the resolution plan. The issue in the petition is ‘whether the liability of a guarantor of a debt of a corporate debtor stands reduced/extinguished upon an insolvency resolution plan in respect of the corporate debtor, being approved under the IBC?’

Decision:

The Hon’ble High Court of Calcutta relied on the case of *Maharashtra State Electricity Board Bombay vs. Official Liquidator High Court, Ernakulum and Anr.*, to hold that,
“37. Section 14 of the Code of 2016 does not apply to a personal guarantor. The Code of 2016 does not allow personal guarantors to escape their liability. When an application under Section 7 of the Code of 2016 is admitted by the Adjudicating Authority, the steps taken subsequent thereto flows out of the statute. The two termination points of an application under Section 7 of the Code of 2016, after the admission of such application, do not result in any variance, made without the surety’s consent, in the terms of the contract between the principal debtor and the creditor to constitute a discharge of a surety under Section 133 of the Act of 1872.”

High Court of Calcutta vide order dated 13.11.2019 dismissed the present petition.

QR CODE FOR FULL ORDER/JUDGEMENT:



Without moving to the Resolution Professional & CoC, merely filing of application to Adjudicating Authority by the Prospective Resolution Applicant regarding tendering of resolution plan, is not the complete compliance as required under IBC and its regulation.

CASE TITLE	Rajesh Kumar Agarwal and Ors. v. M/s Srivani Merchants Pvt. Ltd. And Ors
CASE CITATION	Company Appeal (AT) (Insolvency) No. 669 & 689 of 2019
DATE OF ORDER	18.03.2020
RELEVANT AUTHORITY	NCLAT, New Delhi
CASES REFERRED	Arcelor Mittal India Pvt. Ltd. vs. Satish Kumar Gupta and Others
SECTION/REGULATION	Section 65 of Insolvency and Bankruptcy Code, 2016

Brief of the case:

The present Appeal was preferred against an order of liquidation. Grievance of the Appellants was that they had filed three applications before the Adjudicating Authority (AA). One was for impleadment, the second was to consider them as Resolution Applicants and the third claimed that the appeal proceedings of ‘CIRP’ were vitiated because of fraud attracting Section 65 of IBC. It was submitted that without deciding the applications of the Appellants, the AA proceeded to pass orders of Liquidation as period for completing ‘CIRP’ had come to an end and no Resolution Plan had been received.

Decision:

While relying on the findings of, **“Arcelormittal India Pvt. Ltd. vs. Satish Kumar Gupta and Others” (2019) 2 SC**, NCLAT dismissed the appeal and held that,

“It appears to us that the provisions of IBC require that a prospective Resolution Applicant must approach the Resolution Professional by filing expression of interest and then following the procedures of IBC and the Regulations and complete compliances regarding the tendering of the Resolution Plan. Nothing of this sought has admittedly been done. Without moving Resolution Professional & CoC, filing of application to Adjudicating Authority is not the solution. The learned counsel for Appellant states that as 180 days were already over the Appellants could not follow this procedure. When admittedly, the necessary procedure was not followed during the course of ‘CIRP’ as required by the provisions of IBC and the Regulations, such belated offer cannot be said to be bona fide. Merely expressing that I am ready to file Resolution Plan is not sufficient for taking cognizance of such offer.”

QR CODE FOR FULL ORDER/JUDGMENT :



Provisions of the IBC override all other laws and hence, the resolution plan approved by the NCLT acquires primacy over all other legal provisions.

CASE TITLE	Municipal Corporation Of Greater Mumbai (MCGM) v. Abhilash Lal & Ors
CASE CITATION	CIVIL APPEAL NO. 6350 OF 2019
DATE OF ORDER	15.11.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Dharani Sugars & Chemicals Ltd. v. Union of India & Ors</i> <i>Macquaire Bank Ltd. v. Shilipi Cable Technologies Ltd</i>
SECTION/REGULATION	Section 62 of the Insolvency and Bankruptcy Code

Brief of the case:

The Municipal Corporation of Greater Mumbai (“MCGM”) appealed under Section 62 of the Insolvency and Bankruptcy Code(Code) against the order of NCLAT, rejecting its plea with respect to a resolution plan approved by the NCLT under the provisions of that Code. Appellant had opposed the resolution plan, arguing that being a public body as well as a planning authority, it had to comply with the provisions of the Mumbai Municipal Corporation Act, 1888 (“MMC Act”), which meant that all action and approval had to be taken by the Improvement Committee of the Corporation.

Decision:

The Hon’ble Supreme Court of India, allowed the appeal by holding that:

“In the opinion of this court, Section 238 cannot be read as overriding the MCGM’s right – indeed its public duty to control and regulate how its properties are to be dealt with. That exists in Sections 92 and 92A of the MMC Act. This court is of opinion that Section 238 could be of importance when the properties and assets are of a debtor and not when a third party like the MCGM is involved. Therefore, in the absence of approval in terms of Section 92 and 92A of the MMC Act, the adjudicating authority could not have overridden MCGM’s objections and enabled the creation of a fresh interest in respect of its properties and lands. No doubt, the resolution plans talk of seeking MCGM’s approval; they also acknowledge the liabilities of the corporate debtor; equally, however, there are proposals which envision the creation of charge or securities in respect of MCGM’s properties. Nevertheless, the authorities under the Code could not have precluded the control that MCGM undoubtedly has, under law, to deal with its properties and the land in questions which undeniably are public properties. The resolution plan therefore, would be a serious impediment to MCGM’s independent plans to ensure that public health amenities are developed in the manner it chooses, and for which fresh approval under the MMC Act may be forthcoming for a separate scheme formulated by that corporation.”

QR CODE FOR FULL ORDER/JUDGMENT :



CASE NO. 131

Resolution Plan even though approved by NCLT but since it was never brought to the knowledge of the Commercial Tax authorities of the State of Jharkhand, hence, resolution plan could not be binding on it as per Section 31 of the Code.

CASE TITLE	Electrosteel Steels Limited v. The State of Jharkhand and Ors
CASE CITATION	W.P.(T). No. 6324-6327 of 2019
DATE OF ORDER	01.05.2020
RELEVANT AUTHORITY	High Court of Jharkhand
CASES REFERRED	<i>Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.</i>
SECTION/REGULATION	Section 31(1) of the IB Code

Brief of the case:

The petitioner Company had challenged before the Hon'ble High Court of Jharkhand the garnishee order, issued under Section 46 of the Jharkhand Value Added Tax Act, 2005, asking the respondent Bank (State Bank of India) to pay into the Government Treasury, the sum of Rs.37,41,41,602/-, on account of tax / penalty due under the JVAT Act, from the petitioner Company, who failed to deposit the taxes for the period from 2011-12 & 2012-13, from the Bank account of the Company.

Petitioner contended that once the resolution plan was approved, the tax liability of the Petitioner Company which was not claimed by the State Government during the CIRP stood completely barred under Section 31 of the Code. Respondents contended that they had not received any notice of the ongoing CIRP and were therefore, unaware of making their claim.

Decision:

Hon'ble High Court of Jharkhand stated, *“Admittedly, the registered office of the petitioner Company is at Ranchi, and its principal place of business is in the District of Bokaro, both of which are situated in the State of Jharkhand, but no public announcement of the corporate insolvency resolution process was made in the State of Jharkhand. We are conscious of the fact that since the resolution plan is approved by the NCLT, and not interfered with even by the Hon'ble Apex Court as pointed out above, we are not required to look into the legality or otherwise of the resolution process, but the fact remains that due to non publication of the public announcement of the corporate insolvency resolution process in the State of Jharkhand, the authorities of the Commercial Taxes Department had no occasion to have any knowledge about the corporate insolvency resolution process of the Company, and they were deprived of making their claim before the interim resolution professional. Since the State Government was not involved in the resolution process, the resolution plan cannot be said to be binding on the State Government under Section 31 of the IB Code”*

Hon'ble High Court dismissed the writs of the petitioner for relief.



CASE NO. 132

Providing NIL value to Operational Creditors would certainly not balance the interest of all stakeholders and is a ground for modifying approved resolution plan.

CASE TITLE	Hammond Power Solutions Private Limited Vs. Mr. Sanjit Kumar Nayak RP
CASE CITATION	Company Appeal (AT) (Ins) No.606 of 2019
DATE OF ORDER	14.02.2020
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta Ors
SECTION/REGULATION	Section 30, 32 and Section 61 of the Code.

Brief of the case:

The contention of the Appellant is that the Resolution Plan approved is not in compliance with the provisions of the IBC; that the provision of paying NIL amount to the Operational Creditors is not as per provisions of IBC; that the Operational Creditors deserved a similar treatment as Financial Creditors; that it is wrong on the part of Committee of Creditors to approve a Resolution Plan which provided for payment only to members of the Committee.

Decision:

Hon'ble NCLAT relied on *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors*, to hold that,

“it can be hardly said that there are any reasons given by the Committee to demonstrate that it has taken care of interest of all stakeholders. Para – 46 of the Judgment in the matter of “Essar Steel” requires to see “the reasons given by the Committee of Creditors while approving a resolution plan” from point of view stated in the paragraph. The reasons for giving NIL to Operational Creditors are not reflected from record. We have already reproduced portion from Part B – Financial Proposal with regard to what the approved Resolution Plan states regarding dues to the Operational Creditors. The proposal is based on the assessment that there is no liquidation value due to Operational Creditors. Although it is not stated but there is reason to doubt that the Resolution Applicants were aware of the liquidation value. There is no dispute that so many of the Operational Creditors have been left high and dry giving them nil amount which Hon'ble Supreme Court has observed that giving NIL to Operational Creditors “would certainly not balance the interest of all stakeholders or maximise the value of assets of the Corporate Debtor if it becomes impossible to continue running its business as a going concern.”

Hon’ble NCLAT disposed off the appeal and directed for resubmission of modified resolution plan.

QR CODE FOR FULL ORDER/JUDGMENT:



INTERPRETATION OF LAW

CASE NO. 133

Amount disbursed as loan by a shareholder for the development of assets of the Corporate Debtor shall fall under the purview of Financial Debt.

CASE TITLE	Joel Cardoso Vs. Priority Marketing Private Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 616 of 2018
DATE OF ORDER	30.01.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	<i>Dr. B. V. S. Laxmi Vs. Geometrics Laser Solutions Pvt. Ltd</i> <i>Macksoft Tech Pvt. Ltd. & Ors. Vs. Quinn Logistics India Ltd.</i>
SECTION/REGULATIONS	Section 5(8) of the IBC, 2016

Brief of the case & NCLAT’s holding:

In the present matter, NCLAT held that Section 5(8) defined ‘financial debt’ as “5(8) *“financial debt” means a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money and includes— ...(f)any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;*”

Emphasizing on the use of expression ‘*interest, if any*’, the appellate tribunal concluded that, “*Use of expression ‘if any’ as suffix to ‘interest’ leaves no room for doubt that the component of interest is not a sine qua non for bringing the debt within the fold of ‘financial debt’.*” NCLAT also observed that the language of the clause (Section 5(8)(f)) clearly manifests the fact that money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company would have the commercial effect of borrowing on part of Corporate Debtor notwithstanding the fact that no provision is made for interest. This simply means that even without interest the loan advanced is a financial debt and the funds raised in such a situation may be treated as ‘Long Term Borrowings’ and shall be considered as financial debt with obligation on part of the company to discharge the same.

The Appellate Tribunal thus concurred with the orders passed by NCLT Mumbai Bench and dismissed the appeal filed by the appellant who is promoter/director/shareholder of the Corporate Debtor.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 134

Central Government, State Government or the legal authority having statutory claim can be entitled as Operational Creditor under Insolvency and Bankruptcy Code, 2016.

CASE TITLE	Principle Director of Income Tax (Admn. And TPS) Vs. Synergies Dooray Automative Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 205 of 2017
DATE OF ORDER	20.03.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	<i>Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors</i> <i>Municipal Corpn. Of Delhi v. Tek Chand Bhatia</i> <i>Life Insurance Corporation of India vs D. J. Bahadur & Ors</i>
SECTION/REGULATION	Section 31 of IBC, 2016

Brief of the case:

Whether the ‘Income Tax’, ‘Value Added Tax’ or other statutory dues, such as ‘Municipal Tax’, ‘Excise Duty’, etc. come within the meaning of ‘Operational Debt’ or not? and; (ii) Whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of ‘Operational Creditors’?

Decision:

NCLAT held that “‘Operational Debt’ in normal course means a debt arising during the operation of the Company (‘Corporate Debtor’). The ‘goods’ and ‘services’ including employment are required to keep the Company (‘Corporate Debtor’) operational as a going concern. If the Company (‘Corporate Debtor’) is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the ‘Income Tax’, ‘Value Added Tax’ and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company”

Hon’ble NCLAT held that (1) all statutory dues including ‘Income Tax’, ‘Value Added Tax’ etc. come within the meaning of ‘Operational Debt’ and (2) ‘Income Tax Department of the Central Government’ and the ‘Sales Tax Department(s) of the State Government’ and ‘local authority’, who are entitled for dues arising out of the existing law are ‘Operational Creditor’ within the meaning of Section 5(20) of the ‘I&B Code’.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 135

Supreme Court strikes down RBI Circular dated 12th February, 2018 as ultra vires section 35AA of Banking Registration Act, 1949.

CASE TITLE	Dharani Sugars and Chemicals Limited Vs. Union of India
CASE CITATION	CASE (CIVIL) NO.66 OF 2018 in PETITION (CIVIL) NO.1399 OF 2018
DATE OF ORDER	02.04.2019
COURT/ TRIBUNAL	Supreme Court
CASES REFERRED	<i>Maru Ram and Ors. v. Union of India and Ors; Commercial Tax Officer, Rajasthan v. Binani Cements Ltd. and Anr.; J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P.</i>
SECTION/REGULATION	Sections 35AA and 35AB of the Banking Regulation Act, 1949

Brief of the case:

In a landmark judgment dt. 2nd April 2019 pronounced by the Hon’ble Supreme Court whereby a bunch of petitions (Writ Petition and Transfer Petition), challenging the constitutional validity of sections 35AA and 35AB of the Banking Regulation Act, 1949, were disposed of, the RBI Circular dt. 12th February 2018 (which was termed as the real bone of contention) has been struck down as *ultra vires* section 35AA.

Decision:

The Court, while analyzing the language of section 35AA, found that the section requires an authorization to be issued by the Central Government to the RBI to issue directions in respect of ‘a default’. Interpreting the term ‘default’, the Court clarified that the section confers power only in case of “*a particular default of particular debtor*”, and thus, any direction issued in exercise of the said powers to the “Debtors generally” would be *ultra vires* the section. Elaborating on the rationale thereof, the Court held that since the power to be exercised after due “deliberation and care”, it provides for specific default only. Further, court also found that the requirement of issue of authorization by the CG to the RBI is not satisfied and is wanting in present case.

Note: In the case, while the vires of section 35AA and 35AB were challenged as being unconstitutional, the Court found that the provisions are neither excessive in any way nor do they suffer from want of any guiding principle, which were main grounds of challenge.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 136

Delhi High Court rules that the objective of PMLA being distinct from those of RDHA, SARFAESI Act and Insolvency and Bankruptcy Code, 2016. The latter three legislations do not prevail over the former.

CASE TITLE	Deputy Director Directorate of Enforcement Delhi Vs. Axis Bank
CASE CITATION	CRL.A. 143/2018 & CrI.M.A. 2262/2018
DATE OF ORDER	02.04.2019
COURT/ TRIBUNAL	Delhi High Court
CASES REFERRED	-
SECTION/REGULATION	RDB Act, 1993 (section 34); SARFAESI Act, 2002 (section 35); IBC, 2016(SECTION 238) and PMLA, 2002(section 71).

Brief of the case:

In a landmark judgment, while disposing-off a bunch of five appeals filed under Section 42 of the PMLA against the orders of Appellate Tri bunal (under PMLA), wherein orders for provisional attachment as issued by the Enforcement Officer were confirmed/upheld, the High Court of Delhi, has held that *“The objective of PMLA being distinct from the purpose of RDBA, SARFAESI Act and Insolvency Code, the latter three legislations do not prevail over the former.”*

The question of law addressed in these appeals pertained to the effect of non-obstante clause contained in each of the four legislations, viz., RDB Act, 1993 (section 34); SARFAESI Act, 2002 (section 35); IBC, 2016(SECTION 238) and PMLA, 2002(section 71).

Decision:

The High Court while addressing the said issue, held, *“it is clear that the objects and reasons of enactment of the four legislations are distinct, each operating in different field. There is no overlap...”*

Thus, drawing a distinction between the objective(s) sought to be achieved and the powers conferred thereof, under the PMLA and those of other statutes, High Court held, “141...The Government, when it exercises its power under PMLA to seek attachment leading to confiscation of proceeds of crime, does not stand as a creditor, the person alleged to be complicit in the offence of money-laundering similarly not acquiring the status of a debtor..”

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 137

Rule 3(2) of Companies (Registered Valuer and Valuation) Rules 2017 which makes eligible only companies other than subsidiary, associate and joint venture companies for registration as “Valuer” does not violate Article 14, 19(1)(g) and 301 of the Constitution of India.

