

IBC

Judicial/Regulatory Rulings for Stakeholders

(A Handbook)



INSTITUTE OF INSOLVENCY PROFESSIONALS

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PREFACE

The Insolvency and Bankruptcy Code, 2016 ("Code") is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. 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.

IBC Judicial/Regulatory Rulings for Stakeholders is a collective effort of team members of ICSI IIP comprising of Ms. Ankita Agarwal (Executive) and Ms. Shikha Sukhija (Executive) led by Ms. Lakshmi Arun (Head of Education and Training, ICSI IIP). It contains brief of directions and observations passed by various Adjudicating Authorities as well as directions given by IBBI under the Insolvency and Bankruptcy Code, 2016 and would be useful as a comprehensive guide.

We are confident the reference material 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.

ABOUT THE BOOK

Whenever a new law comes into existence, the various stakeholders tend to take different views on issues and matters dealt with in the law. The judicial authorities settle the law and such difference of opinions to pave a clear way for the future. The judicial authorities in different matters has given directions to various stakeholders relating to conduct of an Insolvency Professional during CIRP, relating to conduct the meeting of Committee of Creditors, invitation of resolution plan, escalation of CIRP process cost etc. The Judicial and Regulatory Authorities have not only reprimanded the Insolvency Professionals but have also on various occasions appreciated the conduct of the Insolvency Professionals and empowered them through their directions.

IBC Judicial/Regulatory Rulings for Stakeholders - A Handbook, is a collective effort of our team members and is a collection of various directions and observations passed by various Adjudicating Authorities under the Insolvency and Bankruptcy Code, 2016 amended time to time, to understand and to facilitate the stakeholders about the various provisions of the Code.

This book not only includes the announcements pronounced by the Adjudicating Authorities, but also the directions passed by the Regulatory bodies and it acts as a comprehensive guide which broadly covers only the important and specific directions or advise given to various stakeholders under the Code.

About ICSI IIP

ICSI Institute of Insolvency Professionals is a frontline regulator registered with Insolvency and Bankruptcy Board of India under the Insolvency and Bankruptcy Code, 2016. 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. ICSI IIP is cast with onerous task of enrolling, educating, training, as well as monitoring the performance of the members, laying down the standards of professional conduct and disciplining the members whenever required. ICSI IIP has registered about 800 IPs who are Company Secretaries, Management experts, Advocates, Cost Accountants and Chartered Accountants.

Since its inception, ICSI IIP has carried out a number of activities for the education and development of Insolvency Professionals such as bringing out practical oriented publications such as Practical aspects of Insolvency Law, Interim Resolution Professionals : A Handbook, Judicial Pronouncements under the code 2016-Issue Analysis, organizing intensive training programmes, interactive sessions with Regulators and Adjudicating Authorities, webinar sessions specially focusing on practical challenges etc. ICSI IIP is the first organization to bring out a monthly journal exclusively on Insolvency. In the years to come, ICSI IIP strives to establish itself as a supportive wing of IPs for their development and to have an effective oversight mechanism for monitoring and disciplining of insolvency professionals.

In its attempt to train and educate, ICSI IIP has prepared this assortment of Judicial and Regulatory Rulings to encourage minds to broaden and delve deeper into the issues faced by various stakeholders. We hope the readers gain some insight into the problems faced in implementation of the new law and leads to refinement in the statutory law and custom in the days to follow.

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ABBREVIATIONS

AA	Adjudicating Authority
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
Code	Insolvency and Bankruptcy Code, 2016
DC	Disciplinary Committee
EoI	Expression of Interest
ED	Enforcement Directorate
FC	Financial Creditor
HC	High Court
IBBI/Board	Insolvency and Bankruptcy Board of India
I&B Code	Insolvency and Bankruptcy Code, 2016
IBC	Insolvency and Bankruptcy Code, 2016
IP	Insolvency Professional
IRP	Interim Resolution Professional
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
OC	Operational Creditor
PMLA	Prevention of Money Laundering Act, 2002
RP	Resolution Professional
RV	Registered Valuers
SC	Supreme Court
SICA	Sick Industrial Companies Act, 1985
SPV	Special Purpose Vehicle

INTRODUCTION

Balancing the Interest of stakeholders, is one of the preamble of Insolvency and Bankruptcy Code, 2016 (the Code). When the Corporate Insolvency Resolution Process (CIRP) is initiated, the management of corporate debtor is shifted from the hands of promoters of corporate debtor to Interim Resolution Professional/Resolution Professional who is appointed by the Adjudicating Authority to manage the affairs under the supervision of Committee of Creditors that is vested with powers of decision making including decision to resolve the affairs of corporate debtor. During the CIRP period of 330 days (with one time extension of 90 days by Adjudicating Authority) the Resolution Professional and the Committee of Creditors (consisting of only financial creditors) are expected to perform in a time bound and transparent manner, in the best interest of all stakeholders, including operational creditors, corporate debtor and other stakeholders for maximization of value of assets of such persons.

This handbook is collation of some of the important directions and observations by NCLT/NCLAT/High Court/Supreme Court that have steered various stakeholders into achieving the objectives enshrined under the Code that have been explained in a fair and elementary way to facilitate the learning for all stakeholders.

The advices / learning are classified into following categories of stakeholders :

1. Interim Resolution Professionals/Resolution Professionals
2. Liquidators
3. Committee of Creditors
4. Corporate Debtor and related parties
5. Financial Creditors
6. Operational Creditors
7. Adjudicating Authorities
8. Other Stakeholders

1. DIRECTIONS TO INTERIM RESOLUTION PROFESSIONALS

The judicial pronouncements/regulatory orders relating to Resolution Professionals have broadly fine tuned the conduct of Resolution Professionals during CIRP; conduct of the meetings of Committee of Creditors, invitation of resolution plan, escalation of CIRP process cost and charging of exorbitant fee by resolution professionals etc., in line with the intentions of the legislature while enacting the law.

I - SUPREME COURT ORDERS

1.	04.10.2018	Arcelormittal India Private Limited (Appellant) Vs. Satish Kumar Gupta and Ors. (Respondents)
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RP is not empowered to 'decide' whether resolution plan contravenes any provisions of the law.

The RP is required to examine that the resolution plan submitted by resolution applicant(s) is complete in all respects, before submitting it to the CoC. RP is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the CoC, who may or may not approve it.

The fact that the RP is required to examine to confirm that a resolution plan does not contravene any of the provisions of law for the time-being in force, including Section 29A of the Code, only his prima facie opinion is to be given to the CoC that a law has or has not been contravened.

Thus, Section 30(2)(e) does not empower the RP to 'decide' whether the resolution plan does or does not contravene the provisions of law.

II- NCLAT ORDERS

2.	28.02.2018	Sandeep Kumar Gupta (Appellant/RP) Vs. Stewarts & Lloyds of India Ltd. & Anr. (Respondents)
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AA can engage another person as RP/Liquidator

NCLAT held that the observations made by NCLT in the impugned order should not be construed to be misconduct on the part of the Appellant (RP) but since NCLT was not satisfied with the performance of the RP, it was well within its jurisdiction to engage another person as RP or Liquidator. Further, if any appointment is made from the list of RPs being made available by the IBBI to the Adjudicating Authorities, it should be treated to be an appointment of RP/Liquidator on the recommendation of the Board.

3.	15.05.2018	Rajputana Properties Pvt. Ltd. (Appellant) Vs. Ultra Tech Cement Ltd. & Ors. (Respondents)
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RP cannot hold or decide as to who is ineligible under Section 29A

NCLAT held that in the absence of any information through any source while scrutinizing the resolution plan under Section 30 (2), the RP cannot hold or decide as to who is ineligible under Section 29A. Neither Section 30 (2) nor any other provision in the Code confers such power on the RP to scrutinize the eligibility of Resolution Applicants.

The resolution plan submitted by one or other Resolution Applicant, being confidential, cannot be disclosed to any competitor Resolution Applicant

The RP is required to examine whether the resolution plan confirms the provisions as mentioned therein, but he cannot disclose it to any other person, including resolution applicant(s) who has submitted the resolution plan. The resolution plan submitted by one or the other resolution applicant being confidential cannot be disclosed to any competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other resolution applicants.

RP's duty with respect to service of notice for the Meetings of CoC

The RP is not only required to give notice of the meeting to the members of CoC, but also to the members of suspended Board of Directors or partners of the corporate person, as the case may be.

The OCs or their representatives are also to be informed to attend the meeting of CoC, if the amount of the aggregate dues is not less than ten percent of the debt.

4.	16.07.2018	State Bank of India (Appellant) Vs. Ram Dev International Ltd. (Respondent/Corporate Debtor)
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Being on the empanelled list of Financial Creditor cannot be ground to reject the appointment of RP

The appointment of Resolution Professional during CIRP cannot be rejected on the ground that he is on the empanelled list of Financial Creditor unless, there is a disciplinary proceeding pending against him or he is an interested person being employee or in the payroll of the Financial Creditor.

5.	07.09.2018	Numetal Ltd. (Appellant) Vs. Satish Kumar Gupta, RP and Ors. (Respondents)
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The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.

The resolution plans of Numetal Limited and Arcelormittal India Pvt. Ltd. (Resolution Applicants) were rejected by RP on the ground of disqualifications under Section 29A of Code. The Tribunal stated that the CoC along with the RP is a creature of the statute. They can be termed as an instrumentality of state and, are under the statutory obligation to follow the mandate of the Code, the basic principles of administrative law and law of the land. The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.

6.	14.11.2018	Binani Industries Limited (Appellant/Corporate Debtor) Vs. Bank of Baroda and Anr. (Respondents)
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The approval of the Resolution Plan is not the domain of the RP.

The approval of the Resolution Plan is in the domain of the CoC and not that of RP.

If the Resolution Plan is approved by the CoC and does not provide for full satisfaction of claims of OCs, in absence of any power of the RP to reject such resolution plan, the RP cannot be blamed for the same.

7.	01.10.2019	Mr. S. Rajendran, RP (Appellant) Vs Jonathan Mouralidarane (Respondent/Financial Creditor) in the matter of PRC International Hotels Private Limited, Corporate Debtor
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RP has no jurisdiction to determine the claim after being determined by AA in a specific case

If an aggrieved person moves before the AA and the AA after going through all the records, comes to a definite conclusion that certain claimed amount is payable than the RP should not have moved in Appeal, as in any manner, he will not be affected. In such a case, RP had no jurisdiction to “determine” the claim. He could have only “collated” the claim, based on evidence and the record of the ‘Corporate Debtor’ or as filed by FC.

8.	14.10.2019	Anurag Nirbhaya (Appellant) Vs. Anuj Maheshwari & Ors. (Respondents)
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Fee claimed by IRP to be exorbitant

IRP claimed Rs.12 Lakhs for the first month and claimed @ Rs.11 Lakhs per month for the period of rest of the two and half months and he was paid Rs.6 Lakhs for the total period of Three and half months. The AA observed that the exorbitant fee has been claimed by the IRP and stated that generally they allow fee @ Rs.1 Lakh per month to the Professionals.

III- NCLT ORDERS

9.	07.08.2017	IDBI Bank Ltd. (Applicant) Vs. Lanco Infratech Ltd. (Respondent/Corporate Debtor)
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RP should not accept too many assignments.

The Court held that an Insolvency Professional must refrain from accepting too many assignments, if he is unable to devote adequate time to each of his assignments as per Clause 22 of First Schedule of the Code of Conduct for Insolvency Professionals under the IBBI (Insolvency Professionals) Regulations, 2016.

10.	12.01.2018	In the matter of Vedika Nut Crafts Pvt. Ltd (Applicant/Corporate Debtor)
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RP should engage another counsel only if he is incapable of handling the matter on his own.

The AA pointed out that RP has engaged a counsel for presenting the case on the last date of hearing despite the fact that RP being an advocate practicing for many years. The AA observed that there was hardly any necessity to engage another counsel.

11.	16.01.2018	ICICI Bank Limited (Applicant) Vs. Essar Power Jharkhand Ltd. (Respondent/Corporate Debtor)
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IRP should not certify in Form 2 that application is true, accurate and complete

Form 2 requires an optional declaration from IRP certifying that facts averred by the application are true, accurate, and complete and a default has occurred. AA observed that such a form is negation of principle of fair play impinging upon the independent character of an IRP who has to act as an independent umpire. IBBI was directed to relook on this part. Petitioner was directed to name another IRP.