CASE TITLE	Cushman and Wakefield India Private Limited Vs. Union of India
CASE CITATION	W.P.(C) 9883/2018, CM No. 38508/2018
DATE OF ORDER	31.01.2019
COURT/ TRIBUNAL	Delhi High Court
CASES REFERRED	Cellular Operators Association of India and Others vs. Telecom Regulatory Authority of India and Others; Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.; Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa
SECTION/REGULATION	Section 247 of the Companies Act, 2013 r/w Rule 3(2) of Companies(Registered Valuers and Valuation) Rules, 2017

Brief of the case:

In a bunch of 4 writ petitions filed before Hon’ble Delhi High Court, the vires of Rule 3(2) of Companies (Registered Valuers and Valuation) Rules, 2017 were challenged as unconstitutional for being violative of Article 14, Article 19(g) and Article 301 of the Constitution of India.

The chief contention raised was that the rule does not satisfy the criteria of “reasonable classification” and that there is no “intelligible differentia” to distinguish the class of a company, other than a subsidiary company, joint venture or associate of other company. The justification provided for the said rule by the Union of India, which also found favor with the court, was, however, that since the subsidiaries, joint subsidiaries, joint ventures and associates cannot be said to be completely independent of the parent company. If a Registered Valuer company is a subsidiary, joint venture or associate of another company, the said entity may not be able to stand out as an independent professional body.

Decision:
Thus, after taking into account the contentions raised as also the case-law referred to by both the parties, and holdings in *Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. and Dr. Haniraj L. Chulani vs. Bar Council of Maharashtra & Goa*, the Court, dismissed the writ petitions with following observations:

“The objective and intention behind laying down the impugned Rule is clearly to introduce higher standards of professionalism in valuation industry, specifically in relation to valuations undertaken for the purpose of Companies Act and IBC, 2016. The impugned Rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation, being one of the most essential elements of the proceedings before NCLT”.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 138

Section 14 of Insolvency and Bankruptcy Code, 2016 is not applicable to penal proceedings under Prevention of Money Laundering Act, 2002.

CASE TITLE	Varrsana Ispat Limited Vs. Deputy Director Directorate of Enforcement
CASE CITATION	Company Appeal (AT) (Insolvency) No. 493 of 2018
DATE OF ORDER	02.05.2019
COURT/ TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 14 of the Insolvency and Bankruptcy Code, 2016; PMLA, 2002

Brief of the case:
Whether an order of attachment of property passed by the Directorate of Enforcement of Central Government under the provisions of PMLA, 2002 can be sustained during the operation of moratorium under Section 14, IBC, was a question before NCLT, the NCLT had held a view that such attachment cannot be released, basing its view on the particular facts of the case, specifically, that the attachment order predated declaration of Moratorium. The NCLT order was, however, challenged by the CD (acting through its RP) before the NCLAT.

Decision:
Before the NCLAT, contentions were raised inter alia that section 14 of IBC has an overriding effect over PMLA, 2002, especially in view of language of section 238 thereof. The Appellate Tribunal, however, after analyzing the scope of section 14, held a view that the section is not applicable to the criminal proceedings. Highlighting the object of PMLA, the NCLAT held that, *“...it is clear that the ‘Prevention of Money-Laundering Act, 2002’ relates to ‘proceeds of crime’*

and the offence relates to ‘money-laundering’ resulting confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Thus, as the ‘Prevention of Money Laundering Act, 2002’ or provisions therein relates to ‘proceeds of crime’, we hold that Section 14 of the ‘I&B Code’ is not applicable to such proceeding”

With the aforementioned observations, the appeal filed by the RP was dismissed.

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 139

Section 18 of Insolvency and Bankruptcy Code, 2016 prevails over Section 13(4) of SARFAESI Act, 2002.

CASE TITLE	Encore Asset Reconstruction Company (P) Limited Vs. Charu Sandeep Desai
CASE CITATION	Company Appeal (AT) (Insolvency) No. 719 of 2018
DATE OF ORDER	14.05.2019
COURT/ TRIBUNAL	NCLAT
CASES REFERRED	M/s. Transcore v. Union of India & Anr.
SECTION/REGULATION	Section 18 r/w Section 238 of Insolvency and Bankruptcy Code, 2016 and Section 13(4) of SARFAESI Act, 2002.

Brief of the case:

While dismissing an appeal preferred by an Asset Reconstruction Company against NCLT orders directing for handover of possession of the mortgaged property in respect of which proceedings under the SARFAESI Act, 2002 were also initiated to the Resolution Professional, the NCLAT vide order dt. 14th May 2019 held “15. ‘SARFAESI Act, 2002’ being an existing law, Section 238 of the ‘I&B Code’ will prevail over any of the provisions of the ‘SARFAESI Act, 2002’ if it is inconsistent with any of the provisions of the ‘I&B Code’.”

Decision:

While interpreting the language of section 18 read with section 238 of the Code, the Appellate Authority held as follows:
“Section 18 of the ‘I&B Code’ deals with ‘Duties of Interim Resolution Professional’. As per which, it is the duty of the ‘Interim Resolution Professional’ to take over the control and custody of any assets over which the ‘Corporate Debtor’ has ‘ownership rights’ as recorded in the

balance sheet of the ‘Corporate Debtor’ which includes the assets that may or may not be in possession of the ‘Corporate Debtor’ as apparent from clause (f) (ii) of Section 18..”

It thus concluded, “we hold that Section 18 of the ‘I&B Code’ will prevail over Section 13(4) of the ‘SARFAESI Act, 2002’ and the ‘Dena Bank’ cannot retain the possession of the property in question of which the ‘Corporate Debtor’ is the owner.”

QR CODE FOR FULL ORDER/JUDGMENT:



CASE NO. 140

The provisions of the Insolvency & Bankruptcy Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.

CASE TITLE	Bhanu Ram Vs. HBN Dairies and Allied Limited
CASE CITATION	(IB)-547(PB)/2018
DATE OF ORDER	30.04.2019
COURT/TRIBUNAL	NCLT, Principal Bench, New Delhi
CASES REFERRED	Pr. Commissioner of Income Tax vs. Monnet Ispatand Energy Limited. Dena Bank vs. Bhikhabhai Prahhudas Parekh and Co. & Ors
SECTION/REGULATION	Section 288 of the Insolvency and Bankruptcy Code, 2016

Brief of the case:

Resolution Professional filed an application to de-attach the immovable property belonging to the Corporate Debtor. The Tribunal directed SEBI to de-attach the properties of the CD [even after attachment order was upheld by the Securities Appellant Tribunal (SAT)] and hand over possession of the property to the Resolution Professional along with all record to enable the Resolution Professional to conduct the CIR process expeditiously with the time line give in the Code.

Decision:

NCLT relied on the decision of Hon'ble Supreme Court in *Monnet Ispat* case stating that the Code is to override anything inconsistent in any other enactment. The observations by the Supreme Court reads as under:-

"Given Section 288 of the Insolvency and Bankruptcy Code, 2016, it is obvious that the code will override anything inconsistent contained in any other enactment including the Income Tax Act. We may also refer in this connection to Dena Bank v. Bhikhabhai Prahhudas Parekh and Co. &Ors, (2000) 5 SCC 694 and its progeny, making it clear that income tax dues, being in the nature of crown debts, do not take precedence even over secured creditors, who are private persons. "

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 141

A corporate applicant earning sufficient income cannot file an application u/s 10 of Insolvency and Bankruptcy Code, 2016. All statutory dues including Income Tax, Value Added Tax, etc. come within the meaning of Operational Debt.

CASE TITLE	Vyomit Shares Stock and Investments Private Limited Vs. Securities and Exchange Board of India
CASE CITATION	Company Appeal (AT) (Insolvency)No.258 of 2019
DATE OF ORDER	15.05.2019
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Pr. Director General of Income Tax v. M/s Synergies Dooray Ltd. &Ors.
SECTION/REGULATION	Section 10 of IBC, 2016

Brief of the case:

In an appeal, titled as Vyomit Shares Stock Investments Pvt. Ltd. v. Securities and Exchange Board of India, filed before the Hon'ble NCLAT, challenging an Order dt. 12thFebruary, 2019 (impugned order) passed by the Hon'ble NCLT (Mumbai Bench), whereby an application filed by the Corporate Applicant under Sec10 of IBC rejected on the grounds that "the Corporate Applicant is earning sufficient income".

Decision:

The Hon' ble NCLAT, after hearing arguments advanced by both the parties, came to a finding that there is income and profit generated by the Company (Corporate Applicant), and thus declined to interfere the impugned order. The Hon'ble NCLAT also recorded that '*prima facie, it appears that there is no reason for the Appellant or the Corporate Debtor to declare itself eligible for filing an application u/s 10 of Insolvency and Bankruptcy Code ('I&B' Code), 2016.* In the matter. the Hon'ble NCLAT was also informed regarding a view expressed by the Hon'ble NCLT stating that SEBI is not an Operational Creditor (to the Corporate Applicant). The said view (expressed by NCLT), however, did not find favour with the Appellate Authority, and the NCLAT relied on its own orders dt. 20thMarch, 2019 passed in matter of *Pr. Director General of Income Tax v. M/s Synergies Dooray Ltd. &Ors.* to come to the opposite view.

Note: The order rejecting the application assumes importance, since, the application in this case was filed by the Corporate Applicant relying on its financial figures, and both the Tribunals, viz., the NCLT as well as the Appellate Authority, after examining such financials have come to common finding that no case under s. 10 is made out and the Corporate Applicant generating income and profit. It is important to bear in mind that satisfaction of the requirements of a provision (of a statute) under which the remedy is sought is not to be only in its letter but also in spirit and therefore, if the requirements are not satisfied, the application is liable to be rejected *in limine*.

QR CODE FOR FULL ORDER/JUDGEMENT:

CASE NO. 142



Hon'ble NCLAT upholds supremacy of Insolvency and Bankruptcy Code, 2016 over the Customs Act, 1962.

CASE TITLE	Commissioner of Customs (Preventive) West Bengal Vs. Ram Swamp Industries Ltd. & Ors
CASE CITATION	Company Appeal (AT) (Insolvency) No. 563 of 2018
DATE OF ORDER	20.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 10, 14, 18 and 238 of the IBC, 2016

Brief of the case:

While hearing an appeal filed by the Commissioner of Customs, (Preventive) West Bengal against Hon'ble NCLT (Kolkata Bench) order dt. 3rd July 2018, Hon'ble NCLAT, vide its order dt. 20th June 2019, held in categorical terms that *during the period of "moratorium", the assets of the Corporate Debtor cannot be alienated, transferred or sold to a third party.*

In the matter, the appellant had claimed right over certain assets of CD on the ground that CD had failed to pay customs duty on machineries imported by it from Italy. Some attempts were also made by the appellant earlier (in the year 2016) trying to e-auction the said machineries, but to no avail, since, there was no participation by any buyer.

Subsequently, an application under Section 10 of IBC was filed by CD which was allowed by the AA (vide its order dt. 8th January, 2018), and an order for moratorium was passed u/s 14 of IBC. The Custodian of the machineries who acted on behalf of the appellant, however, made another attempt to e-auction the machineries on 19th January, 2018 wherein the 4th respondent had proposed a winning bid.

Being aggrieved, Appellant had approached Hon'ble NCLT, and subsequently, Hon'ble NCLAT (under the present appeal) claiming its right to sell-off said assets of CD on the ground that CD's ownership rights over Imported assets got relinquished by operation of law (citing s. 48, Customs Act, 1962).

Decision:

NCLAT, however, after taking Into account facts and circumstances of the case, as also relevant legal provisions applicable to the case (s. 14, s. 18(1)(f) and (g), s. 238 of IBC as also s. 48, Customs Act, 1962), concluded, that though the machineries in question are in possession of the appellant, ownership rights over them are of CD, therefore, RP has right to take control and custody of the assets.

The appeal was accordingly dismissed, and impugned order was held.

QR CODE FOR FULL ORDER/JUDGEMENT:



An order passed under section 14 of Insolvency and Bankruptcy Code, 2016 imposing moratorium is not applicable to criminal proceedings initiated under PMLA, 2002.

CASE TITLE	Rotomac Global Private Limited vs. Deputy Director, Directorate of Enforcement
CASE CITATION	Company Appeal (AT) (Insolvency) No. 140 of 2019
DATE OF ORDER	02.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	VarrsanaIspat Limited v. Deputy Director, Directorate of Enforcement
SECTION/REGULATION	Section 14 of IBC, 2016

Brief of the case:

In an appeal preferred by *M/s Rotomac Global Private Limited* (CD, through the Liquidator) against Hon’ble NCLT (Allahabad Bench) order dt. 10th January, 2019 (impugned order) passed in I.A. No. 150/2018 in CP No. (IB) 70/ALD/2017, Hon’ble NCLAT, vide its order dt. 2nd July 2019, reiterates its earlier view taken in the matter of *VarrsanaIspat Limited v. Deputy Director, Directorate of Enforcement*’ holding that “**Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds.**”

Decision:

In *Varrsana (supra)*, after analyzing provisions of the Prevention of Money Laundering Act, 2002, Hon’ble NCLAT had concluded that since PMLA relates to ‘proceeds of crime’ and the offence relates to ‘money-laundering’ resulting in confiscation of property derived therefrom, or involved therein, section 14 of the ‘I&B Code’ shall not be applicable to such proceedings. It was further observed that offence under PMLA is punishable with imprisonment and has nothing to do with the CD, and rather, it shall be applicable to the Ex-directors and Shareholders of the CD, who cannot be given the protection of s.14. Thus, concluding, it was held:
“14. As the ‘Prevention of Money Laundering Act, 2002’ relates to different fields of penal action of ‘proceeds of crime’, it invokes simultaneously with the ‘I&B Code’, having no overriding effect of one Act over the other including the ‘I&B Code’...”

The appeal was dismissed and the impugned order affirmed.

QR CODE FOR FULL ORDER/JUDGEMENT:



Regulation 30A of IBBI (CIRP) Regulations, 2016 is directory in nature.

CASE TITLE	Navin Heavy Lifter & Anr. v. Canbuild Precast Solutions Pvt. Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 649 Of 2019
DATE OF ORDER	12.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Brilliant Alloys Private Limited v. Mr. S. Rajagopal & Ors
SECTION/REGULATION	Section 12 A of IBC and Regulation 30A (CIRP Regulations, 2016)

Brief of the case:

Regulation 30A (CIRP Regulations, 2016) which speaks of *Withdrawal of application* requires the applicant to submit its Withdrawal Application (u/s 12A, IBC) with the IRP/RP *before issue of invitation for Expression of Interest*. Recently, the said Regulation was the subject matter for discussion before Hon'ble NCLAT in the matter of *Navin Heavy Lifter & Anr. v. Canbuild Precast Solutions Pvt. Ltd.* (CA (AT) (Ins.) No. 649 of 2019). In the said appeal, Hon'ble NCLAT's order dt. 9th May 2019, *vide* which a section 12A application was dismissed, was sought to be challenged. Hon'ble NCLAT had dismissed the application on the ground that the CIRP was initiated prior to insertion of Section 12A.

Decision:

Regarding the issue as no more a res integra, Hon'ble NCLAT, *vide* its order dt. 12th July 2019, referred to Hon'ble Supreme Court's order dt. 14th December 2018 (*Brilliant Alloys Private Limited v. Mr. S. Rajagopal & Ors. – Special Leave Petition (Civil) No.31557/2018*) wherein it was held that Regulation 30A has to be read with s. 12A, IBC which does not contain any stipulation that a withdrawal application cannot be permitted after invitation for Expression of Interest, and thus, the said stipulation in Reg. 30 was held to be only directory in nature.

Basing its legal finding on the aforementioned Apex Court judgment, Hon'ble NCLAT allowed the application filed u/s 12A which had approval of 100% voting share of the CoC and set aside the impugned order. Consequently, Hon'ble NCLAT's order appointing an '*Interim Resolution Professional*', declaring moratorium and all other order(s) passed by the Adjudicating Authority pursuant to the impugned order and action taken by the '*Resolution Professional*' were also set aside.

QR CODE FOR FULL ORDER/JUDGEMENT:



Proceedings before NCLT, either under section 7 or 9 or 10 of Insolvency and Bankruptcy Code, are neither in the nature of a litigation, nor a money suit, or a money claim.

CASE TITLE	Smartron Indian Private Limited Vs. ZTE Corporation
CASE CITATION	CA (AT) (Ins.) No. 733 of 209
DATE OF ORDER	18.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Binani Industries Ltd. v. Bank of Baroda &Anr., CA (AT) (Ins.) No. 82 Innoventive Industries Ltd. v. ICICI Bank &Ors.
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

An appeal *was filed* against an order dt. 21st June, 2019 passed by Hon’ble NCLT (Hyderabad Bench). *Vide* the impugned order, the AA had declined to grant its permission to the Corporate Debtor (*M/s Smartron India (P) Ltd.*) to file its rejoinder/ additional counter and additional documents in the proceedings initiated against it by *M/s ZTE Corporation* (Operational Creditor) u/s 9 of IBC, and had directed the parties to argue on merit.