12.	13.03.2018	Punjab National Bank (Applicant) Vs. DivyaJyoti Sponge Iron Pvt. Ltd (Respondent/Corporate Debtor)
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RP should not ask for exaggerated insolvency resolution cost.

The AA took notice of fixation of exaggerated insolvency resolution cost, inclusive of fixation of fee of RP in a lump sum manner by the CoC without applying its mind as regards fate of CD, the volume, nature and complexity of CIRP. It observed that it is time to have legitimate guidelines or regulation in this regard so as to safeguard and to ensure the prospects of revival of a dying CD not be at the highest cost which cannot be affordable by the CD. It hoped that the IBBI would frame necessary regulations/ guidelines for fixation of fees and resolution cost by a RP.

13.	19.03.2018	V. Nagarajan (Applicant) Vs. K. Subburaj & Ors. (Respondents) in the matter of Cethar Ltd. (Corporate Debtor)
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RP has to follow the directions of the Tribunal and non compliance of the same will result in penalty.

NCLT, in its previous order, had given direction to the Counsel for the RP to make sure that the RP remain present in person before the Bench in the next date of hearing of case, for receiving the documents from the respondent and yet RP failed to make his appearance. The respondents had brought in the documents as demanded by the RP by paying the transport charges. The AA directed the Counsel for the RP to receive the documents and take the same to the registered office of the CD and make payment for the transport charges. The AA also imposed on the RP a cost of Rs. 10,000/- payable to the counsel for respondent for non-compliance of its order.

14.	20.03.2018	InderPreet Singh (Applicant) Vs. Mariners Buildcon India Limited (Respondent/Corporate Debtor)
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Earlier RP will have to cooperate with the new RP wherever they require.

The AA held that the earlier RP shall support the new RP. The earlier RP is

requested to submit all information/audited books to the new RP along with the password to his official email ID that was used to handle the CIRP and related communications.

15.	23.03.2018	In the matter of LML Ltd. (Applicant/Corporate Debtor)
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RP should follow the timeline prescribed under the Code.

The AA observed that the RP has failed to submit the Progress Report/ Resolution Plan within the statutory period of 270 days .The RP filed the application for liquidation, after issuance of the notice by the AA against him for submission of progress report/ resolution plan. The RP was not careful in following the timeline prescribed under the Code, and therefore, it was not proper to appoint the RP as liquidator in the said case. It directed the RP to handover all the documents to the liquidator to be appointed.

16.	02.05.2018	Braj Bhushan Das & Ors. (Applicants) V/s Mr. Vijay Kumar V Iyer, RP, in the matter of Binani Cement Limited (Corporate Debtor)
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RP has to comply with the provisions of the Code in submitting the resolution plan before CoC.

A revised offer was presented in front of the RP by the resolution applicant. NCLT advised that RP is directed to comply with the provisions of the Code and regulations in submitting the revised offer before CoC. CoC is directed to consider the revised offer by giving an opportunity to have hearing if any for further modification is found necessary. The reason that the process document does not permit the RP and the CoC to consider the revised offer of the applicant [UltraTech] has no legal force at all. There are no provisions in the process document or in the clarification matrix that its makers cannot amend if the need arises.

17.	04.05.2018	Sunrise Polyfilms Pvt Ltd. (Applicant) Vs. Punjab National Bank, (Respondent/FC) in the matter of Siddhi Vinayak Logistic Limited (Corporate Debtor)
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RP cannot file for liquidation before inviting applications for resolution plans.

The RP filed an application praying for an order of liquidation. NCLT noted that the RP did not invite application for resolution plan and straight away decided to go for liquidation. NCLT observed that it is clear that the RP has neither performed his statutory duties and responsibilities nor the CoC seems to have shown much interest and made efforts to achieve the object of the Code for exploring the possibilities for revival of the company. NCLT directed the RP to invite and consider plans of resolution applicants, if any, and take the same to CoC as per mandate of the Code.

18.	15.05.2018	Mussadi Lal Kishan Lal (Applicant) Vs. Ram Dev Int. Ltd (Respondent/Corporate Debtor)
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RP has to be an independent party for conducting CIRP.

The State Bank of India is a member of the CoC. The name of Mr. K.V. Somani, who has been on the panel of erstwhile State Bank of Hyderabad which is now merged with State Bank of India, was proposed by the CoC to act as the RP by replacing the earlier RP, Mr. Rakesh Kumar Jain. In such like circumstances, the proposed RP cannot be regarded as independent umpire to conduct CIRP as required by well settled practice and therefore, NCLT cannot accept the request made by the learned Counsel for the CoC.

19.	16.05.2018	Takkshill Enterprises (Applicant) Vs. IAP Company Pvt. Ltd. (Respondent/Corporate Debtor)
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IP cannot be discharged of his duties for vague reasons once he has given his consent

The AA appointed one of the IPs from the IBBI empanelled list of IPs to act as IRP for the CIRP of the CD. Instead of discharging the functions as IRP, he filed an application for discharge. The AA dismissed the application

with costs with an observation that “The practice of IRP’s appointed by NCLTs based on panel provided by IBBI and subsequently trying to resile from their consent earlier given and that too upon appointment by the AA is strongly required to be eschewed and is to be nipped in the bud at the earliest opportunity.” Furtherance to the same, it directed the IRP to commence the performance of his duties. It also directed IBBI to take such action against the unprofessional act of the IRP as contemplated under various Regulations as framed by it in relation to IP and IPA empanelled with it.

20.	03.08.2018	Punjab National Bank (Applicant) Vs. Mintri Tea Company Private Limited (Respondent/Corporate Debtor)
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RP cannot withdraw any resolution plan as that power lies only with the CoC.

The Court held that after approval of resolution plan by the CoC, the RP cannot file an application for withdrawal as per Section 12A of the Code. The power of approval of resolution plan lies only with the CoC.

21.	05.09.2018	Mr. Pankaj Agarwal (Applicant) Vs. Partha Kamal Sen (Respondent/IRP) in the matter of Prism Infracon Ltd. (Corporate Debtor)
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AA directed the IRP to allow the applicant to be appointed as representative for debenture holders of the corporate debtor

An application under section 60 (5) of the Code was filed seeking a direction to the IRP to accept the applicant as one of the members of the CoC as a representative of 86 debenture holders of the CD. The AA noted that where the terms of financial debt provide for appointment of a trustee or agent to act as authorised representative for all FCs, such trustee or agent shall act on behalf of such FCs. However, trustees to manage the affairs of debenture holders are debarred by SEBI from acting as intermediary of the trust in this matter. Therefore, each debenture holder has to submit his claim to the IRP. However, section 21 (6A) of the Code allows the class of creditors to appoint their representative to attend the CoC meeting. Accordingly, the AA directed the IRP to allow the applicant to act as representative of creditors.

22.	16.10.2019	Amar Universal Private Limited (Applicant) V/s. SK Wheels Private Limited (Respondent/Corporate Debtor)
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Abuse of dominant position by RP by not paying rent to the landowner with ‘malicious intention’.

In this matter, the corporate debtor defaulted in making payments towards the license fee to the applicant against his premise which was taken on rent. The applicant filed the claim and same pending for consideration of RP for four months.

The AA further observed that: *“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.”*

“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.”

IV- IBBI ORDERS

23.	13.04.2018	In the matter of Mr. Dhaivat Anjaria, Insolvency Professional
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RP should consider the claims he receives and follow the timeline for the CIRP.

The DC found that Mr. Anjaria, as IRP, did not consider the claim of one of the claimants. He did not even respond to him. He was subsequently appointed as RP in the CIRP. As RP, he neither considered the claim nor responded to the claimant. He disregarded his duty to receive and collate claims and also the timeline for the same. He did not respond to IBBI. He made the claimant as well as IBBI helpless. The DC accordingly imposed a penalty equal to one tenth of the total fee payable to him as IRP and RP in the CIRP of Electrosteel Steels Ltd.

24.	18.04.2018	In the matter of Mr. Mukesh Mohan, Insolvency Professional
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RP should not mislead the CoC, NCLT and IBBI during CIRP.

On examination of the Interim Inspection Report detailing the conduct and transgression of the IP in two matters, the DC found that the IP had attempted to mislead the CoC, NCLT and the IBBI, outsourced his responsibilities to a third person, acted beyond his authority without the approval of the CoC, acted for on behalf of one of the creditors, etc. Accordingly, the DC, by an interim order, debarred the IP from undertaking any new assignment either as an IRP/RP/Liquidator or otherwise under the Code. It directed the said debarment would cease to have effect on the expiry of 90 days from the date of the Order.

25.	03.05.2018	In the matter of Ms. Bhavna Sanjay Ruia, Insolvency Professional
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RP should not charge exorbitant fees for any assignment.

Ms. Bhavna Sanjay Ruia contracted a professional IRP fee of Rs.5 crore till the first meeting of the CoC and a monthly fee of Rs.1.75 crore for the subsequent months as IRP/RP. The IBBI found professional fee of such magnitude for her services as IRP / RP exorbitant and not reasonable reflection of the work to be done by her. It was found unreasonable by any standard - in relation to the compensation of the MD & CEO of the same CD, fee of an IP for a similar CIRP, fee earned by Ms. Ruia as IRP / RP in a similar CIRP, opportunity cost of time of Ms. Ruia, fee payable to a liquidator of a similar CD, outstanding debt of Rs.4.16 crore of the CD, etc. Ms. Ruia attempted to mislead the stakeholders, IBBI and the DC by a series of misrepresentation of facts and severely compromised her status as a fit and proper person. The DC, therefore, suspended the registration of Ms. Ruia for a period of one year.

26.	23.08.2018	In the matter of Mr. Mukesh Mohan, Insolvency Professional
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RP cannot make false claims in the Expression of Interest (Eoi) and cannot take post facto approval of the CoC.

No single creditor, whether secured or unsecured, can substitute the CoC and RP must not engage in private communication with a creditor, irrespective of its voting power or share. The RP made a false claim that the Expression of Interest (EoI) had the requirement for resolution applicants to have a CA Certificate where in fact no application had this requirement. Additionally, he did not identify a CA for verification of eligibility on his behalf, he asked the interested party, namely, resolution applicant to obtain a certificate from a CA, who, in any case, is not professionally qualified to undertake this responsibility keeping in view the provisions of Section 29A of the Code. He claimed that the EoI was made with approval of the CoC. This was a post facto approval. The RP must have approval of CoC for laying down the eligibility criteria under section 25(2) (h) of the Code. This cannot be a post facto approval. The RP is the sole authority for taking a view on irregular transactions and filing applications before the AA seeking appropriate relief. The CoC has no authority to decide the merits of such transactions and whether to file and when to file the application before the AA. It can, however, raise a concern if the RP does not discharge his duties, including his duties in respect of irregular transactions, in accordance with Code. The work of a forensic auditor and a registered valuer has a substantial bearing on outcome of a CIRP, particularly on maximization of value of the assets of the CD. The IP must ensure that the professionals, including forensic auditors and registered valuers, engaged by him to assist him in CIRP must not have any conflict of interest. IBBI concluded that an IP must perform his defined role under the Code and must not usurp other's role and must not allow others to usurp his role.

27.	23.08.2018	In the matter of Mr. Dinkar T. Venkata Subramanian, Insolvency Professional
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RP should not allow authorised auditors to raise invoices for his fees and out of pocket expenses.

The DC found that Mr. Venkata Subramanian authorised and allowed Ernst & Young LLP to raise invoices for his fees and other out of pocket expenses for work undertaken by him as an IRP and RP in connection with CIRP of JEKPL (Corporate Debtor), in contravention of provisions of the Code and regulations made thereunder. Given that the Code was a new law and he was following circular dated 16th January, 2018 in

letter and spirit, effective the date of the circular, Board took lenient view and accordingly, imposed a monetary penalty of one lakh rupees on Mr. Venkata Subramanian.

28.	13.11.2018	In the matter of Martin S.K. Golla, Insolvency Professional
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RP should not make misleading statements and adhere to every guideline to stay a fit and proper person to continue as an IP.