Decision:

While considering merits of the plea taken by the appellant, Hon’ble NCLAT referred to its own judgment delivered in the case of *Binani Industries Ltd. v. Bank of Baroda &Anr., CA(AT) (Ins.) No. 82 of 2018* wherein it was held that an application u/s. 7 or s. 9 or s. 10 which relates to initiation of ‘*Corporate Insolvency Resolution Process*’ is neither a litigation nor a money suit or a money claim, and held that, the question of sur-rejoinder/additional counter and additional documents does not arise.

The Appellate Tribunal also referred to the Apex Court dicta delivered in the landmark judgment of *Innoventive Industries Ltd. v. ICICI Bank &Ors.* (judgmentdt. 31st August, 2017) wherein the subtle distinction between different sets of procedure/scheme to be followed in respect of a section 7 application and that of a section 9 application was clearly laid down. In light of such directions, Hon’ble NCLAT dismissed the appeal and held as follows:

“5. *One opportunity which was required to be given to the ‘Corporate Debtor’ has since been given and it has filed its reply affidavit. Now, it is on the basis of the record available and the stand so taken by the ‘Corporate Debtor’, the Adjudicating Authority is required to decide the matter...*”

QR CODE FOR FULL ORDER/JUDGEMENT



A dispute barring an application under section 9 of Insolvency and Bankruptcy Code must have existed prior to the issuance of demand notice under section 8(1) of Insolvency and Bankruptcy Code.

CASE TITLE	Ahluwalia Contracts (India) Limited Vs. Raheja Developers Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 703 of 201
DATE OF ORDER	23.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Ltd.
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

While disposing of the appeal the NCLAT set aside the impugned order of NCLT, New Delhi bench dated 19th September, 2018 in which the AA rejected the application filed u/s 9 on the ground that the claim of the Appellant falls within the ambit of ‘disputed claim.’

Decision:

After persusing the documents produced on record, NCLAT found that the date of issuance of demand notice u/s 8(1) was 28th April, 2018 while the arbitration proceeding which resulted into the dispute was initiated by the Respondent vide notice dt.24th May, 2018 i.e. one month later than the date of issuance of demand notice. Therefore, the Corporate Debtor cannot rely on arbitration proceeding to suggest a pre-existing dispute.

Further, the NCLAT also referred to the SC decision rendered in “*Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Ltd. 2017*”, where the Hon’ble Supreme Court held that the ‘existence of the dispute’ and/or the suit or arbitration proceeding must be pre-existing – i.e. **it must exist before the receipt of the demand notice or invoice.**

The NCLAT thus remarked that the AA wrongly rejected the Appellant’s claim on the ground that it fell within the ambit of a disputed claim as it was initiated a month after the date of issuance of demand notice as per Sec 8(1) and hence was not a ‘pre-existing dispute’. Further, NCLAT remitted the case to the AA for admitted the application u/s 9 after notice to the CD to enable him to settle the matter prior to the admission.

QR CODE FOR FULL ORDER/JUDGEMENT:



Moratorium under section 14 of Insolvency and Bankruptcy Code, 2016 will not bar trial of suit by the Corporate Debtor and a counter claim in such suit if issues and facts in both are intertwined and interlinked.

CASE TITLE	SSMP Industries Limited v. Perkan Food Processors Pvt. Ltd
CASE CITATION	CS (COMM) 470/2016 & CC(COMM) 73/2017
DATE OF ORDER	18.07.2019
COURT/TRIBUNAL	High Court, Delhi
CASES REFERRED	Power Grid Corporation of India vs. Jyoti Structures Ltd.
SECTION/REGULATION	Section 14 of IBC, 2016

Brief of the case:

SSMP Industries Ltd. (Plaintiff) filed the suit seeking recovery of Rs. 1,61,47,336. 44 against *Perkan Food Processors Pvt. Ltd.* (Defendant). The Defendant filed its counter claim in the suit entitled to recover a sum of Rs. 59,51,548/-. In the meantime, the Plaintiff went into Insolvency. The question arose as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.

Decision:

Based on the earlier decision of the HC in *Power Grid Corporation of India vs. Jyoti Structures Ltd.*, the Hon’ble High Court observed that until and unless the proceeding has effect of endangering, diminishing, dissipating or adversely impacting the assets of the Corporate Debtor, adjudication of counter claim would not be prohibited under Section 14(1)(a) of the code. Further the court also referred to *Jharkhand Bijli*, wherein NCLAT in similar circumstances held that until and unless the counter claim is itself determined, the claim and the counter claim is itself determined, the claim and the counter claim deserve to be heard together and there is no bar on the same order.

Hon’ble High Court of Delhi held that the nature of counter claim is such that it requires proper pleadings to be filed, defences and stands of both the parties to be considered, evidence to be recorded and then issues have to be adjudicated. Till the defence is adjudicated, there is no threat to the assets of the Corporate Debtor and the continuation of the counter claim would not adversely impact the assets of the Corporate Debtor. Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings depending on the situation prevalent, Section 14 could be triggered.

QR CODE FOR FULL ORDER/JUDGEMENT:



Proceedings under section 7 of Insolvency and Bankruptcy Code cannot be challenged merely on account of some criminal proceedings initiated by Corporate Debtor against Financial Creditor's Employees relating to a charge of "Misappropriation of Funds".

CASE TITLE	Neeraj Jain Vs. Yes Bank and Others
CASE CITATION	Civil Appeal No(s).3997/2019 with I.A. No. 71562 of 2019
DATE OF ORDER	10.04.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case:

In a curious set of facts, an appeal was filed before Hon'ble NCLAT impugning orders dt. 25th March 2018 passed by Hon'ble NCLT (Principal Bench), New Delhi whereby an application filed u/s 7 of IBC was admitted against *M/s Namo Alloys (P) Ltd.* (CD). Aggrieved by the aforementioned orders (passed by the NCLT), the Appellant approached Hon'ble Appellate Tribunal in the capacity as CD's shareholder alleging some fraud played upon the CD by officials of the Bank (Financial Creditor) in connivance with the Chief Financial Officer of the CD.

The Appellant further informed the Appellate Tribunal that pursuant to the fraud played upon the CD, an FIR has been lodged and a Charge sheet already filed in the Criminal Court. Based on these facts, Appellant claimed that if the amount illegally withdrawn from CD would have remained in the account of the CD, it would not have failed to pay FC's dues.

Decision:

Hon'ble NCLAT dismissed the appeal by holding as:

"7. ...an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriate of the funds by the Chief Financial Officer of the 'Corporate Debtor' and the employees of the Banks. The Bank which is the 'Financial Creditor' is a separate entity from the Chief Financial Officer of the Corporate Debtor or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an application under Section 7 if the application is complete and there is a debt and default. The 'I&B Code' being a complete Code will prevail over the other Acts and no person can take advantage of the pendency of the case to stall Insolvency and Bankruptcy proceeding filed under Section 7."

QR CODE FOR FULL ORDER/JUDGEMENT:



The true spirit of Section 240A is to protect the genuine MSME entrepreneurs which are MSME entrepreneurs from the beginning

CASE TITLE	Bank of India v. Maxim Infrastructure & Real Estate Ltd and H.M Cements Pvt. Ltd. v. Kamalesh Kumar Singhania
CASE CITATION	IA No.43/2019 in CP (IB) 04/GB/2018
DATE OF ORDER	06.08.2019
COURT/TRIBUNAL	NCLT, Guwahati Bench
CASES REFERRED	-
SECTION/REGULATION	Section 29A of the IBC, 2016

Brief of the case:

An application by Mr. Pankaj Jhunjhunwala, Managing Director, H.M Cements Pvt. Ltd. (Resolution Applicant) was filed before Hon'ble NCLT, Guwahati Bench for a declaration that the Resolution Plan submitted by the resolution applicant is eligible for consideration on commercial merits by the CoC and also other consequential reliefs including staying the discussion of eligible Resolution Plans/ Revised Resolution Plans by the CoC.

In the matter, the Resolution Applicant being the promoter of the Company had attracted ineligibility under Section 29A of the Code. The promoter received a certificate claiming to be a MSME to escape this ineligibility. The question that arose is whether the resolution applicant will be considered a bona fide MSME unit for this purpose simple based on the acknowledgement of the Competent Authority.

Decision:

Hon'ble NCLT held that since the applicant only got acknowledgment from the concerned authorities, i.e., District Industries and Commerce Centre, Government of Assam and only got the acknowledgment for the project of Corporate Debtor in Guwahati, this must be a clear attempt to submit a resolution plan through back door entry which is not in the spirit of Section 240A of IBC. The true spirit of Section 240A is to protect the interest of MSME entrepreneurs who are MSMEs from the beginning. Hon'ble NCLT rejected the application and the Resolution Applicant was not considered to be a MSME for claiming eligibility to submit a plan.

QR CODE FOR FULL ORDER/JUDGEMENT:



Section 29A of Insolvency and Bankruptcy Code is not applicable for entertaining/considering an application under Section 12A of Insolvency and Bankruptcy Code

CASE TITLE	Andhra Bank v. Sterling Biotech Ltd. (Through the Liquidator) & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 601 of 2019
DATE OF ORDER	28.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.
SECTION/REGULATION	Section 7, 12A and Section 29A of the Code.

Brief of the case:

An appeal was preferred by Andhra Bank (Appellant) impugning order dated 08th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench. The Appellant submitted that Section 29A is not applicable to an application filed under Section 12A for withdrawal of application under Section 7 filed by Andhra Bank, if the Committee of Creditors accepts the same with more than 90% of the voting share.

Decision:

NCLAT held that

“12. From Section 12A and the decision of the Hon’ble Supreme Court in ‘Swiss Ribbons Pvt. Ltd. & Anr.’ (Supra), it is clear that the Promoters/Shareholders are entitled to settle the matter in terms of Section 12A and in such case, it is always open to an applicant to withdraw the application under Section 9 of the ‘I&B Code’ on the basis of which the ‘Corporate Insolvency Resolution Process’ was initiated.”

In view of the aforesaid provision of law, NCLAT further held that Section 29A is not applicable for entertaining/considering an application under Section 12A.

Hon’ble NCLAT *vide* its order dated 28.08.2019 disposed off the appeals and set aside the impugned order dated 08th May, 2019, allowing the Appellant to withdraw the Application.

QR CODE FOR FULL ORDER/JUDGEMENT:



If the assets of a Corporate Debtor are the result of “proceeds of crime”, it would always be open to the Enforcement Directorate to seize the assets in accordance with the Prevention of Money Laundering Act, 2002.

CASE TITLE	Shweta Vishwanath Shirke & Ors. V. The Committee of Creditors & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 601 of 2019
DATE OF ORDER	28.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7, 12A and 29A of the Code

Brief of the case:

A bunch of appeals were filed against a liquidation order passed against the Corporate Debtor. The CoC approved a settlement with the promoters of the Corporate Debtor with 90% approval and sought withdrawal of the Section 7 application. NCLT passed the liquidation order as the settlement was opposed on the ground that the assets of the Corporate Debtor are based on the proceeds of the crime and therefore, it cannot be given to any person.

Decision:

NCLAT held that the Enforcement Directorate has the power to seize the assets of the Corporate Debtor in accordance with the prevention of Money laundering Act, 2002, however, “ it will not come on the way of the individual such as ‘Promoter’ or ‘Shareholder’ or ‘Director’, if he pays not from the proceeds of crime but in his individual capacity the amount from his account and not from the account/assets of the ‘Corporate Debtor’ and satisfies all the stakeholders, including the ‘Financial Creditors’ and the ‘Operational Creditors’. There is nothing on the record to suggest that the individual property of the ‘Promoter’/ ‘Shareholder’/ ‘Director’ who proposed to pay the amount has been subjected to restraint by the ‘Enforcement Directorate’. Therefore, even if the asset of the ‘Corporate Debtor’ is held to be proceeds of crime, the Adjudicating Authority cannot reject the prayer for withdrawal of application under Section 7, if the ‘Promoter’ / ‘Director’ or ‘Shareholder’ in their individual capacity satisfy the creditors

NCLAT vide its order dated 28.08.2019 dispose off all the appeals.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 152

Hon'ble Supreme Court held that Resolution Process may be revived if there is still time left as per third proviso to Section 12 of the Insolvency and Bankruptcy Code

CASE TITLE	Committee Of Creditors Of Amtek Auto Limited Through Corporation Bank Dinkar T. Venkatsubramanian & Ors.
CASE CITATION	Civil Appeal No(s). 6707/2019
DATE OF ORDER	24.09.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Arcelormittal India Pvt. Ltd Vs. Satish Kumar Gupta and Ors.</i>
SECTION/REFERRED	Section 12 of the IBC, 2016

Brief of the case:

A civil appeal was filed owing to the fact that resolution plan of Amtek Auto failed due to non-fulfilment of the commitment by Liberty House which consumed the time as given in Section 12 of the Code.

Decision:

Reliance was placed on the decision of the Hon'ble Supreme in aforementioned case wherein it was reiterated that the object of the legislation is resolution and the third proviso to Section 12 added by virtue of the Amendment Bill, 2019 with effect from 16.08.2019, which states that,

“Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.”

The resolution process may be permitted to be completed within 90 days from the date of the commencement of the Amendment Act, and hence the date of completion of resolution now would be 15th November 2019.

Hon'ble Supreme Court *vide* order dated 24.09.2019 permitted the resolution professional to invite fresh resolution plans for the CoC to consider. The CoC was asked to take a decision regarding the fresh resolution plans within two weeks and place the same before the Hon'ble Court.

QR CODE FOR FULL ORDER/JUDGEMENT



Proceedings under the provisions of the Code are binding on all the Stakeholders/ Central Government/ State Government and the Local Authorities and the State Government cannot change the Board of Directors as it stands suspended terms of Section 17 of the Insolvency and Bankruptcy Code.

CASE TITLE	Arunava Sikdar Vs. Sanjeev Saxena & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency)No. 914 of 2019
DATE OF ORDER	05.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Jaipur Metals & Electricals Vs. Jaipur Metals & Electricals Ltd.</i>
SECTION/REGULATION	Section 17 of the IBC, 2016

Brief of the case:

An appeal was preferred by Mr. Arunava Sikdar seeking direction against Respondent — 'State of Rajasthan' to hand over the possession, assets, records, management and affairs of the 'Corporate Debtor' which was with the State of Rajasthan. The Adjudicating Authority by impugned order dated 7th August, 2019 noticed the stand taken by the State of Rajasthan and it was brought to the notice of the Adjudicating Authority that the Hon'ble High Court of Rajasthan had passed order in Civil Writ Petition No. 19134/2017 on 14th November, 2017 and the 'State of Rajasthan' had been restrained from transferring the property of the 'Corporate Debtor' in question of the 'Corporate Debtor'.

Decision:

Hon'ble NCLAT relied upon the judgement in the matter of Jaipur Metals & Electricals Vs. Jaipur Metals & Electricals Ltd. and directed the Resolution Professional to move an application before the Hon'ble High Court of Judicature at Rajasthan and bring the matter to the notice of Hon'ble Chief Justice with the request to expedite the matter as under the provisions of the Code. Further, Hon'ble NCLAT held:

"9. Though the 'State of Rajasthan' has not been heard at this stage, we make it clear that the proceedings under the provisions of the 'I & B' Code is binding on all the Stakeholders/ Central Government/State Government and the Local Authorities and the State Government cannot change the Board of Directors as it stands suspended in terms of Section 17 of the 'I & B' Code."

Hon'ble NCLAT vide its order dated 05.09.2019 disposed of the appeal.



CASE NO. 154

The date of coming into force of the Insolvency and Bankruptcy Code does not and cannot form a trigger point of limitation for applications filed under the Insolvency and Bankruptcy Code

CASE TITLE	Sagar Sharma & Anr V. Phoenix Arc Pvt. Ltd. & Anr
CASE CITATION	CIVIL APPEAL NO. 7673 OF 2019
DATE OF ORDER	30.09.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>B.K. Educational Services Private Limited vs. Parag Gupta and Associates</i>
SECTION/REGULATION	<i>Section 7 of the Code, Article 141 of the Constitution of India, Article 137 of the Limitation Act</i>

Brief of the case:

An appeal was filed in the aforementioned matter to set aside the impugned judgement wherein the following statement was made:

“13. Admittedly, ‘I&B Code’ has come into force since 1st December, 2016, therefore, the right to apply accrued to 1st Respondent on 1st December, 2016. Therefore, we hold that the application under Section 7 was not barred by limitation.”

Decision:

The Hon’ble Supreme Court relied upon the judgement of the Apex Court in the matter of B.K. Educational Services Private Limited vs. Parag Gupta and Associates and held:

“3) Article 141 of the Constitution of India mandates that our judgments are followed in letter and spirit. The date of coming into force of the IBC Code does not and cannot form a trigger point of limitation for applications filed under the Code. Equally, since “applications” are petitions which are filed under the Code, it is Article 137 of the Limitation Act which will apply to such applications.”

Accordingly, Hon’ble Supreme Court vide its order dated 30th September, 2019 set aside the judgment under appeal and directed that the matter to be determined afresh. It was also held that it will be open for both sides to argue the case on facts on the footing that Article 137 of the Limitation Act alone will apply.