Using the CIRP as a facade, Mr. Golla successfully (a) thwarted actions, liabilities and obligations under the SARFAESI and proceeding before the DRT, released the personal guarantors, and the secured properties, (b) made himself eligible to submit a resolution plan by misrepresentation, (c) passed on an OTS as resolution plan, and (d) used the resolution plan to wipe off claims of various creditors, including 66% of claim of BoB (Bank of Baroda). Mr. Golla as an RP did not play by the rule book and did not “explore every possibility to address the illegality”. He made several misleading and false statements before the DC to justify what he did. The RP is behind the nefarious design of the CD in this matter. By his conduct and action, Mr. Golla has caused irreparable damage to the reputation of the institution of insolvency profession and rendered himself a person not fit and proper to continue as an IP. IBBI in issuing directions for the RP/IRP said that an IRP or RP is appointed by the AA. He is an officer of the Court. He is duty bound to (i) conduct CIRP with fairness and diligence, (ii) confirm that the resolution plan does not contravene any of the provisions of the law for the time being in force, (iii) maintain absolute independence in discharge of his statutory duties, and (iv) assist the AA with the correct perspective of the law, including provisions of Section 29A of the Code. The AA relies on the work of an IP, as an insolvency proceeding is mostly not adversarial in nature. Considering the deliberate, blatant, orchestrated and collusive contraventions, the DC, cancelled the registration and debarred him from seeking fresh registration as an insolvency professional or providing any service under the Insolvency and Bankruptcy Code, 2016 for ten years from the date of this order.

2. DIRECTIONS TO LIQUIDATORS

The judicial pronouncements/Regulatory orders relating to Liquidators broadly convey the messages pertaining their conduct and procedure during the liquidation process. Liquidator must act in the best interest of all the stake holders including the Corporate Debtor and follow all the procedures and guidelines that they should adhere to which includes directions about what to include in the liquidation estate.

I-NCLAT ORDERS

1.	31.07.2019	Kautilya Industries Pvt. Ltd. (Appellant/Resolution Applicant) Vs. Parasrampuriya Synthetic Ltd. & Anr. (Respondents) in the matter of Parasrampuriya Synthetic Ltd., Corporate Debtor
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Liquidator can accept the resolution plans which were not accepted in CIRP as schemes or arrangements in liquidation process

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 Code which is the maximization of the assets of the 'Corporate Debtor', feasibility and viability of the Scheme and balancing the stakeholders.

II- NCLT ORDERS

2.	11.01.2018	In the matter of Gujarat NRE Coke Limited (Corporate Debtor)
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Liquidator should try to pass off the Corporate Debtor as a going concern while the process of sale is going on.

After noting the judgement passed by the Hon'ble Supreme Court in a particular case, wherein it allowed the sale of the company as a going concern in extraordinary circumstances and based on undisputed fact that the corporate debtor is a going concern and liquidation order serves as a notice of discharge to officers and employees, except when the business of CD is continued during liquidation, the AA passed the following order –

"The Liquidator shall try to dispose of the Corporate Debtor company as a going concern after publication of notice in newspaper with the reserve price which shall be equal to the total debt amount including interest and maximum period applicable for trying the sale of the Corporate Debtor as a going concern will be only three month from the date of the order. If the process of sale as a going concern is failed during this period, then process of the sale of the assets of the company will be according to the provisions of sale of asset of the Corporate Debtor prescribed under Section 33, Chapter VI of the Insolvency & Bankruptcy Board of India (Liquidation Process) Regulations, 2016. In case it is not concluded within this period, the order of this Court directing the sale of the company as a going concern shall stand set aside and corporate debtor to be liquidated in the manner as laid down in Chapter III of the Liquidation process provided in Insolvency & Bankruptcy Code."

3.	12.09.2018	Precision Fasteners Ltd. (Applicant/Corporate Debtor) Vs. Employees Provident Fund Organisation (Respondent)
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The liquidator should not declare the dues in respect to Provident Fund/Pension Fund/Gratuity Fund as part of the liquidation estate.

The liquidator sought a declaration regarding attachment of movable and immovable properties of the CD (under liquidation) under Employees' Provident Funds and Miscellaneous Provisions Act, 1952 as null and void to enable him to dispose of these properties alongside other assets of the CD. The AA noted that in terms of the Code, the dues in respect to Provident Fund/Pension Fund/Gratuity Fund are not part of the liquidation estate. The AA vacated the attachment with a direction to the liquidator to sell the assets and pay off the provident fund dues in priority to all claims payable by the CD in liquidation.

3. DIRECTIONS TO COMMITTEE OF CREDITORS (CoC)

The judicial pronouncements/Regulatory orders relating to Committee of Creditors broadly convey the messages pertaining to the conduct of CoC during the CIRP. CoC includes both the Financial and Operational Creditor. CoC must act in the best interest of all the stake holders and appoint the authorised representative who must have authority to take decision on the spot.

I- NCLAT ORDERS

1.	06.03.2018	State Bank of India (Appellant) Vs. SKC Retails Ltd. (Respondent)
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CoC is not liable bear the expenses incurred by the IRP in proportion to the amount claimed.

The AA, vide impugned orders, directed the CoC to bear the rest of expenses incurred by the IRP in proportion to the amount claimed. The NCLAT held that as per regulation 33(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the applicant is liable to incur the expenses of RP and, thereafter, the applicant will get the amount reimbursed by CoC to the extent the amount is ratified by the CoC.

2.	15.05.2018	Rajputana Properties Pvt. Ltd. (Appellant) Vs. Ultra Tech Cement Ltd. &Ors. (Respondents)
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CoC should have a transparency while accepting or rejecting resolution plans.

The CoC, while approving or rejecting one or other resolution plan, should follow transparent procedure. It should record the reason in brief while approving or rejecting one or other resolution plan. The members of suspended Board of Directors or its partners, OCs or their representatives

and resolution applicant(s) are not mere spectators. They may express their views in the meetings of the CoC. Their views should be recorded and taken into consideration by the CoC before approving or rejecting one or other resolution plan. The views expressed by any of those who are watching the proceedings should also be recorded (in short).

3.	24.08.2018	Dharmendra Kumar (Appellant) Vs. IBBI & Ors. (Respondents) in the matter of IAP Company Pvt. Ltd. (Corporate Debtor)
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CoC can appoint the IRP as RP only after obtaining consent from the proposed person.

The IRP (appellant) filed an application before AA seeking discharge from the CIRP. The AA rejected the request vide order dated the 16th May, 2018 and imposed a cost of Rs. 50,000 on the appellant on the observation that his attitude was unprofessional. The NCLAT, after referring Section 22 of the Code, observed that, in case, the CoC resolves to appoint the IRP as RP, the consent is required from the IRP as to whether he intends to continue as RP or wants to be discharged. Without his consent, the IRP cannot be forced to continue beyond 30 days.

4.	07.09.2018	Numetal Ltd. (Appellant) Vs. Satish Kumar Gupta RP and Anr. (Respondents) in the matter of Essar Steel India Ltd. (Corporate Debtor)
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CoC is a creature of the Statute and an instrumentality of the state

In the matter, the resolution plans of Numetal Limited and Arcelormittal India Pvt. Ltd. (Resolution Applicants) were rejected by RP on the ground of disqualifications under Section 29A of Code. The Tribunal stated that the CoC along with the RP is a creature of the statute and can be termed as an instrumentality of state and, are under the statutory obligation to follow the mandate of the Code, the basic principle of administrative law and law of the land. The nature of duties assigned to a RP is similar to a public servant, as he is being an appointee of the Code.

5.	06.09.2019	Shaji Purushothaman (Appellant) Vs. Union Bank of India & Ors. (Respondents) in the matter of Empee Distilleries Ltd. (Corporate Debtor)
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CoC is required to decide whether the proposal given for settlement in terms of Section 12A is better than the 'Resolution Plan' or not

If an application u/s 12A is filed by the Appellant, the 'CoC' may decide as to whether the proposal given by the Appellant for settlement in terms of Section 12A is better than the 'Resolution Plan' as approved by it. Such decision is required to be taken only by the 'CoC'.

6.	11.09.2019	Sreeram E. Techno School Pvt. Ltd. (Appellant) Vs. Beans and More Hospitality Pvt. Ltd. (Respondent/Corporate Debtor)
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CoC to look at the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP

The question of viability, feasibility and other conditions of the resolution plan as prescribed under the Code in respect of a 'Corporate Debtor' can be looked into by the 'CoC' which has expertise in the financial field. Such issue of viability, feasibility and other conditions cannot be looked into by the Adjudicating Authority or by the Appellate Tribunal.

7.	12.09.2019	Bank of Baroda (Appellant) Vs. Maa Tara Ispat Industries Private Limited (Respondent/Corporate Debtor)
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CoC should not have given any reason against the IRP which otherwise would affected the career of the person

In view of the decision taken by CoC with 100% majority of voting share regarding replacement of IRP, the NCLAT held that that the AA should not have replaced the IRP in accordance with the provisions of Section 22 of the Code.

NCLAT was also of the view that the 'CoC' should not have given any reason against the IRP, which otherwise would have affected the career of the person.

II- NCLT ORDERS

8.	12.01.2018	In the matter of Vedika Nut Crafts Pvt. Ltd. (Applicants/Corporate Debtor)
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CoC should not seek liquidation if time is still left to invite resolution plans.

After perusing records, the AA could not see any reason for not inviting resolution plan despite the fact that even a period of one month as balance period of 180 days was still available. NCLT observed that there was no reason for the CoC to jump to the conclusion of seeking liquidation of the company without seeking extension of time of 90 days, without inviting expression of interest by the prospective resolution plan applicant as it falls foul of legal provisions and fair play. It presents a tell tale story of the irregularity committed by the CoC. To say the least such a decision is arbitrary and should not be sustained.

9.	20.03.2018	Renaissance Steel India Private Limited (Applicant) Vs. Mr. Dhaivat Anjaria & Ors. (Respondents) in the matter of Electrosteel Steels Limited
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CoC is responsible for safeguarding the interests and assets of the CD under CIRP.

The Tribunal observed that it cannot make a decision to hold the Resolution Applicants as eligible or ineligible. It observed that the RP as well as CoC are equally responsible for safeguarding the interests and assets of the CD under CIRP and would take as much caution to ensure that an applicant under the purview of Section 29A of the Code is not qualified for submission of a resolution plan. It accordingly advised that the objections would be considered by the CoC for an independent decision in regard to application of Section 29A.

10.	07.06.2018	SBJ Exports & Mfg. Pvt. Ltd. (Applicant/Corporate Debtor) Vs. BCC Fuba India Limited (Respondent)
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Members of the CoC should give due authority to their nominated representatives for smooth voting process.

NCLT observed that a strange phenomenon had developed in so far as the functioning of CoC was concerned. In a number of cases it has now been seen that members of the CoC were nominated by Financial Creditors like Banks without conferring upon them the authority to take decision on the spot which acts as a block in the time bound process contemplated by the Code. Such like speed breakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIR process. NCLT directed service of the order to IBBI for taking suitable action in respect of the conduct of the members of CoC in the present matter as well as in the day to day functioning of the members of CoC generally speaking.

11.	14.08.2018	R. Venkatakrishnan (Applicant) vs. Paragon Steels Pvt. Ltd. & Ors. (Respondents)
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CoC should support the RP and the resolution applicants by way of making all documents available to them.

The AA directed the CoC to support RP and Resolution applicant by way of making available all the documents to the RP for their comments on the same. The CoC was asked to help the RP in dealing with the situation of unpaid wages to the labourers.

12.	10.09.2018	Subburaj Cotspin Mills Pvt. Ltd. (Applicant/Corporate Debtor) Vs. Tharuvai Ramachandran Ravichandran, IRP (Respondent)
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CoC has to comply with the provisions of the Code.

A show cause notice was issued to the CoC by the Bench for delay in filing application before AA regarding the appointment of another IP as RP instead of earlier IRP as per the provisions of Section 22(3)(b) of the Code. There was delay of three months in filing an application by the

CoC. An Affidavit explaining the delay was asked to be presented on the next date of hearing by the CoC.

13.	13.03.2019	Ms. Rama Subramaniamv. (Applicant) M/s Sixth Dimensions Project Solution Limited (Respondent)
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COC is not vested with absolute power to change the IRP without any valid or tenable reasons

AA rejected the arbitrariness of one CoC member to change IRP and appoint their own nominee as RP without assigning any reasonable reason, stating that, "The change of RP must be rational/tenable/reasonable and not at the whims and fancies of the COC".

Tribunal observed that, "..... COC had thoroughly failed forth any tenable or valid or genuine reasons for the same and we hold that the COC is not vested with the absolute power to change the IRP without any valid or tenable reasons particularly when the Adjudicating Authority after considering the contentions on both sides and expresses an opinion to continue the IRP as RP, and accordingly the present IRP is confirmed as RP of the Corporate Debtor".