CASE NO. 155

Options to resolve/revive a company before the NCLT can and should always be explored unless irrevocable steps towards liquidation have already been undertaken

CASE TITLE	Action Ispat & Power Pvt. Ltd v. Shyam Metalics & Energy Limited & Ors.
DATE OF ORDER	10.10.2019
COURT/TRIBUNAL	High Court, Delhi
CASES REFERRED	Jotun India Pvt. Ltd. v. PSL Ltd.; Forech India Ltd. v. Edelweiss Assets Reconstruction Co. Ltd.; Rajni Anand v. Cosmic Structures Ltd.; Shree Shyam Pulp & Board Mills (In Liquidation) v. Tata Capital Financial Services Ltd; Sudarshan Chits v. Sukumaran Pillai; G.T. Swamy v. M/s. Goodluck Agencies; Government of Karnataka v. NGEF Limited
SECTION/REGULATION	Section 7 of the IBC; Sections 433(e) and 433(f) of the Companies Act, 1956; Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016

Brief of the case:

In the aforementioned matter, a winding-up petition was admitted and Official Liquidator (OL) was appointed for the appellant company under Sections 433(e) and 433(f) of the Companies Act, 1956 in August 2018. While the winding-up proceedings were still at an early stage and no direction to liquidate any of the assets of the appellant had been passed, the State Bank of India (SBI), a secured creditor, moved the NCLT under IBC. SBI also moved an application before the Company Judge for transfer of the winding-up proceedings to the NCLT.

Decision:

Hon'ble High Court of Delhi placed reliance on Section 434 of the Companies Act, 1956 and Rules 5 and 6 of the Companies (Transfer of Pending Proceedings) Rules, 2016 to state that unless an order for dissolution of the company was passed, there was no bar against the proceedings under section 7 of the IBC. The Court held that,

“.....The statutory scheme found in Section 434(1)(c) clearly is that the proceedings for winding up pending before the Company Court could be transferred to the NCLT and there is no provision for transfer of proceedings from the NCLT to the Company Court.”

The Court *vide* its order dated 10.10.2019 upheld the order of transfer and dismissed the appeal.



CASE NO. 156

The provisions of Insolvency and Bankruptcy Code override those of Tea Act.

CASE TITLE	Duncans Industries Ltd. v. A. J. Agrochem
CASE CITATION	CIVIL APPEAL NO. 5120 OF 2019
DATE OF ORDER	04.10.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Innoventive Industries Ltd. v. ICICI Bank</i> <i>Swiss Ribbons Pvt. Ltd. v. Union of India</i>
SECTION/REGULATION	Section 9 of IBC; Section 16G(1)(c) of the Tea Act, 1953

Brief of the case:

An appeal was filed in the Supreme Court by the CD against NCLAT’s order wherein NCLAT had reversed AA’s order of declining to entertain OC’s application (filed u/s 9 of IBC) on the ground that the application is not maintainable in view of provisions of Tea Act, 1953.

Initiation of the proceedings under the IBC was opposed by the corporate debtor on the ground that, as provided under Section 16G(1)(c) of the Tea Act, once the management of tea unit has been taken over by the Central Government, then the proceedings for winding up or appointment of receiver cannot be initiated without the consent of the Central Government.

Decision:

Hon’ble SC while upholding NCLAT’s order has clarified on the over-riding effect of IBC over the Tea Act, 1953, iterated as follows:

“Section 16G(1)(c) refers to the proceeding for winding up of such company or for the appointment of receiver in respect thereof. Therefore, as such, the proceedings under Section 9 of the IBC shall not be limited and/or restricted to winding up and/or appointment of receiver only. The winding up/liquidation of the company shall be the last resort and only on an eventuality when the corporate insolvency resolution process fails.

... the entire “corporate insolvency resolution process” as such cannot be equated with “winding up proceedings”. Therefore, considering Section 238 of the IBC, which is a subsequent Act to the

Tea Act, 1953, shall be applicable and the provisions of the IBC shall have an overriding effect over the Tea Act, 1953. Any other view would frustrate the object and purpose of the IBC.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 157

Enforcement Directorate can be Operational Creditor under the Insolvency and Bankruptcy Code for amount generated from assets acquired through proceeds of crime

CASE TITLE	JSW Steel Ltd. and Ors. v. Mahender Kumar Khandelwal & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 957 of 2019
DATE OF ORDER	25.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 5 (20) and (21) of IBC

Brief of the case:

In the aforementioned matter, an appeal heard on 14th October 2019 raised the question whether the ‘Directorate of Enforcement’ comes within the meaning of ‘Operational Creditor’ in terms of Section 5 (20) and (21) of IBC for the purpose of money claim (civil matter), which may be generated out of the attached property/ part thereof of the ‘Corporate Debtor’.

Decision:

In response to the above question, NCLAT vide its order dated 25.10.2019 held that if the assets seized by the Enforcement Directorate are held to be purchased out of the ‘proceeds of crime’, then the amount which is generated from such assets would come within the meaning of ‘Operational Debt’ under the Code.

NCLAT stated that,

“Prima facie, we are of the view that if the assets are seized by the Enforcement Directorate and finally hold that the assets were purchased out of the ‘proceeds of crime’, in such case, the amount as may be generated out of the assets will come within the meaning of ‘Operational Debt’ payable to the Enforcement Directorate for which it may file claim in terms of the Insolvency and Bankruptcy Code, 2016.”

NCLAT concluded that this Operational Debt would be payable to the Enforcement Directorate for which it may file a claim under Insolvency and Bankruptcy Code, 2016 and hence Enforcement Directorate will be considered an Operational Creditor under the Code.



CASE NO. 158

All the stakeholders, including the Promoters/ Shareholders are entitled to know the fair value/ liquidation value of the Corporate Debtor

CASE TITLE	Sri Ch. Sridhar v. Dr. G.V. Narasimha Rao & Ors
CASE CITATION	Company Appeal (AT) (Insolvency) Nos. 1132-1133 of 2019
DATE OF ORDER	25.10.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	-

Brief of the case:

An appeal was preferred by Promoters against the order dated 18th September, 2019 passed by the Adjudicating Authority (NCLT, Amaravati Bench), whereby the order of liquidation was passed in absence of any viable and feasible Resolution Plan and the Committee of Creditors in its 6th meeting voted in favour of liquidation of the CD by a vote of 95.04% and resolved to seek liquidation of the ‘Transstroy (India) Limited’ (Corporate Debtor).

The liquidation order was challenged on the ground that the documents relating to fair value and liquidation value of the Corporate Debtor was not supplied to the Appellant (Promoters).

Decision:

NCLAT held that,

“Now the order of liquidation having been passed, we are of the view that all the stakeholders, including the Promoters/ shareholders are entitled to know the fair value/ liquidation value of the ‘Corporate Debtor’. The Appellant/ Shareholder be provided with the liquidation value of the ‘Corporate Debtor’ preferably within three weeks from the date of production of the copy of this order.”

NCLAT dismissed the appeal and upheld the order of liquidation.



CASE NO. 159

Article 142 of the Constitution is the power which is vested only with the Supreme Court where it can pass any order to deliver complete justice

CASE TITLE	Jaiprakash Associates Ltd & Anr. Versus IDBI Bank Ltd. & Anr,
CASE CITATION	CIVIL APPEAL NO. 6486 of 2019
DATE OF ORDER	06.11.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Chitra Sharma & Ors. vs. Union of India & Ors</i>
SECTION/REGULATION	Section 29A of the Code

Brief of the case:

A group of homebuyers moved the apex court in 2017, saying around 23,000 people had booked flats and were paying installments, but their homes were not ready. On August 22, 2019, the court had ordered status quo for a week on the insolvency proceeding after the Jaypee Group challenged an order of the NCLAT that allowed fresh bidding for Jaypee Infratech. The NCLAT had barred the parent company, Jaypee Associates, from bidding.

Decision:

The Supreme Court in the matter of Jaiprakash Associates Ltd & Anr. v. IDBI Bank Ltd. & Anr. vide order dated 06.11.2019 has held that the Jaypee Infratech resolution process should be completed within 90 days and allowed only the government’s construction arm NBCC and Suraksha Realty to submit their revised proposals before the Committee of Creditors. The Hon’ble Court directed that the IRP shall not entertain any expression of interest (improved) resolution plan individually or jointly, much less ineligible in terms of Section 29A of the Code.

The 90-day extension from 06.11.2019 has been granted in the interest of all stakeholders under Article 142 of the Constitution. The Supreme Court has given both NBCC and Suraksha Realty 45 days to submit their revised bid and another 45 days to the insolvency and resolution professional to process the fresh bids.

The Apex Court concluded by directing the Resolution Professional that the pendency of any other application before the NCLT or NCLAT, including any interim direction given by them shall not be an impediment for the RP to receive and process the revised resolution plan from the

two mentioned bidders and the RP has to take the CIRP to its logical end as per the provisions of the Code and the extended timeline prescribed in terms of this order.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 160

Hon’ble Supreme Court exempts government bodies performing Sovereign functions from IBC proceedings

CASE TITLE	Hindustan Construction Company Limited & Anr. v. Union of India & Ors.
CASE CITATION	WRIT PETITION (CIVIL) NO. 1074 OF 2019
DATE OF ORDER	27.11.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	National Aluminum Company Ltd. (NALCO) v. Pressteel & Fabrications (P) Ltd. and Anr.; National Buildings Construction Corporation Ltd. v. Lloyds Insulation India Ltd.
SECTION/REGULATION	Section 3(7) of the Insolvency Code.; NHAI Act, 1988

Brief of the case:

A Writ Petition was filed by Hindustan Construction Company Limited, an infrastructure construction company. The Petitioner Company, inter alia, undertakes building projects as a contractor for government bodies such as the NHAI, NHPC, NTPC, IRCON and others. The Court stated that as PSUs are not protected from the IBC, and CIRP can be initiated against them under IBC.

Decision:

The bench headed by Justice Rohinton Fali Nariman, referring to NHAI Act, observed:

“63. ... NHAI is a statutory body which functions as an extended limb of the Central Government, and performs governmental functions which obviously cannot be taken over by a resolution professional under the Insolvency Code, or by any other corporate body. Nor can such Authority ultimately be wound-up under the Insolvency Code. For all these reasons, it is not possible to accede to Dr. Singhvi’s argument to either read in, or read down, the definition of ‘corporate person’ in Section 3(7) of the Insolvency Code.”

Hon’ble Supreme Court vide its order dated 27.11.2019 disposed of the Writ Petitions.

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 161

Hon’ble Supreme Court held that High Court can interfere if NCLT passes an order in a matter pertaining to Public Law

CASE TITLE	Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka and Ors.
CASE CITATION	Civil Appeal No. 9170 of 2019
DATE OF ORDER	03.12.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	-
SECTION/REGULATION	Section 61 of IBC, Article 226/227 of the Constitution

Brief of the case:

Three appeals were preferred, one filed by the Resolution Applicant, the second filed by the Corporate Debtor through the Resolution Professional and the third filed by the Committee of Creditors, all of which challenge an Interim Order passed by the Division Bench of High Court of Karnataka in a writ petition, staying the operation of a direction contained in the order of the NCLT, on a Miscellaneous Application filed by the Resolution Professional. The questions of law put up before the Hon’ble Supreme Court of India is as below:

1. Whether the High Court ought to interfere, under Article 226/227 of the Constitution, with an order passed by NCLT in a proceeding under the IBC, 2016, despite the availability of a statutory alternative remedy of appeal to NCLAT?
2. Whether questions of fraud can be inquired into by the NCLT/NCLAT in the proceedings initiated under the Insolvency and Bankruptcy Code, 2016?

Decision:

Hon’ble Supreme Court dismissed the appeal while answering to the questions:

“45. our answer to the first question would be that NCLT did not have jurisdiction to entertain an application against the Government of Karnataka for a direction to execute Supplemental Lease Deeds for the extension of the mining lease. Since NCLT chose to exercise a jurisdiction not vested in it in law, the High Court of Karnataka was justified in entertaining the writ petition, on the basis that NCLT was coram non judice.”

“51. ... it is clear that NCLT has jurisdiction to enquire into allegations of fraud. As a corollary, NCLAT will also have jurisdiction. Hence, fraudulent initiation of



QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 162

NCLAT held that proviso to sub section (4) of section 31 of the Insolvency and Bankruptcy Code is directory not mandatory

CASE TITLE	Arcelormittal India Pvt. Ltd Vs. Abhijit Guhathakurta, Resolution Professional of EPC Constructions India Ltd. & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 524 of 2019
DATE OF ORDER	16.12.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Arcelor Mittal India (P.) Ltd. v. Satish Kumar Gupta [2019]
SECTION/REGULATION	Section 31(4) of the Insolvency and Bankruptcy Code, 2016

Brief of the case:

Arcelor Mittal India Private Limited (Appellant) preferred miscellaneous application challenging the decision of the ‘Committee of Creditors’ which was rejected by the Adjudicating Authority (NCLT, Mumbai Bench). The Appellant submitted that approval of plan is in contravention of the mandatory requirement under the proviso to Section 31(4) of the Insolvency and Bankruptcy Code, 2016, as amended, requiring ‘Resolution Applicants’ to obtain approval of the Competition Commission of India prior to approval by the ‘Committee of Creditors’.

Decision:

Hon’ble NCLAT held:

“15. We have noticed and hold that proviso to sub-section (4) of Section 31 of the ‘I&B Code’ which relates to obtaining the approval from the ‘Competition Commission of India’ under the Competition Act, 2002 prior to the approval of such ‘Resolution Plan’ by the ‘Committee of Creditors’, is directory and not mandatory. It is always open to the ‘Committee of Creditors’, which looks into viability, feasibility and commercial aspect of a ‘Resolution Plan’ to approve the ‘Resolution Plan’ subject to such approval by Commission, which may be obtained prior to approval of the plan by the Adjudicating Authority under Section 31 of the ‘I&B Code’. In present matter already approval of the Competition Commission of India has been taken to the Resolution Plan.”

Hon’ble NCLAT vide its order dated 16th December, 2019 dismissed the appeal.

CASE NO. 163

Lease of immovable property cannot be considered as a supply of goods or rendering of any services, and thus, cannot fall within the definition of Operational Debt

CASE TITLE	M. Ravindranath Reddy Vs. Mr. G. Kishan & Ors.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 331 of 2019
DATE OF ORDER	17.01.2020
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Jindal Steel & Power Ltd. v. DCM International Ltd.; Parmod Yadav & Anr v. Divine Infracon (P) Ltd. Col. Vinod Awasthy v. AMR Infrastructure Ltd.
SECTION/REGULATION	Section 3(6), 3(11), 5(20), 5(21) and 9 of the IBC, 2016

Brief of the case:

An appeal was filed against the order passed by NCLT, Hyderabad Bench wherein the petition u/s 9 of the IBC had been admitted against the Corporate Debtor.

The order of the Adjudicating Authority has been challenged on two grounds, one of the ground is: whether a landlord by providing lease, will be treated as providing services to the corporate debtor, and hence, an operational creditor within the meaning of Section 5(20) read with Section 5(21) of the 'Insolvency and Bankruptcy Code, 2016

Decision:

Hon'ble NCLAT allowed appeal with the below observations :

“In case if the amount claimed does not fall under any of the categories, the claim cannot be categorised as an operational debt, and even though there might be a liability or obligation due from one person, namely Corporate Debtor to another, namely Creditor other than the Government or local authority, such a creditor cannot categorise itself as an "Operational Creditor" as defined under Section 5(21) of the I&B Code, 2016. Therefore, we are of the considered opinion that lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus, cannot fall within the definition or 'Operational Debt.”



CASE NO. 164

Any suit that has been instituted seeking to disturbed the proceedings of the Liquidator or the provisions of the Insolvency and Bankruptcy Code are barred under law

CASE TITLE	Roofit Industries Limited
CASE CITATION	C.P.(IB)-1055/MB/2017, MA 205/2020, MA 241/2020, MA 242/2020, MA 282/2020
DATE OF ORDER	24.01.2020
COURT/TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 33 of the Code

Brief of the case:

In the aforementioned matter, an application has been filed by the Liquidator with the prayer to quash the Civil Suit No. 251/2019 filed before the Civil Court, Palghar by the plaintiff (being one of the occupant of CD) on the ground that the plaintiff has wrongly approached the Civil Court seeking direction or decree for grant of prohibiting injunction restraining the Liquidator from disturbing the lawful possession and not to demolish the structure constructed by the plaintiff over the suit property which actually belong to the CD. The AA, before passing order, questioned the plaintiff whether he is prepared to withdraw the suit. The plaintiff refused to do so. The AA, while passing the order, referred Section 33 (5) of the Code, which read as follows:-

"Therefore, any suit that has been instituted seeking to disturbed the proceedings of the Liquidator or provisions of the IBC, 2016 are barred under law."

Decision:

The AA quashed the Civil Suit no. 251/2019 and held that:

"We make it very clear that any disturbance to the possession of the Liquidator or any obstruction if at all is caused by the said plaintiff who is Respondent in the present application shall be viewed very seriously by this Bench and liquidator is at liberty to approach the Police station of the concerned jurisdiction to file appropriate complaint as the very same would amount to trespass under Criminal law."