4. DIRECTIONS TO CORPORATE DEBTOR AND RELATED PARTIES

The judicial pronouncements/Regulatory orders relating to Corporate Debtor and other related parties broadly convey the messages in respect of the conduct of the CD and their staff. They are directed to provide full cooperation/ support to the IRP/RP and CoC in resolving the Insolvency during the CIRP and during the liquidation process and not to hide, misrepresent the things and not to abuse the process of law.

I- HIGH COURT ORDERS

1.	05.02.2018	Dr. Vidya Sagar Garg (Petitioner) Vs. Insolvency and Bankruptcy Board of India (Respondent)
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IP was given liberty to approach the High Court, once the discharge application is disposed of by the trial court.

The petitioner challenged an order of the IBBI rejecting his application seeking registration as an IP on the ground that he is not a fit and proper person as he has been charge-sheeted. He contended that he had no role in the alleged infraction of law and he had filed an application for discharge. The High Court held that the writ petition was pre-mature and allowed the petitioner liberty to approach the High Court, once the discharge application is disposed of by the trial court.

II- NCLAT ORDERS

2.	22.02.2018	Subasri Realty Private Limited Vs. Mr. N. Subramanian & Anr.
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Duties of the directors, personnel and all other persons associated with the CD are not suspended on suspension of the Board of Directors Management

The NCLAT clarified that after the appointment of the RP and declaration

of a moratorium, the Board of Directors stands suspended, but that does not amount to a suspension of Managing Director, or any of the directors or officers or employees of the CD. To ensure that the CD remains a going concern, all the directors/employees are required to function and to assist the RP who manages the affairs of the CD during the moratorium. If one or other officer or employee had the power to sign a cheque on behalf of the CD prior to the order of moratorium, such power does not stand suspended on suspension of Board of Directors nor can it be taken away by the RP. If the person empowered to sign cheque refuses to function on the direction of the RP or misuse the power, it is always open to the RP to take away such power after notice to the person concerned.

3.	25.06.2018	Uttam Galva Metalics Ltd. & Ors. (Appellants) Vs. State Bank of India (Respondent)
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Liberty was given to the promoters to negotiate with a third party investor to settle dues even after the admission of the case

The CD approached the NCLAT to defer pronouncement of admission orders by the AA as the CD had already negotiated with a third party for investing money and the matter would be settled if the orders were not pronounced for four weeks. The NCLAT declined to allow the prayer with an observation that even if the applications were admitted, it would be open for the CDs or their promoter along with the proposed investor to negotiate with the FC and settle the claims and move the appropriate forum for relief.

4.	30.08.2018	Amandeep Singh Bhatia & Ors. (Apellants) Vs. Vitol S.A. & Anr. (Respondents) in the matter of Asian Natural Resources (India) Ltd. (Corporate Debtor)
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NCLT is empowered to direct the ex directors of the CD not to leave the country.

The appellants are former directors and personal guarantors of the CD which is under liquidation. On considering an application under section 60 (5) (c) read with section 67 of the Code, the AA directed that the appellants shall not leave the country without prior permission. The appellants contended that the AA has no power to give such direction. In view of provisions of sections 66 and 67 of the Code, the NCLAT held:

"... it cannot be stated that the Adjudicating Authority is not empowered to direct the ex-Directors not to leave the country without prior permission of the Adjudicating Authority."

5.	24.10.2019	Jindal Steel and Power Limited (Appellant) Vs. Arun Kumar Jagatramka & Anr. (Respondent) in the matter of Gujarat NRE Coke Limited (Corporate Debtor)
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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.

By referring the finding of the Hon'ble Supreme Court in the matter of *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.* wherein it was held that the "primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation", the NCLAT submitted 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. Proviso to Section 35(f) prohibits the Liquidator to sell the immovable and movable property or actionable claims of the 'Corporate Debtor' in Liquidation to any person who is not eligible to be a Resolution Applicant.

III- NCLT ORDERS

6.	08.05.2017	In the case of Unigreen Global Private Limited (Applicant)
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Penalty of Rs 10 lakh was imposed on the CD for not coming to the Tribunal with clean hands

Since the CD in this case has taken mala fide actions that have clearly abused the process of law which should be discouraged at the earliest. The tribunal imposed a penalty of Rs 10 lakh on the CD for not coming to the Tribunal with clean hands and suppression of facts.

7.	31.05.2018	Sri Renga Creative Apparels India Pvt. Ltd. (Applicant) Vs. Aruppukotai Sri Jayavilas Ltd (Respondent)
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Due to settlement, CD was released from CIRP on the instruction to pay the expenses incurred by IRP during CIRP

During the CIRP was on, the matter was settled between the OC and CD while the FC did not have any objection. The AA released the CD from CIRP and recalled the order of admission. However, it made clear that the CD shall pay the expenses of public announcement and other miscellaneous expenses which have been incurred by the IRP during the CIRP.

8.	05.09.2017	Harendra Singh Rathore (Applicant) Vs. Mr. Arunava Sikdar & Anr. (Respondents) In the matter of Hotel Gaudavan Private Limited (Corporate Debtor)
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Falsely accusing the RP is highly condemnable, penalty was imposed on Managing Director of Corporate Debtor

The Management of Corporate Debtor tried to falsely accuse the RP of committing fraud on the basis of a typographical error in the public announcement made in the newspapers. The Tribunal held this act as a gross misuse of the process and highly condemnable. The Tribunal further imposed a penalty of Rs 2 lakh on the Management Director of the Corporate Debtor from his personal account.

9.	08.11.2017	Radico Khaitan Ltd. (Applicant) Vs. Ajudhia Distributors Ltd. (Respondent/Corporate Debtor)
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Penalty imposed on Corporate Debtor for disobeying the orders of Tribunal and not co-operating with the RP

The Corporate Debtor was not cooperating with the RP and did not submit his reply in spite of a notice issued to him. The Corporate Debtor was disobeying the orders of the Tribunal and was not letting the RP take over the affairs of the Company. The Tribunal imposed a penalty of Rs. 3 lakh on the Director of the Corporate Debtor, failing which the amount would be paid by the Corporate Debtor in accordance with law.

10.	08.08.2018	Punjab National Bank (Applicant) Vs. James Hotels Ltd. (Respondent/Corporate Debtor)
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RP has the right to eject Corporate Debtor with the help of police by moving appropriate application before the District Police Chief.