"we hereby direct the Superintendent of Police, District Palghar, forth



with look into the matter and provide the necessary security to the liquidator and also take stringent, penal action against the plaintiff Mr. E.C. John by arresting him and secure the life of the Liquidator who is an officer of the court"

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 165

Requirement for obtaining special Resolution passed by AGM or EGM under section 10 is not applicable to applications admitted prior to introduction of IBC (Second Amendment) Act, 2018.

CASE TITLE	Amit Gupta v. Yogesh Gupta
CASE CITATION	Company Appeal (AT) (Ins) No.903 of 2019
DATE OF ORDER	20.12.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 10 of IBC

Brief of the case:

In the aforementioned matter, one of the contentions was that this Application was filed under Section 10 of IBC without there being a resolution of the General Body as subsequent to 6th June, 2018 when Sub-Section (3) of Section 10 of IBC was substituted and Clause ‘c’ came to be added. By this amendment to move Application under Section 10, the Corporate Debtor was now required to file special Resolution passed by shareholders of the Corporate Debtor or Resolution passed by at least 3/4th of the total partners of the Corporate Debtor, as the case may be, approving filing of the Application.

Decision:

Hon’ble NCLAT stated that since the Section 10 application was admitted on 26.04.2018 and IBC (Second Amendment) Act, 2018 came into effect from 06.06.2018.

NCLAT held that,

“Under the statutory law, the requirement to get a special Resolution passed by AGM or EGM was provided on 6th June, 2018 in Section 10 of IBC vide Second Amendment Act, 2018 and thus, we do not find that the admitting of proceedings under Section 10 in the present matter on 26th April, 2018 (which was prior in time) to be bad.”

NCLAT *vide* order dated 20.12.2019 rejected the appeal by concluding that in the present matter the process of IBC cannot be allowed to be abused under Section 10 of IBC.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 166

Some rulings from the matter of Anuj Jain interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited

CASE TITLE	Anuj Jain interim Resolution Professional for Jaypee Infratech Limited Vs. Axis Bank Limited,
CASE CITATION	CIVIL APPEAL NOS. 8512-8527 OF 2019
DATE OF ORDER	26 .02.2020
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	<i>Pioneer Urban Land and Infrastructure Ltd. & Anr. v. Union of India & Or, State of Bombay v. R.M.D. Chamarbaugwala and Anr. Mazagaon Dock Ltd v. Commissioner of Income-Tax and Excess Profits Tax, Swiss Ribbons Private Limited and Anr. v. Union of India and Ors.</i>
SECTION/REGULATION	<i>Section 43, 45, 53 and 66 of IBC, 2016</i>

Brief of the case:

Within the ambit of Section 43 of the Code, ordinarily, the following questions shall have to be examined in a given case: (i). As to whether such transfer is for the benefit of a creditor or a surety or a guarantor? (ii). As to whether such transfer is for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor? (iii). As to whether such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets being made in accordance with Section 53? (iv). If such transfer had been for the benefit of a related party (other than an employee), as to whether the same was made during the period of two years preceding the insolvency commencement date; and if such transfer had been for the benefit of an unrelated party, as to whether the same was made during the period of one year preceding the insolvency commencement date? (v) As to whether such transfer is not an excluded transaction in terms of sub-section (3) of Section 43? (Page 73)

Decision:

The combined application under section 43, 45 and 66 should not have filed as the degree of examination in preferential and undervalued & fraudulent are different. (Page 105)

A person having only security interest over the assets of corporate debtor (like the instant third party securities), even if falling within the description of ‘secured creditor’ by virtue of collateral security

extended by the corporate debtor, would nevertheless stand outside the sect of ‘financial creditors’ as per the definitions contained in subsections (7) and (8) of Section 5 of the Code. Differently put, if a corporate debtor has given its property in mortgage to secure the debts of a third party, it may lead to a mortgage debt and, therefore, it may fall within the definition of ‘debt’ under Section 3(10) of the Code. However, it would remain a debt alone and cannot partake the character of a ‘financial debt’ within the meaning of Section 5(8) of the Code. *(Page 157/158)*

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 167

The pendency of actions under the SARFAESI Act or actions under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 does not create obstruction for filing an application under section 7 of Insolvency and Bankruptcy Code, 2016.

CASE TITLE	Rakesh Kumar Gupta Director, M/S Gupta marriage halls Pvt. Ltd v. Mahesh Bansal Interim Resolution Professional M/S Gupta Marriage Halls Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1408 of 2019
DATE OF ORDER	20.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Pegasus Assets Reconstruction Pvt. Ltd. Vs Haryana Concast Ltd. and Anr.; Aditya Kumar Jajodia Vs. Srei Infrastructure Finance Ltd. and Ors.
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case:

In the aforementioned matter, the Appeal has been filed by the Appellant in view of admission of an Application under Section 7 of Code which was filled by Punjab National Bank (Financial Creditor) against Gupta Marriage Hall Private Limited (Corporate Debtor). The Application of the Financial Creditor was admitted by the Adjudicating Authority.

The main contention raised was that the Bank had already resorted to various proceedings under the SARFAESI Act and had also resorted to proceeding under recovery of debts due to Banks and Financial Institutions Act, 1993. As the Bank resorted to those remedies, the Bank could not have filed an Application under Section 7 of IBC and the Application should have been rejected.

Decision:

NCLAT while deciding on the issue relied on the matter of Pegasus Assets Reconstruction Pvt. Ltd. Vs Haryana Concast Ltd. and Anr., and Aditya Kumar Jajodia Vs. Srei Infrastructure Finance Ltd. and Ors., to conclude that,

“The pendency of actions under the SARFAESI Act or actions under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 does not create obstruction for filling an Application under Section 7 of Insolvency and Bankruptcy Code 2016, specially in view of Section 238 of IBC. The Application is more to bring about a Resolution of Corporate Debtor than any penal action or any recovery proceedings. We do not find any substance in the Appeal.”

The appeal was dismissed vide order dated 20.02.2020.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 169

The Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under Insolvency and Bankruptcy Code, 2016.

CASE TITLE	Punjab National Bank Vs. M/s Vindhya Cereals Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 854 of 2019
DATE OF ORDER	26.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Neeraj Jain Vs. Yes Bank Ltd. & Anr</i> <i>Karan Goeal Vs. M/s Pashupati Jewellers & Ors</i>
SECTION/REFERRED	Section 7, 65 & 238 of the Code and Section 13(4) of SARFAESI Act, 2002

Brief of the case:

In the aforementioned matter, FC had filed the application against the CD u/s 7 of the Code in March 2018. Before filing of the application Financial Creditor has served the notice under Section 13 (2) of SARFAESI Act, 2002 dated 03.01.2017 on Corporate Debtor. During the pendency of the application before the AA, Corporate Debtor has sent a proposal for One Time Settlement. However, the FC did not agree with the proposal. The contention raised in the appeal were that whether Financial Creditor can initiate parallel proceedings under SARFAESI Act, 2002 as well as under I&B Code and second question is that whether filing of parallel proceedings attracts proceedings under Section 65 of I&B code.

Decision:

Hon’ble NCLAT set aside the impugned order and held that,
“9. Financial Creditor can proceed simultaneously under SARFAESI Act, 2002 as well as under I&B Code. Section 238 of I&B Code provides that the provisions of this code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by the virtue of any such law. Thus, the non-obstante clause of the I&B Code will prevail over any other law for the time being in force.”

“12. In the application under Section 7 of I&B Code Financial Creditor has mentioned that the Corporate Debtor has sent the notice under Section 13 (2) of SARFAESI Act, 2002, thus, the Financial Creditor has not suppressed any material fact. The Financial Creditor has initiated parallel proceedings against the Corporate Debtor in SARFAESI Act as well as I&B Code, only on this ground it cannot be inferred that proceedings against the Corporate Debtor are fraudulent or malicious.”

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLAT held that the SARFAESI and DRT proceeding will not extend the period of limitation since those proceedings are independent and as per section 238 of Insolvency and Bankruptcy Code, Insolvency and Bankruptcy Code is a complete code and will have overriding effect on other laws.

CASE TITLE	Bimal kumar Manubhai Savalia Vs Bank of India & Anr.
CASE CITATION	Company Appeal(AT) (Insolvency) No. 1166 of 2019
DATE OF ORDER	05.03.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	B.K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates
SECTION/REGULATION	Section 2328 of the IBC

Brief of the case:

An Appeal was preferred by a Shareholder and Director of the Corporate Debtor i.e., M/s. Radheshyam Agro Products Pvt. Ltd. challenging the order dated 20th September, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench.

The contention of the Appellant was that the application filed by the Financial Creditor was time barred. He submitted that the Adjudicating Authority admitted the Application and initiated CIRP of the Corporate Debtor. With regard to the limitation, the Adjudicating Authority observed that the date of mortgage is 18.11.2010, The SARFAESI and DRT started in 2017, One Time Settle (OTS) revised offer from 12 Crores to 14.56 Cores, vide letter dated 01.06.2016 was submitted by the Corporate Debtor to the Financial Creditor-Bank and the credits have come to the loan account on 31.03.2017. The Adjudicating Authority, by observing above, held that the Application is within limitation taking into account the OTS proposal dated 01.06.2016 and the amounts which have come from the Guarantor into the loan account of the Financial Creditor on 31.03.2017.

Decision:

Hon'ble NCLAT set aside the impugned order while holding that:

"9 We are of the view that the SARFAESI and DRT proceeding will not extent the period of limitation since those proceedings are independent and as per section 238 of IBC, the Insolvency and Bankruptcy Code is a complete Code and will have overriding effect on other laws. Therefore, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under debts and due to Banks and Financial Institutions cannot be taken into account for the purposes of limitation. OTS was not accepted by the 1st Respondent/the Financial Creditor, therefore, the same cannot be treated as an acknowledgement in view of Section 18 of the Limitation Act, 1963.

QR CODE FOR FULL ORDER/JUDGEMENT



The definition of “person” in Section 3(23) of IBC is an inclusive definition which inter alia also includes Sole Proprietorship Firms.

CASE TITLE	Neeta Saha, Member of Suspended Board of Palm Developers Pvt. Ltd. v. Mr. Ram Niwas Gupta and Anr.
CASE CITATION	Company Appeal(AT) (Insolvency) No. 321 of 2020
DATE OF ORDER	25.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	R.G. Steels Vs. Berry Auto Ancillaries (P) Ltd
SECTION/REGULATION	Section 3(23), 9 of IBC and Rule 11 of NCLT Rules, 2016

Brief of the case:

The present appeal was filed on the ground that the Sole Proprietorship Firm is not a legal entity under the definition of “person” under Section 3(23) of IBC, and thus application under Section 9 of IBC could not be maintained.

Decision:

After hearing the submissions of both parties, Hon’ble NCLAT overruled the order of NCLT, New Delhi in the matter of ***R.G. Steels Vs. Berry Auto Ancillaries (P) Ltd***, wherein it was held that when the petition was filed by Sole Proprietorship concern it was not held to be a person and the petition was dismissed.

The Hon’ble NCLAT held that,

“Even the judgment shows the name of Respondent No. 1 as the Operational Creditor in his personal name. The Adjudicating Authority in effect has allowed the defects to be cured. The objection on this count does not survive. We also note that Section 2 of IBC provides that the provisions of the Code apply, inter alia, to “proprietorship firms”. Further the definition of “person” in Section 3(23) of IBC is inclusive definition.”

NCLAT vide order dated 25.02.2020 upheld the decision of Adjudicating Authority and dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT



NCLT has no power either to convert Corporate Insolvency Resolution Process into fast track Corporate Insolvency Resolution Process and extending Corporate Insolvency Resolution Process period beyond 270 days, or to reduce the fees and expenses of an Resolution Professional which has already been approved by Committee of Creditors.

CASE TITLE	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Limited & Others
CASE CITATION	Company Appeal(AT) (Insolvency) No. 560 of 2018
DATE OF ORDER	03.01.2019
COURT/ TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

In the present matter, wherein the appellant, Sanjay Kumar Ruia, who was the erstwhile RP for *M/s SN Plumbing Private Limited* had appealed against NCLT orders dt. 25th July 2018 *inter alia* on the grounds that reducing and determining his ‘*Corporate Insolvency Resolution Process Fee*’ and the ‘*cost*’ incurred to the tune of Rs. 23,69,064/-, when the same was approved by the Committee of Creditors, is not permissible in law.

Decision:

While disposing of the Appeal, the NCLAT held that:

- (a) In the present case, as no order has been passed under Section 31(approving resolution plan), nor any order has been passed by the Adjudicating Authority under Section 33(order initiating liquidation), there is no jurisdiction to decide the resolution cost including the fee of the ‘Resolution Professional’.
- (b) The CD in the present case does not fall within the category specified under clauses (a), (b) and (c) of the sub-section (2) of section 55, and therefore, section 55 cannot be invoked against the CD herein.

The NCLAT also held that the NCLT has no jurisdiction to proceed with the CIRP beyond the period of 270 days having not been empowered under the I&B Code, 2016.

QR CODE FOR FULL ORDER/JUDGMENT:



To ensure a robust Insolvency Eco-system, NCLT imposes a heavy cost on unsuccessful bidders inferring mala fide intentions on their part; directs IBBI to form suitable guidelines.

CASE TITLE	Edelweiss Asset Reconstruction Company Vs. Bharati Defence and Infrastructure Limited
CASE CITATION	MA 170/2018 in CP 292/I&B/NCLT/MAH/2017
DATE OF ORDER	14.01.2019
COURT/ TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 7 & 30 of IBC, 2016

Brief of the case and findings:

In the present matter, the NCLT Mumbai Bench imposed a heavy cost (Rs. 20 lakhs) on each of the three unsuccessful bidders observing that the submissions made by the bidders smack of their *mala fide* intentions to delay the CIRP of Corporate Debtor. NCLT observed that, “*the records show that the conduct of unsuccessful bidders throughout the proceedings is not bonafide /genuine, not in the interest of the resolution process of the company. Their submissions/requests/ prayers/claims before this Adjudicating Authority was with a malafide intention to derail/delay the CIRP of the Corporate Debtor. In spite of the direction from the Bench, that if the un successful bidders failed to bring in the Earnest Money Deposit amount of Rs.10 crores, the Bench would levy a cost on them which was agreed by the un successful bidders, but all the three bidders failed to bring in even a single rupee in spite of providing various opportunities which has substantially delayed the entire CIRP.*”

NCLT also directed IBBI to frame suitable guidelines in this regard.

QR CODE FOR FULL ORDER/JUDGEMENT:



Jurisdiction of Civil Court to entertain any suit or other proceedings under the Insolvency and Bankruptcy Code, 2016 is barred.

CASE TITLE	Liberty House Group Pte Limited Vs. State Bank of India
CASE CITATION	CS(COMM) 1246/2018 & IAs No.16056/2018 1&2 CPC) & 16060/2018 (u/O II R-2 CPC)
DATE OF ORDER	22.02.2019
COURT/ TRIBUNAL	Delhi High Court
CASES REFERRED	Oil & Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd.; National Thermal Power Corporation Limited Vs. Ashok Kumar Singh; State of Haryana Vs. Malik Traders
SECTION/REGULATION	Section 65(1)(c) & 231 of the IBC, 2016

Brief of the case:

While dealing with the objections filed by State Bank of India challenging the suit proceedings instituted against it by M/s Liberty House Group Pte. Ltd(Resolution Applicant) before the High Court, in respect of matter pertaining to M/s Castex Technologies Limited (Corporate Debtor) under the Code.

Decision:

The High Court after considering the rival contentions and arguments advanced both the parties, as also taking account of the case-law and the statutory provisions on the subject, concluded that it does not have jurisdiction over the subject matter of the suit. The High Court also observed that “*the entire transaction is in the ambit of the Code*”.

After quoting the language of section 60(5)(c) of the IBC, the High Court observed, “*The questions raised in these lis, have clearly arisen out of or in relation to the insolvency resolution of Castex Ltd. and ARGL Ltd. being corporate debtors. Once it is so, Section 63 of the Code provides, “No civil court.....shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal..... has jurisdiction under this Code”*

The High Court was of the view that since the questions raised in the suits arise out of or in relation to insolvency resolution, which the NCLT has jurisdiction to entertain, the jurisdiction of the High Court will also be barred by Section 231 of the IBC. Emphasizing on the object behind inclusion of such a provision in the Code, the High Court observed that, “*if this Court were to have jurisdiction and apply, instead of the civil law of contracts and guarantees, the Code, for judging forfeiture, ...there is likely to arise a situation of conflicting orders of this Court and of NCLT.*”

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT is not a right forum to initiate recovery proceedings for non-payment of annual listing fees.

CASE TITLE	Alchemist Asset Reconstruction Company Limited Vs. Moser Baer Limited
CASE CITATION	(IB)-378(PB)/2017
DATE OF ORDER	19.03.2019
RELEVANT AUTHORITY	NCLT, Principle Bench
CASES REFERRED	-
SECTION/REGULATION	Section 53 of IBC, 2016

Brief of the case:

An application was filed on behalf of the workmen of Moser Baer India Limited, seeking direction to exclude Provident Fund, Pension Fund and Gratuity Fund from the waterfall mechanism envisaged under Section 53 of the Code and pay tem Provident Fund, Pension Fund and Gratuity Fund dues as those dues will not constitute part of the liquidation estate.

Decision:

NCLT, Principle Bench, New Delhi while deciding Alchemist Asset Reconstruction Co. Ltd. v. Moser Baer Limited vide order dated 19th March 2019 observed that under section 36(4)(a)(III), the expression ‘liquidation estate’ has been defined and it is clarified that all sums due to any workmen or employee from Provident Fund, Pension Fund and Gratuity Fund were not to constitute and include in the expression “liquidation estate assets”.

NCLT allowed the application and made clear that if there is any deficiency to the Provident Fund, Pension Fund and Gratuity Fund, then the liquidator shall ensure that the fund is made available to the said aforesaid accounts, even if their employer has not diverted the requisite amount.

QR CODE FOR FULL ORDER/JUDGEMENT:



Adjudicating Authority can take cognizance of a decree passed by the Civil Court under which the claim has been crystallised.

CASE TITLE	Cortica Manufacturing (India) Pvt. Ltd. Vs. Victory Electricals Limited
CASE CITATION	CP/872/IB/2018
DATE OF ORDER	10.04.2019
COURT/TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	Dem Roll Tech Ltd v. R.L. Steel and energy Ltd.
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

In a recent case, the CD sought dismissal of OC’s application, inter alia on the grounds that the OC suppressed the fact regarding pendency of CD’s Revision Petition before Hon’ble Madras High Court. Countering the allegations, OC brought it to NCLT’s notice that in the Original Suit filed by him (against the CD), a decree was passed and the challenge to the same filed by the CD also failed. He further informed that a Revision Petition has been filed before Madras High Court, but no stay order has been granted therein, and that vide its interim order dt. 18.12.2018, the HC has clarified that the pendency of the Civil Revision Petition shall not amount to an interim stay.

To buttress its case, CD had placed reliance on NCLT’s ruling in the matter of Dem Roll Tech Limited v. R.L.Steel and Energy Ltd., arguing that as against a Decree passed, an Execution Petition could be filed, but an Insolvency Proceedings cannot be used for execution.

Decision:

The Tribunal was convinced that the application (under consideration) is neither for execution of the decree nor for recovery of the decretal amount, but for initiating the CIRP which is on the basis of default by the CD in making payment of decretal amount which is in nature of operational debt.

Thus, concluding, NCLT rejected the objections raised by CD holding that it can take cognizance of the decree passed by the Civil Court under which claim has been crystallized, and further directed for commencement of CIRP and declaration of moratorium.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT has no jurisdiction to pass any order with regard to matter pending before the Court of Criminal Jurisdiction.

CASE TITLE	Prasad Gempex v. Star Agro Marine Exports (P) Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 291 of 2018
DATE OF ORDER	02.05.2019
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 31 of IBC, 2016

Brief of the case:

An order passed under section 31 of IBC by the NCLT, Chennai bench, approving a resolution plan in respect of Corporate Debtor, came under challenge before the NCLAT vide its order, the NCLT, while approving the Resolution Plan, has *inter alia* held as follows:

“13. From the plan approval date, all inquiries, investigation and proceedings, whether civil or criminal, suits, claims, disputes, proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the plan approval date, or arising on account of implementation of this resolution plan shall stand withdrawn and dismissed.”

Decision:

Disposing off the appeal, the NCLAT, while referring to its earlier orders dt. 1st February 2019 vide which the appellant was allowed to file its claim under section 60(6) of IBC with the Court of law, held that *the Adjudicating Authority has no jurisdiction to pass any order with regard to any matter pending before the Court of Criminal Jurisdiction.* The Appellate Tribunal further held *“having given opportunity to move against the ‘Corporate Debtor’ under sub-section (6) of Section 60 of the ‘I&B Code’, the Adjudicating Authority cannot prohibit the aggrieved person to file a claim before the Court of competent jurisdiction or an application before the appropriate Forum.”*

Thus, impugned order passed by the NCLT, insofar as it concerned prohibition on inquiry, investigation, proceedings whether civil or criminal etc was set aside, while the remaining portion thereof concerning approval of the resolution plan was not interfered with.

QR CODE FOR FULL ORDER/JUDGEMENT:



Adjudicating Authority shall take decisions in accordance with law and orders passed by Appellate Tribunal and Hon'ble Supreme Court.

CASE TITLE	State Bank of India Vs. Bhushan Energy Limited
CASE CITATION	C.A No. 922(PB)/2018 in C.P. (IB)-530(PB)/2017
DATE OF ORDER	11.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case and findings:

The Appellate Tribunal vide its order dated June 11, 2019 stated that **'The Adjudicating Authority is suppose to decide the case on merit In accordance with law uninfluenced by any order except the decision of this Appellate Tribunal and the Hon'ble Supreme Court.'**

NCLAT disposed of the appeal filed by the COC seeking directions for early disposal of the matter on the grounds that the it had remitted the matter for consideration of the 'Resolution Plan' submitted by 'JSW Steel' to the Adjudicating Authority vide order dated February 4, 2019. The matter was heard and the order w.r.t the same was reserved. In the meantime the Hon'ble High Court of Punjab and Haryana at Chandigarh passed an order dated April 18, 2019 directing the Adjudicating Authority to follow certain procedure giving reference to the decision of the Hon'ble Supreme Court and holding that any order passed by the Adjudicating Authority/ NCLT, which are in contravention, contradiction or derogation of the directions of the Hon'ble Supreme Court should not be taken into consideration.

The Appellate Tribunal stated that *"The Hon'ble High Court has jurisdiction under Article 226 of the Constitution of India and has also supervisory jurisdiction under Article 227 of the Constitution of India. We are not expressing any opinion as to whether they have the supervisory jurisdiction over all the Tribunals or not, but it is not clear as to how the Punjab and Haryana High Court can pass an order, which has no territorial jurisdiction over Delhi, where Principal Bench of National Company Law Tribunal, New Delhi is situated, who is considering the matter."*

QR CODE FOR FULL ORDER/JUDGEMENT



NCLAT holds NCLT's order in respect of waiver of Income Tax dues as being without jurisdiction.

CASE TITLE	RMS Employees Welfare Trust Vs. Anil Goel
CASE CITATION	Company Appeal (AT) (Insolvency) No. 699 of 2018
DATE OF ORDER	30.06.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Pr. Director General of Income Tax (Admn. & TPS) v. M/S. Synergies Dooray Automotive Ltd. & Ors</i> <i>Swiss Ribbons Pvt. Ltd &Anr. v. Union of India & Ors</i>
SECTION/REGULATION	Section 5(21) and 30 of IBC, 2016

Brief of the case:

An appeal was filed by the Resolution Applicant in the present case, impugning NCLT (Chandigarh Bench) orders dt. 14th September, 2018 whereby, the AA, while approving the Resolution plan, had observed as, "...The matter relating to the waiver of Government dues, including waiver of MAT liability under Section 115J of the Income Tax Act 1961, may be considered by the respective Government Department."

The said observations were challenged on the grounds that debts payable to the Central Government or the State Government or any other authorities are '*Operational Debt*' within the meaning of Section 5(21), and are, thus, payable in accordance with Section 30(2)(b) of the IBC.

Decision:

Hon'ble NCLAT, after taking into account its own orders, passed in the matter of *Pr. Director General of Income Tax (Admn. & TPS) v. M/S. Synergies Dooray Automotive Ltd. &Ors* and wherein Hon'ble SC's judgment passed in the matter of *Swiss Ribbons Pvt. Ltd &Anr. v. Union of India &Ors.* were followed, held as follows:

"7. ..we hold that the part of the impugned order passed by the Adjudicating Authority, as quoted above, relating to waiver of Income Tax is without jurisdiction. The debt of the Central Government or the State Government arising out of the existing law being 'Operational Debt'. the question of asking for waiver does not arise as per the 'Resolution Applicant' to decide how much to be paid to the Central Government or the State Government against the 'Operational Debt' (Income Tax or G.S.T or any other statutory debt), which should not be less than the amount to be paid to the 'Operational Creditors' in the event of a liquidation of the 'Corporate Debtor' under Section 53

The appeal was thus allowed and part of the impugned order, as mentioned above, was set aside.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 180

NCLAT held that the Adjudicating Authority cannot quash the disciplinary proceedings initiated by IBBI, even if proceeding is initiated at the instance and recommendation made by Adjudicating Authority.

CASE TITLE	Insolvency and Bankruptcy Board of India and Rishi Prakash Vats
CASE CITATION	Company Appeal (AT) (Insolvency) No. 324 of 2019
DATE OF ORDER	11.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-

Brief of the case:

An appeal was filed by IBBI (Insolvency and Bankruptcy Board of India) against the order issued by Adjudicating Authority (NCLT, New Delhi Bench) to quash the disciplinary proceedings initiated by IBBI against Rishi Prakash Vats (who was appointed as RP) during the CIRP of *Rana Global Limited*.

In the aforementioned matter, CIRP was delayed for certain reasons and the AA passed an order dated 26th April, 2018 against RP for lack in taking any action in the CIRP proceedings because of a typographical error in his name . Pursuant to this order, IBBI initiated disciplinary proceedings against the RP. Subsequently, RP filed certain explanation before the AA, showing the reasons for delay for execution of the CIRP. Since, the proper explanation was given by the RP, the Adjudicating Authority expunged the earlier order made on 26th April, 2018 and IBBI was informed.

Decision:

NCLAT concluded that, *“once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for disciplinary authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with the law. Such power has been vested with IBBI and in the absence of any power with the Adjudicating Authority/NCLT, the AA cannot quash the proceeding, even if the proceeding is initiated at the instance and recommendation made by the AA/NCLT.”*

The appeal was disposed off and the matter was remitted to the IBBI to pass the appropriate order taking into consideration the orders passed by the AA.

QR CODE FOR FULL ORDER/JUDGEMENT:



It is not open to an appellant to challenge an order admitting its own application

CASE TITLE	Suresh Narayan Singh Vs. Tayo Rolls Limited
CASE CITATION	CA (AT) (Ins.) No. 561 of 2019
DATE OF ORDER	18.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

In present appeal, the Appellant, who represented 284 workers of the CD (M/s Tayo Rolls Ltd.), had sought to challenge Hon'ble NCLT (Kolkata Bench) order dt. 5th April, 2019 whereunder the Appellant application filed u/s 9 of IBC was admitted. The impugned orders were passed by the AA in terms of Hon'ble NCLAT's directions passed in its judgment dt. 26th September, 2018 wherein the Appellant had challenged AA's order dt. 3rd January, 2019 rejecting Appellant's application (filed u/s 9 of IBC) on the ground that application u/s 9 has to be filed by the OC individually and not jointly.

Decision:

Hon'ble NCLAT also recorded the fact that while an application u/s 10 of IBC, was also preferred (by the CD), the same was rejected by AA, and subsequently, while hearing an appeal against the rejection order, the Appellate Authority, though set aside the impugned order, but did not remit the matter back to AA since CIRP was already initiated against the CD in the application filed u/s 9 of IBC.

Expressing its view on the matter, Hon'ble NCLAT held, *The Appellant- Mr. Suresh Narayan Singh having filed application under Section 9 and being successful, on the basis of direction of this Appellate Tribunal his application under Section 9 was admitted. Now, it is not open to the Appellant to challenge the order of admission of application filed by him.*"

The Appellate Authority further held that the appeal is not maintainable also in view of s. 61, IBC, since the appellant is not an aggrieved person since the application preferred by him u/s 9, IBC has already been admitted. The Appeal was accordingly dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT



NCLAT held that NCLT is empowered to pass ad-interim orders, including an order restraining the Corporate Debtor from alienating its assets, before admitting any application under section 7 or 9 of the Insolvency and Bankruptcy Code.

CASE TITLE	NUI Pulp and Paper Industries Private Limited Vs. Roxcel Trading GMBH
CASE CITATION	Company Appeal (AT) (Insolvency) No. 664 of 2019
DATE OF ORDER	17.07.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

M/s Roxcel Trading GMBH (Respondent) filed an application under Section 9 of the Code against the Appellant. When the matter came up for hearing before NCLT, Chennai, the Corporate Debtor (Appellant) submitted that there was an existence of a dispute between the parties. NCLT adjourned the matter till Appellant had to file its reply.

NCLT invoked its inherent jurisdiction under Rule 11 of the NCLT Rules, 2016 and restrained the Appellant and its Directors from alienating, encumbering or creating any third party interest on the assets of the Company except with respect to the withdrawal of the legitimate expenses required for carrying on day to day expenses.

An appeal was filed against this order on the ground that before admission of an application under Sec. 7 or 9, the NCLT has no jurisdiction to restrain a Corporate Debtor and its Directors from alienating, encumbering or creating any third party interest on the assets of the Corporate Debtor.

Decision:

While dismissing an appeal, vide order dated 17th July, 2019, NCLAT held that NCLT is empowered to pass ad-interim orders, including an order restraining the Corporate Debtor from alienating its assets, before admitting any application under section 7 or 9 of the Code.

NCLAT dismissed the appeal and concluded that the AA (NCLT) can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal.

QR CODE FOR FULL ORDER/JUDGEMENT



Exclusive jurisdiction clause does not bar NCLT from entertaining IBC proceedings, NCLAT

CASE TITLE	Excel Metal Processors Limited Vs Benteler Trading International GMBH and Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 664 of 2019
DATE OF ORDER	21.08.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Binani Industries Limited vs. Bank of Baroda and Anr. – Company Appeal (AT) (Insolvency) No.82 of 2018
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

An appeal was preferred before the Hon'ble NCLAT, impugning order dated 25th June, 2019, passed by the Adjudicating Authority NCLT, Mumbai Bench, wherein Adjudicating Authority admitted the application under Section 9 initiating CIRP against Excel Metal Processors Private Limited (Corporate Debtor). The Appellant raised the question of jurisdiction of the NCLT, Mumbai Bench in entertaining the application under Section 9 of the Code based on the Agreement reached between the parties, that as per the Agreement and as the Office of the Respondent – Benteler Trading International GMBH is in Germany, any suit or case is maintainable only in the Court at Germany.

Decision:

Honb'le NCLAT relied on its judgement in the aforementioned matter, wherein it was held that *'Corporate Insolvency Resolution Process'/ insolvency proceedings is not a 'suit' or a 'litigation' or a 'money claim' for any litigation; No one is selling or buying the 'Corporate Debtor' a 'Resolution Plan'; It is not an auction; it is not a recovery, which is an individual effort by the creditor to recover the dues through a process that had debtor and creditor on opposite sides; and it is not liquidation. The object is mere to get resolution brought about, so that the Company do not default on dues.*

Hon'ble NCLAT held that since the office of the corporate debtor was in Mumbai, NCLT, Mumbai Bench had the jurisdiction to entertain an application under Section 9 and the Appellant could not derive advantage of the terms of the agreement reached between the parties.

In view of the aforesaid observation, NCLAT dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 184

Issue of viability, feasibility and other conditions of the Corporate Debtor cannot be looked into by the Adjudicating Authority or by Appellate Tribunal.

CASE TITLE	Sreeram E. Techno School Pvt. Ltd. v. Beans and More Hospitality Pvt. Ltd. Through R.P. Prabhjit Singh Soni
CASE CITATION	Company Appeal (AT) (Insolvency) No. 936 of 2019
DATE OF ORDER	11.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case:

An appeal was preferred by a dissenting financial creditor challenging the approved Resolution Plan on various grounds. The resolution plan was submitted by Mr. Abhay Jain (Promoter), considered by the Committee of Creditors and approved with 74.19% of voting share. The Adjudicating Authority approved the plan by impugned order dated 19th July, 2019. The resolution plan was contended on the ground that the Corporate Debtor is not a going concern.

Decision:

NCLAT in this regard held that “a ‘resolution plan’ cannot be rejected on such ground if the resolution applicant can show the feasibility to run the company in future. The question of viability, feasibility and other conditions as prescribed by the ‘Insolvency and Bankruptcy Board of India (for short, ‘the Board’) of a ‘Corporate Debtor’ can be looked into by the ‘Committee of Creditors’ which has expertise in the financial field. Such issue of viability, feasibility and other conditions of the ‘Corporate Debtor’ cannot be looked into by the Adjudicating Authority or by this Appellate Tribunal. The ‘Committee of Creditors’ having gone through the financial aspects, including the viability, feasibility and other conditions of the ‘Resolution Plan’ and having approved the plan with 74.19% of voting share, this Appellate Tribunal is not inclined to decide such issue.”

NCLAT dismissed the appeal stating that the successful resolution applicant had proposed to pay 100% dues of all the financial creditors with interest including that of the Appellant and hence, no interference is called for.

QR CODE FOR FULL ORDER/JUDGEMENT



NCLAT held that AA cannot reject the application under section 7 of the Insolvency and Bankruptcy Code on the ground that civil suit is pending at various authorities

CASE TITLE	Vinayaka Exports Vs. M/s. Colorhome Developers Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 06 of 2019
DATE OF ORDER	23.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	<i>Innoventive Industries Ltd. Vs. ICICI Bank and Anr.</i>
SECTION/REGULATION	Section 7 of IBC, 2016

Brief of the case:

An appeal was preferred by Vinayaka Exports against impugned order dated 25th October, 2018 passed by the Adjudicating Authority (AA) i.e. National Company Law Tribunal, Chennai Bench, wherein an application was preferred against M/s Colorhome Developers Pvt Ltd under Section 7 to initiate CIRP was rejected by AA. Further, the Adjudicating Authority observed that the petition / application was liable to be dismissed under Section 5(6) and Section 5(6)(a) of IBC and there was a civil suit pending and a dispute existed in the amount of debt between both the parties.

Decision:

Hon’ble NCLAT relied upon the aforementioned judgment and concluded as below:

“13. We find that there is a debt due and payable which is more than Rs. 1 lakh and the same has been defaulted by the Respondent and being satisfied with the grounds as mentioned by the Appellants and in view of the judgment of Hon’ble Supreme Court (supra), we hereby set aside the impugned order dated 25th October, 2018, and hold that it is a fit case to trigger Insolvency Resolution Process.”

Hon’ble NCLAT vide its order dated 23.09.2019 set aside the impugned order dated 25th October, 2018 passed by Adjudicating Authority and directed the Adjudicating Authority to admit the application under Section 7 of IBC.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 186

It is the NCLT having jurisdiction over the registered office of the Corporate Debtor that would have jurisdiction with regard to an application for initiation of insolvency proceedings against the corporate debtor and not the NCLT where properties of the Corporate Debtor may be situated

CASE TITLE	Sh. Naresh Kumar Sharma v. Oriental Bank of Commerce & Anr.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 628 of 2018
DATE OF ORDER	18.09.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 7 of IBC, 2016 and SARFAESI, 2002

Brief of the case:

An appeal was preferred by Sh. Naresh Kumar Sharma, promoter/shareholder of M/s. Shekhar Resorts Ltd. (Corporate Debtor) against the impugned order dated 11th September, 2018 passed by NCLT, New Delhi, Bench-III wherein an application filed by Oriental Bank of Commerce under Section 7 of the Code was admitted.

The Appellant raised the question of maintainability of petition under Section 7 of the Code filed by the Oriental Bank of Commerce, submitting that the NCLT, New Delhi has no territorial jurisdiction as the properties of the Corporate Debtor is situated at State-U.P., of which NCLT, Allahabad has jurisdiction.

Decision:

Hon'ble NCLAT held:

“11. The Registered Office of the ‘Corporate Debtor’ being situated at “New Delhi”, we hold in terms of Section 60(1) the ‘National Company Law Tribunal, New Delhi’ has jurisdiction and not the ‘National Company Law Tribunal, Allahabad’ where properties of the ‘Corporate Debtor’ may be situated. Therefore, the submissions made by the Appellant relating to maintainability of the application under Section 7 before the Adjudicating Authority (National Company Law Tribunal), New Delhi is rejected.”

Hon’ble NCLAT vide its order dated 18.09.2019 with aforesaid observation dismissed the appeal.

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 187

Adjudicating Authority has no jurisdiction to impose conditions with regard to amount which may be recoverable by the Corporate Debtor in future

CASE TITLE	JSW Steel Limited Vs. Vardhman Industries Limited
CASE CITATION	Company Appeal (AT) (Insolvency) No. 467 of 2019
DATE OF ORDER	04.12.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	-
SECTION/REGULATION	Section 30 of IBC, 2016

Brief of the case:

An appeal was preferred by JSW Steel Limited, Successful Resolution Applicant in the CIRP of Vardhman Industries Limited (Corporate Debtor) challenging the part of impugned order dated 16th April, 2019 so far it relates to ‘right to receivables’, ‘carry forward losses’ and ‘subsidiaries, associate companies and joint ventures of the Company’.

With regard to ‘right to receivables’, the Adjudicating Authority directed that any amount recovered by the Corporate Debtor due from any third party which has been written off as bad debts or which stands in the books but has not been recovered as on the date, Adjudicating Authority approved that before being put to any other use, the amount would be used to pay the balance amount to dissenting Financial Creditors.

Decision:

The Appellant submitted that the Resolution Plan was found to be in accordance with Section 30(2) of the Code and was further approved by the CoC with 100% voting shares. In absence of any objection by any of the party, the Adjudicating Authority while passing order under Section 31 of its own, was not empowered to impose any condition either relating to ‘right to receivables’ or ‘carry forward losses’ or ‘subsidiaries, associate companies and joint ventures of the Company’. Hon’ble NCLAT held:

“10. We agree with the submissions made on behalf of the Appellant that the Adjudicating Authority has no jurisdiction to impose such conditions with regard to amount as may be recoverable by the Corporate Debtor’ in future.”

Hon’ble NCLAT vide its order dated 04.12.2019 set aside the part of impugned order.

QR CODE FOR FULL ORDER/JUDGMENT:

CASE NO. 188

Adjudicating Authority is not competent to straight away direct any investigation to be conducted by the Serious Fraud Investigation Office

CASE TITLE	Union of India through Serious Fraud Investigation Office Vs. Maharashtra Tourism Development Corporation
CASE CITATION	Company Appeal (AT) (Insolvency) No. 964 of 2019
DATE OF ORDER	02.12.2019
COURT/TRIBUNAL	NCLAT
CASES REFERRED	Mr. Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari
SECTION/REGULATION	Section 70 of the ‘I&B Code’ and Section 213 & 447 of the Companies Act, 2013

Brief of the case:

Two appeals were preferred by Union of India against the impugned orders dated 24th July, 2019 and 26th July, 2019 passed by the Adjudicating Authority, Principal Bench, New Delhi in two different applications filed by the ‘Resolution Professional’ (now ‘Liquidator’) in respect of investigation into the affairs of the ‘Luxury Train Pvt. Ltd.’ and ‘Zynke Exports Pvt. Ltd.’ (Corporate Debtors) wherein AA directed ‘*Serious Fraud Investigation Office*’, for investigation about siphoning of funds in respect of public money. The question arose before the Hon’ble NCLAT was whether the Adjudicating Authority has jurisdiction to direct the SFIO to investigate about the fraud or siphoning of funds, if any, committed by the Company (Corporate Debtor).

Decision:

Hon’ble NCLAT relied upon its decision in the matter of *Mr. Lagadapati Ramesh v. Mrs. Ramanathan Bhuvaneshwari, Company Appeal (AT) (Insolvency) No. 574/2019 dated 20th September, 2019* and held as follow:

“7.we modify the impugned orders dated 24th July, 2019 and 26th July, 2019 passed in relation to the ‘Luxury Train Pvt. Ltd.’ and ‘Zynke Exports Pvt. Ltd.’ (Corporate Debtors) and refer the matter to the Central Government for investigation through ‘Inspector’ or ‘Inspectors’ to find out whether one or other promoter or officer or employee or any other person related to the company or companies in question have violated the



provisions of Section 70 of the ‘I&B Code’. The matter is referred to the Secretary, Ministry of Corporate Affairs to get the matter investigated by ‘Inspector’ or ‘Inspectors’ following the procedure in terms of Section 213 of the Companies Act, 2013 read with Section 70 of the ‘I&B Code’ and Section 447 of the Companies Act, 2013 or any other offence punishable under Chapter VII of the ‘I&B Code’.”

QR CODE FOR FULL ORDER/JUDGEMENT

CASE NO. 189

The constitutional validity of the provisions of the IBC cannot be decided by the National Company Law Tribunal

CASE TITLE	Hindustan Antibiotics Limited & Anr. Vs Union of India & Ors
CASE CITATION	M.P. No. 3430 of 1989
DATE OF ORDER	06.12.2019
COURT/TRIBUNAL	Bombay High Court
CASES REFERRED	-
SECTION/REGULATION	Section 3(8), Section 3(23) and Section 238 and also Sections 7, 8 & 9 of IBC, 2016

Brief of the case:

An Interim Application was moved by M/s. Hindustan Antibiotics Ltd before the Hon’ble High Court, Bombay. The petitioner in the writ petition prayed before the Hon’ble High Court to hold and declare that the provisions of Insolvency and Bankruptcy Code, 2016 and more particularly Section 3(8), Section 3(23) and Section 238 and also Sections 7, 8 & 9 are unfair, illegal, drastic, unreasonable and arbitrary and are in direct conflict with statutory provisions of Companies Act, 2013 and they are also violative of Article 14 of the Constitution of India so far as “Government companies” are concerned and therefore the same are required to be declared as ultra vires, invalid, null and void.

The employees of the company moved the Company Petition No. CP (IB) No.2482 of 2018 under section 9 of the Code before the Hon’ble NCLT, Mumbai Bench. The petitioner /applicant brought to the notice of NCLT that there were intricate, legal and constitutional issues involved.

Hon’ble High Court held that:

“7. ...We do not think that the National Company Law Tribunal should precipitate the matter when a constitutional challenge is pending before this Court. None can dispute that it is only this Court which can deal with the challenge raised to the constitutional validity of the provisions of the IBC. That the NCLT exercises the jurisdiction conferred on it by the IBC is undisputed. That such an issue with regard to the constitutional validity of



QR CODE FOR FULL ORDER/JUDGEMENT:

CASE NO. 190

Adjudicating Authority has no jurisdiction to decide on the question of first charge or entitlement to proceed under section 52

CASE TITLE	Srikanth Dwarkanath, Liquidator of Surana Power Ltd. v. Bharat Heavy Electricals Ltd
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1510 of 2019
DATE OF ORDER	20.12.2019
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	JM Financial Asset Reconstruction Company Ltd. v. Finquest Financial Solutions Pvt. Ltd
SECTION/REGULATION	Section 52 of IBC, 2016

Brief of the case:

In this above case, Hon’ble NCLAT was called upon to decide as to whether the Adjudicating Authority (AA) has the authority to decide a question as to whether a lender has a first charge over CD’s property and whether it is entitlement to proceed u/s 52 to realise its security interest.

Decision:

While answering the aforementioned issue, Hon’ble NCLAT referred to and reiterated its own holding given in the matter of JM Financial Asset Reconstruction Company Ltd. v. Finquest Financial Solutions Pvt. Ltd. (‘JM Financial’ in short) wherein vide its orders dt. 11th December, 2019, the appellate tribunal inter alia observed that it is the Liquidator who can permit the Secured Creditor to realise its security interest only after taking proof of the existence of such security interest in accordance with clauses (a) and (b) of sub-section (3) of section 52. In JM Financials, it was also held that except the manner as prescribed under sub-section (2), (3) and (4) of Section 52, if a ‘Secured Creditor’ directly applies before the Adjudicating Authority for allowing it to recover the secured assets under sub-section (6) of Section 52, such application is not maintainable”.

Thus, in Srikanth Dwarkanath, Hon’ble NCLAT, reiterated that the AA has no jurisdiction to adjudicate on the question of first charge or entitlement



to proceed u/s 52 to realise its security interest, and that such jurisdiction falls into the domain of the liquidator by virtue of section 52(2) r/w section 52(3) of IBC.

QR CODE FOR FULL ORDER/JUDGEMENT:

CASE NO. 191

The Adjudicating Authority cannot go into the serious disputes which require adducing of evidence.



CASE TITLE	Anjani Gases Vs. B.P. Projects Pvt. Ltd.
CASE CITATION	Company Appeal (AT) (Insolvency) No. 661 of 2019
DATE OF ORDER	29.01.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Mobilox Innovations Private Limited vs. Kirusa Software Private Limited
SECTION/REGULATION	Section 9 of IBC, 2016

Brief of the case:

In the aforementioned matter, the Appellant filed the Section 9 application before the AA for initiation of CIRP of the CD, namely B.P. Projects Pvt. Ltd. (Respondent). Since the Corporate Debtor allegedly committed default in paying the operational debt of Rs. 1,45,74,133/-. The Adjudicating Authority rejected the Application on the ground of existence of serious dispute pending between the Appellant and the Respondent and further holding that the same is required proper adjudication.

Decision:

Hon'ble NCLAT relied on the case of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited* and held that there is a pre-existing dispute that needs to be adjudicated upon. Hon'ble NCLAT observed that,
“However, we are not going into those issues. It is very clear that the IBC is a summary procedure fully time bound as specified in the Act. The Adjudicating Authority cannot go into the serious disputes which require adducing of evidence.
....14. From the facts and records, it is emphatically clear that there is serious dispute between the parties which are prior to issuance of Demand Notice. Neither the Adjudicating Authority nor this Appellate Tribunal sitting in a summary jurisdiction can go into those issues which otherwise required regular trial.”

Hon'ble NCLAT dismissed the appeal without costs vide order dated 29.01.2020.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 192

High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, once the proceedings under the Insolvency and Bankruptcy Code had commenced, and an order declaring moratorium was passed by the NCLT.

CASE TITLE	Mr. Anand Rao Korada Resolution Professional Vs. M/s. Varsha Fabrics (P) Ltd. & Ors.
CASE CITATION	CIVIL APPEAL NOS. 88008801 OF 2019
DATE OF ORDER	18.11.2019
COURT/TRIBUNAL	Supreme Court
CASES REFERRED	-
SECTION/REGULATION	Section7, 231 & 238 of IBC, 2016

Brief of the case:

In the aforementioned matter, the present appeal was filed against impugned order of the Odisha High Court for a stay on the proceedings carrying out the auction of assets of the Corporate Debtor. During the pendency of proceedings before the High Court, M/s. Nandakini Contractors Pvt. Ltd. (Financial Creditor) filed a petition u/s 7 of the IBC, 2016 before NCLT, Cuttack Bench for initiation of the CIRP, and the *NCLT vide* Order dated 04.06.2019 admitted the insolvency petition. The grounds of this appeal were that since insolvency had commenced, the High Court proceedings must be stayed.

Decision

Hon'ble Supreme Court relied on Section 238 (overriding clause) and 231 (bar on jurisdiction) of the Code to state that,

"9. In view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. The High Court passed the impugned Interim Orders dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. The moratorium having been declared by the NCLT on 04. 06.2019, the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Corporate Debtor before the NCLT. If the assets of the Company are alienated during the pendency of the proceedings under the IBC, it will seriouslyjeopardise the interest of all the stakeholders. "

Hon'ble Supreme Court allowed the civil appeals *vide* order dated 18.11.2019.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 193

The Adjudicating Authority as defined in section 5(1) of Insolvency and Bankruptcy Code cannot come within the ambit of Court as defined in section 2(29) of the Companies Act, 2013.

CASE TITLE	Vijay Pal Garg & Ors. Vs. Pooja Bahry (Liquidator in the matter of Gee Ispat Private Limited
CASE CITATION	Company Appeal (AT) Insolvency No. 949 of 2019
DATE OF ORDER	04.02.2020
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 5(1) of IBC, Section 2(29) & 210(2) of the Companies Act, 2013

Brief of the case:

The contentions that were raised were that since Section 210(2) of the Companies Act is invoked, for the purpose of exercise of jurisdiction as per Section 210(2) of the Companies Act, 2013, the meaning of term ‘Court’ or the ‘Tribunal’ has to be considered in terms of the definition specified under the Companies Act, 2013. Hon’ble NCLAT while deciding, stated that the term ‘Adjudicating Authority’, as defined in Section 5(1) of IBC cannot come within the ambit of court as defined in Section 2(29) of the Companies Act, 2013.

Decision

Hon’ble NCLAT held that,
“44. the Adjudicating Authority (Tribunal) in Law is not empowered to order an investigation directly, to be carried out by the Central Government. An Adjudicating Authority (Tribunal) as a competent / Appropriate authority in terms of Section 213 of the Companies Act has an option to issue notice in regard to the charges/allegations levelled against the promoters and others (including the Appellants) of course after following the due procedure enshrined u/s 213 of the Companies Act, 2013. In case an exfacie/prima facie case is made out, then, the Tribunal is empowered to refer the matter to the Central Government for an investigation by the Inspectors and upon such investigation, if any action is required to be taken and if the Central Government subjectively opines that the subject matter in issue needs an investigation, through the Serious Fraud Investigation Office, it may proceed in accordance with Law.”

Hon’ble NCLAT disposed off the appeal and directed the office of Registry to forward a copy of this order to MCA for follow up action *vide* order dated 04.02.2020.

QR CODE FOR FULL ORDER/JUDGEMENT



CASE NO. 194

National Company Law Tribunal or Appellate Tribunal cannot sit in appeal on commercial wisdom of the Committee of Creditors.

CASE TITLE	Vishal Vijay Kalantri and Ors. v. DBM Geotechnics & Construction Pvt. Ltd and Ors
CASE CITATION	Company Appeal (AT) (Insolvency) No. 139 of 2018
DATE OF ORDER	12.03.2020
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors
SECTION/REGULATION	Section 12A of IBC, 2016

Brief of the case:

The order of admission was appealed against in three appeals. One for there being ‘existence of dispute’ which remained pending as a settlement was reached between parties and Section 12A application was filed, another appeal was filed by a resolution applicant against the successful resolution applicant for allowing time for modification of their plan and the last appeal was filed by a shareholder of the CD against the settlement under Section 12A being rejected by the Committee of Creditors.

Hon’ble NCLAT relying on the matter of ‘*Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta & Ors. – (2019) SCC Online SC 1478*’, which stated that the National Company Law Tribunal or this Appellate Tribunal cannot sit in appeal on commercial wisdom of the CoC, observed that,

“the determination/adjudication as to whether the Resolution Plan is in compliance to the provisions of the I&B Code and Regulations framed thereunder is sub judice before the NCLT i.e. Adjudicating Authority being the court of first instance. It is further submitted that the Settlement Proposal of the Appellant under Section 12A of the I&B Code has been rejected by 99.68% [voting share] of the ‘Committee of Creditors’. Furthermore, almost 2[two] years have elapsed since passing of the Admission Order and in the event this Appellate Tribunal interferes with the Admission Order, this would result in one of the creditors filing a fresh application before the NCLT and ‘corporate insolvency resolution process’ of the ‘Corporate Debtor’ would have to be recommenced.

..Consequently, none of the lenders/stake holders would receive their dues from the subsequent ‘corporate insolvency resolution process’ of the Corporate Debtor and the Corporate Debtor would eventually be subjected to nothing but liquidation.”

Hon’ble NCLAT dismissed the appeals preferred by ‘Vishal Vijay Kalantri’ and declared both the appeals preferred by ‘APSEZL’ as infructuous.

QR CODE FOR FULL ORDER/JUDGEMENT:



The National Company Law Tribunal (NCLT) is not the forum to claim damages for non-delivery of goods to a party.

CASE TITLE	Cellpap BV v. Oren Hydrocarbons Pvt. Ltd
CASE CITATION	IBA/937/2019
DATE OF ORDER	05,05,2020
COURT/ TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	-
SECTION/TRIBUNAL	Section 9 of IBC, Section 46(2) of Sale of Goods Act, 1930

Brief of the case:

An application to initiate insolvency proceedings under section 9 of IBC was filed by Cellpap BV (Operational Creditor). The OC had filed a list of documents that supporting its operational debt and amount in default.

Decision:

NCLT, Chennai Bench, referring on Section 46(2) of Sale of Goods Act, 1930 which gives a right to withhold delivery for non-payment of goods, held that:

“the Operational Creditor would have stopped the goods in transit, as soon as he did not receive the payment within 90 days. The Operational Creditor is also left with the remedy for claiming damages from the buyer for non-performance. Moreover, the Applicant has failed to produce any proof of delivery of the goods to the Respondent. So the default cannot be ascertained and as such the claim of Operational Creditor will not qualify as an operational debt.

When the goods are not delivered to the party, the Applicant can only claim for the damages, for which this Tribunal is not the Forum.”

NCLT, Chennai Bench by way of video conferencing, dismissed the petition on the ground that the Applicant was not able to prove existence of its Operational Debt.

QR CODE FOR FULL ORDER/JUDGEMENT:



NCLT cannot direct Forensic Audit at CIRP pre-admission stage.

CASE TITLE	Allahabad Bank v. Poonam Resorts Limited and Link House Industries Ltd
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1303 of 2019
DATE OF ORDER	22.05.2020
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	Innoventive Industries Limited v. ICICI Bank & Anr
SECTION/REGULATION	Section 7 and 75 of IBC, 2016

Brief of the case:

There were twin appeals preferred by same Financial Creditor (Allahabad Bank) against two different Corporate Debtors i.e. Poonam Resorts and Link House Industries (Corporate Debtors), for defaults of a financial debt. The Corporate Debtor moved an application under Section 75 of IBC, claiming that the applications were initiated fraudulently and with a malicious intent to drag a solvent corporate, who was willing to pay amounts that were actually due and payable legally. NCLT, Mumbai Bench, appointed a Forensic Auditor to examine the allegations raised by the Corporate Debtor, instead of admitting or rejecting the application under Section 7.

Decision:

NCLAT sets aside NCLT orders directing forensic audit at pre-admission stage of Sec. 7 application for CIRP initiation to examine allegations raised by the Corporate Debtor.

Hon'ble NCLAT relying on the dictum of Apex Court in *Innoventive Industries Limited v. ICICI Bank & Anr*, allowed the appeal and held that,

“The satisfaction in regard to occurrence of default has to be drawn by the Adjudicating Authority either from the records of the information utility or other evidence provided by the ‘Financial Creditor’. The Adjudicating Authority cannot direct a forensic audit and engage in a long drawn pre-admission exercise which will have the effect of defeating the object of the ‘I&B Code’.

...the ‘I&B Code’ does not envisage a pre-admission enquiry in regard to proof of default by directing a forensic audit of the accounts of the ‘Financial Creditor’, ‘Corporate Debtor’ or any ‘financial institution’. Viewed thus, the impugned order cannot be supported. Application under Section 75 of the ‘I&B Code’ on behalf of the ‘Corporate Debtors’ cannot be permitted to frustrate the provisions of the ‘I&B Code’ when the matter is at the stage of admission.

...Section 75 is a penal provision which postulates an enquiry and recording of finding in respect of culpability of the Applicant regarding commission of an offence. The same cannot be allowed to thwart the initiation of ‘Corporate Insolvency Resolution Process’ unless in a given case forgery or falsification of documents is patent and prima facie established.”

QR CODE FOR FULL ORDER/JUDGEMENT:



CASE NO. 197

The appellant, being at tenant has no locus standi under section 47(1) of Insolvency and Bankruptcy Code to seek any direction against the Liquidator as regards undervalued sale transaction.

CASE TITLE	D & N Taxcon Services Private Limited Vs. Vinod Kumar Kothari
CASE CITATION	Company Appeal (AT) (Insolvency) No. 1347 of 2019
DATE OF ORDER	03.03.2020
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 5(20) & Section 53 of the ‘I&B Code’

Brief of the case:

Nicco Corporation Limited (Corporate Debtor/CD) was directed to undergo liquidation proceedings and liquidator was appointed. The ‘Liquidator’ made newspaper publication for selling the ‘Nicco House’. The Appellant resisted such move on the part of the ‘Liquidator’ (in proceeding with the sale) and alleged that the ‘Liquidator’ had made an unholy nexus with the third party for disposing of the said building as the intending purchasers would not participate in the bidding process on account of building being partially constructed without any approved building plan. NCLT, Kolkata Bench passed impugned order dated 16th October, 2019 while holding that the actions of the ‘Liquidator’ strictly confirmed to Regulations under the ‘Insolvency and Bankruptcy Code’ and the Appellant had no locus standi. Aggrieved thereof the Appellant has filed the instant Appeal assailing the impugned order.

Decision:

On the facts as stated above, Hon’ble NCLAT dismissed the appeal with the below observations:

“The liquidation estate comprising of ‘Nicco House’ admittedly does not belong to the Appellant and in its capacity as tenant, the Appellant having no right, title or interest in ‘Nicco House’ other than the right of occupation in accordance with the terms of ‘Lease Agreement’ does not fall within the ambit of ‘Operational Creditor’ under Section 5(20) of the ‘I&B Code’.

Thus, for being entitled as beneficiary to the proceeds from sale of liquidation assets, it is essential that such beneficiary is either a creditor or belongs to any of the categories enumerated in Section 53 of the ‘I&B Code’. Once it is found that the Appellant is not an ‘operational creditor’ as claimed by it on the strength of ‘Lease-hold Rights’ in ‘Nicco House’, it cannot seek declaration to adjudge a sale transaction affected by the ‘Liquidator’ in respect of liquidation estate as being void within the ambit of Section 47 of the ‘I&B Code’.”

QR CODE FOR FULL ORDER/JUDGEMENT:



Section 47(1) of Insolvency and Bankruptcy Code enables a Creditor to file application where undervalued transactions take place, if Resolution Professional has not reported it to the Adjudicating Authority.

CASE TITLE	M/s. Vitol Vs. Asian Natural Resources (India) Limited
CASE CITATION	IA 230/2017 in CP (LB)No. 19/7/NCLT/AHM/2017
DATE OF ORDER	06.11.2017
COURT/ TRIBUNAL	NCLT, Ahmadabad Bench
CASES REFERRED	-
SECTION/REGULATION	Section 60(5)(c) of the Code

Brief of the case:

The Adjudicating Authority (AA) had passed an order to initiate CIRP against Asian Natural Resources(India) Ltd.(Corporate Debtor/CD) and the applicant is one of the Operational Creditors(OC) of the CD and is thus entitled to file their claim. The questions raised by the OC in this application relate to diversion of funds by the CD and collusion between the financial creditor and the CD. The AA had to look into whether this application would be maintainable under Section 60.

Decision:

NCLT, Ahmadabad Bench noted that the questions raised relate to the Resolution process and in case the resolution process fails would relate to the liquidation process and therefore the application is maintainable under Section 60(5)(c) of the Code.

NCLT further on the issue of when Section 43 and 44 may be invoked, stated that:

“No doubt, Sections 43 to 48 are in Chapter III which deal with liquidation process but not resolution process. Therefore, it may be argued that invoking of the above said Sections comes into picture only in case of commencement of liquidation process but not during resolution process. But Section 43 refers to Resolution Professional also. The question of forming an opinion by the Resolution Professional will arise only during the stage of Resolution Process. Therefore, Section 43 can be invoked. Even during Resolution Process or liquidation proceedings, if there is any grievance that pertains to preferential transactions, the Resolution Professional is entitled to move the Adjudicating Authority under Section 44, and the Adjudicating Authority is empowered to pass orders. Section 45 says about declaration of undervalued transactions by a Liquidator or Resolution Professional. In case of undervalued transactions, Section 47(1) of the Code enables a Creditor, incase Resolution Professional has not reported it to the Adjudicating Authority, to file an application. It is not stated in Section 47 that a Creditor should be a Financial Creditor or a Secured Financial Creditor. Section 47 of the Code applies even during pendency of Corporate Insolvency Resolution Process.”

QR CODE FOR FULL ORDER/JUDGEMENT:



Section 43 and 45 of Insolvency and Bankruptcy Code for the treatment of the avoidance or preferential or undervalued transactions, are applicable even at the stage of Liquidation.

CASE TITLE	Mr. Ram Ratan Kanoongo v. Mr. Sunil Kathuria and Ors
CASE CITATION	MA 436/2018 in CP No.172/IBC/NCLT/MB/MAH/2017
DATE OF ORDER	07.05.2019
COURT/ TRIBUNAL	NCLT, Mumbai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 19 of IBC

Brief of the case:

Applicant (Resolution Professional) sought an order under section 19 of the Insolvency and Bankruptcy Code, 2016 (Code) seeking direction for the promoters/directors of the Corporate Debtor (CD) to co-operate in completion of CIRP, which is now under liquidation process. The Applicant also sought for recovery of 135 Lakhs being preferential transaction with one of the Respondents, the same needs to be vested into the CD.

Decision:

The Hon’ble NCLT, Mumbai Bench observed that the transaction discussed in this order is not done in the ordinary course of business of the Corporate Debtor as assets (stock) has been transferred and no money/payment has been received in respect of the same. Discussing the powers of the liquidator to prefer application for a preferential transaction, NCLT noted that: *“...Now keeping in view the fact that if there is a syphoning off of funds of the Corporate debtor, it is important that the money be brought back for the completion of liquidation proceedings. Section 43 & 45 start with the phrase “Where the liquidator or the resolution professional.....”, hence it can be understood that the avoidance or preferential or undervalued transactions can be handled even at the stage of Liquidation. Therefore, the Code leaves no iota of doubt with respect to the idea that the defaulters should not go scot free, if the funds have been syphoned away. Therefore, it is important to decide this application so that the doubtful transactions be undone and the money be brought back to the Corporate Debtor. Henceforth, the Liquidator shall take due action as prescribed under law.”*

Tribunal held that the transactions discussed were not made in the ordinary course of business or financial affairs of the Corporate debtor and satisfy the criteria of section 43 of the I&B Code to be labelled as preferential transactions. Therefore, the prayers of the Applicant are allowed.

QR CODE FOR FULL ORDER/JUDGEMENT:



A transaction involving a non- related party, cannot be challenged under section 43, if the same was undertaken one year prior to the commencement of CIRP.

CASE TITLE	V. Nagarajan (Liquidator) for M/s Cethar Ltd. v/s. Asset Reconstruction Company India Ltd. & Anr
CASE CITATION	Company Appeal (AT) (Insolvency) No. 328 of 2018
DATE OF ORDER	30.08.2018
COURT/ TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	-
SECTION/REGULATION	Section 43 of IBC, 2016

Brief of the case:

Appellant(Resolution Professional/ Liquidator) had preferred this appeal against order of NCLT, Chennai Bench, whereunder the application preferred by the appellant under Section 43 of the Insolvency and Bankruptcy Code, 2016(Code) was rejected.

The contention was regarding the date on which the said preferential transaction would have taken place and in that regard it was held that it was not in dispute that the Demand Draft was prepared prior to 30.05.2016, which were also shown as consideration amount and recorded in the Sale Deed dated 30.05.2016. NCLAT held that the sale was complete on 30.05.2016. As to on which date amount was deposited in the account of the Corporate Debtor that could not be grounds to shift forward the date of Sale Deed to 14.10.2016.

Decision:

Hon'ble NCLAT held that:

“6. Admittedly, the 2nd Respondent is not a related party to the Corporate Debtor and therefore, for preferring an application under Section 43 in respect to transaction made with 2nd Respondent one has to refer to clause (b) of Sub-section (4) of Section 43. In the said provision the period of one year preceding the insolvency commencement date is prescribed to find out whether any preferential transaction was made in favour of any person other than the related party.

7. Admittedly, the insolvency commencement date (date of admission) in the present case is 16.06.2017, the execution of Sale Deed reached finality on 30.05.2016 that is much prior to one year preceding the insolvency commencement dated.”

In the view of aforesaid findings, NCLAT dismissed the appeal holding that NCLT had rightly rejected the petition.

QR CODE FOR FULL ORDER/JUDGEMENT:



Section 43 of the Code shall be invoked if, (1) there shall be transfer of property or interest from the Corporate Debtor to a Creditor, (2) and it must be for the benefit of such Creditors in preference to the other Creditors of the Corporate Debtor.

CASE TITLE	Orchid Pharma Limited Vs. Orchid Health Care Private Limited
CASE CITATION	MA/87/IB/2018 in CP/540/IB/2017
DATE OF ORDER	04.07.2019
COURT/ TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	-
SECTION/REGULATION	Section 43, 45 & 66 of IBC, 2016

Brief of the case:

The Resolution Professional filed an application under Section 43 of the Insolvency and Bankruptcy Code (Code) against the corporate debtor and its directors, to seek reversal of a transaction on the ground that the Respondents received benefits of the payment falling within the ambit of Section 43 of the Code.

The grievance of the Applicant was that since these adjustments fall within two years before the admission of the Company petition and since one of the Respondent was a related party to the Corporate Debtor as contemplated under Section 5(24) of the Code, the transactions made in the form of adjustments had to be construed as preferential transaction falling within the relevant time and directions be given to respondents to pay back that money to the Corporate Debtor under Section 44 of the Code.

Decision:

On perusal of the application, NCLT, Chennai Bench (Special Bench) stated that to invoke Section 43 certain elements need to be completed. The Special Bench stated,

“...to invoke Section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from the Corporate Debtor to a Creditor, (2) and it must be for the benefit of such Creditors in preference to the other Creditors of the Corporate Debtor in the event of a distribution of assets being made in accordance with Section 53 of the Code..”

NCLT, Chennai Bench *vide* order 04.07.2019 dismissed the petition stating that there were mutual obligations between the appellants and respondents; and the adjustments made were shown in the books of the Corporate Debtor, therefore, the transaction would not fall within the ambit of Section 43 of the Code.

QR CODE FOR FULL ORDER/JUDGEMENT:



If it is shown as transaction falling within the exemption of ordinary course of transaction, then though such transaction falls within look back period, it shall not be treated as preferential transaction.

CASE TITLE	V-International v. Mr. Karuppiah Murganandan (IRP of Samaara Leathers Pvt. Ltd.)
CASE CITATION	MA/770/2019 in IBA/141/2019
DATE OF ORDER	30.08.2019
COURT/ TRIBUNAL	NCLT, Chennai Bench
CASES REFERRED	-
SECTION/REGUALTION	Section 9 of IBC, 2016

Brief of the case:

The application was filed against the Corporate Debtor(CD) to direct the IRP/RP to permit the Applicant (V-International) to remove equipment from CDs premises to Applicant's factory. The sale of the said equipment was done pursuant to initiation of CIRP against CD and the claim of the Applicant was that they were not aware of the same.

Decision:

NCLT, Chennai Bench observed that the transaction fell in the "look back" period as mentioned in Section 33 of the Insolvency and Bankruptcy Code (Code) and since it will be considered a preferential transaction, the equipment cannot be moved from the CD premises to the Applicant.

NCLT, while interpreting Section 43(3) of the Code, stated that:

"As to Section 43 transaction is concerned, this Bench need not look into as to whether it is 'bonafide transaction' or a transaction entered into with a view to cause loss to the Corporate Debtor. The person asserting something as a preferential transaction has to show that said transaction has taken place and it is falling within the 'look back period as mentioned under the Code. If at all it is shown as transaction falling within the exemption of ordinary course of transaction, then though such transaction falls within look back period, it shall not be treated as preferential transaction. Apart from this, there is no room to take shelter under the doctrine of bonafide transaction because no such provision has been carved out in addition to the exemptions already provided in section 43 of the Code."

NCLT held that since the transaction did not fall in the exemption, the asset could not be held to be claimable by the Applicant, the alleged transaction could not be held valid and the application was therefore dismissed.

QR CODE FOR FULL ORDER/JUDGEMENT:



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