In this matter, the RP made a prayer seeking eviction of two respondents from the premises of the hotel. The respondents (Corporate Debtor) opposed it claiming that it was not maintainable before the AA and remedy lies elsewhere. The AA observed that the RP performs duties and exercises powers under the Code and he cannot be relegated to remedy before the Civil Court to seek possession of hotel premises, which is unauthorisedly occupied by any person. Accordingly, it directed the respondents to vacate the hotel accommodation within a period of three weeks, failing which the RP shall have the right to eject them with the police help by moving appropriate application before the District Police Chief as well as to the District Administration, Chandigarh, who would provide the necessary assistance.

11.	19.11.2018	Gokulakrishnan & Aruna Gokulakrishnan (Applicants) v. Mavens - I Soft tech Solutions (Respondent)
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The Corporate Debtor was directed to be more serious in resolving the issue

The Corporate Debtor needs to show seriousness in resolving a matter. NCLT gave a pre-emptory direction to the Corporate Debtor to resolve the issue with the promoters who are willing to make payment failing which the Operational Creditor is being directed to proceed further with the case in hand.

12.	29.01.2019	In the matter of Amar Remedies Limited, Applicant/ Corporate Debtor
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AA imposed a cost of Rs. 10 lacs for suppression of material facts

Since the petition has been filed under section 10 of the Code after the suppression of the material facts, which were known to be material, therefore the petition is rejected with cost Rs. 10 lakhs which shall be paid by the Corporate Applicant. AA stated

that, “It is clear that after liquidation order passed in a winding-up petition against the corporate debtor then it is barred from filing a petition under section 10 of the Code. Here the corporate debtor has not only suppressed the material fact that the winding up petition has not only been filed and admitted, but liquidation order has also been passed against the corporate applicant/corporate debtor and the liquidator has been directed to expedite liquidation proceedings expeditiously. The corporate applicant suppressed this material fact, knowing it to be material, and filed the petition under section 10 and in contravention of Rule 10 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The alleged act of the corporate applicant is punishable under section 77(a) of the Insolvency and Bankruptcy Code 2016.”

5. DIRECTIONS TO FINANCIAL CREDITORS

The judicial pronouncements/Regulatory orders relating to directions made to Financial Creditors regarding the extent to which they can use their discretion in the CoC and the entire CIR Process.

I- NCLAT ORDERS

1.	08.01.2019	Dr. Vishnu Kumar Agarwal (Appellant) Vs. M/s Piramal Enterprises Ltd. (Respondent)
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For the same set of debt, claim cannot be filed by same FC in two separate CIRPs filed against two separate Corporate Guarantors.

The NCLAT referred to the Supreme Court decision rendered in Innovative Industries Ltd. v. ICICI Bank & Ors., to conclude that for same claim amount and default, two applications under Section 7 cannot be admitted simultaneously. This was based on the reasoning that, since, for same set of debt, claim cannot be filed by same FC in two separate CIRP, and thus, once, for the same claim CIRP is initiated against one of the CD, after such initiation, the FC cannot trigger CIRP against the other CD for the same claim amount.

II- NCLT ORDERS

2.	22.06.2018	State Bank of India (Applicant) Vs. Orissa Manganese & Minerals Limited (Respondent)
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CoC is the fit person to take its own business decision

FC filed an application against the decision taken by CoC in respect of distribution of upfront payment which is allegedly against the provisions of the Code and regulations. While dismissing the application, the AA held that CoC is the fit person to take its own business decision. We find no reason to disturb or sit on the decision of the CoC taken on by majority vote share. The application requires no consideration and it is

liable to be dismissed. It noted that instances of challenging resolution plans by unsuccessful resolution applicants is on the rise and it is among one of the reasons for delay in approval of resolution plan. In this case, the application was filed without any valid grounds. Accordingly, the AA dismissed the application with a cost of Rs.1 lakh.

3.	03.07.2018	In the matter of Ramsarup Industries Ltd (Corporate Debtor)
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RP is entitled to take possession of the assets of the CD and any sale proceeding by FC of the assets of CD is void ab initio as per Section 14 of the Code

Certain assets imported from abroad were lying at Durgapur as customs duty was not paid. The respondents (IREDA) issued e-auction notice for sale of those assets. The RP as well as the CD requested the respondents not to go ahead with the e-auction. However, the respondents proceeded as per e-auction notice. The RP filed an application under section 14 of the Code praying for directions to respondents not to proceed with the e-auction of the machineries. The AA observed that the sale is in violation of section 14 of the Code and the RP is entitled to take possession of the assets of the CD. The remedy available to respondents is to submit claim for the amount due with the RP. It also observed that the sale proceeding being void ab initio as per Section 14 of the Code, the sale becomes null and void and the buyer is entitled to get back the money.

4.	15.02.2019	Mr. Kamal Gulati (Applicant) Vs. IDV Technology Solutions Private Limited (Respondent)
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Financial Creditor was directed by AA to deposit a sum of Rs 2 Lacs with IRP to meet out the expenses.

AA held that IRP/ RP shall be under duty to protect and preserve the value of 'Corporate Debtor' as a part of its obligation imposed by Sec 20 of the Code and perform all his functions strictly in accordance with the provisions of the code. AA directed the financial creditor to deposit a sum of Rs 2 Lacs with IRP to meet out the expenses to perform the functions assigned to him. Further, it also held that the amount is subject to adjustment by CoC and the amount must be accounted for by Interim Resolution Professional and shall be paid back to the Financial Creditor.

6. DIRECTIONS TO OPERATIONAL CREDITORS

The judicial pronouncements/Regulatory orders relating to directions to the Operational creditor like to not initiate a proceeding against the Corporate Debtor against a pre-existing dispute is pending or to bring such cases to NCLT wherein the parties are not in a position to bear the basic costs.

I- NCLT ORDERS

1.	18.09.2017	Birender Kumar (Applicant) Vs. Adel Landmarks Ltd (Respondent/Corporate Debtor)
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OC should not file for prosecution in two forums at the same time as it results in Forum Shopping.

The Tribunal directed that there cannot be prosecution in two forums as that result in Forum Shopping. The fact that Operational Creditor did not disclose the winding up proceedings already underway in another forum indicates that the application is a form of personal vendetta and thus the application was dismissed and a cost of Rs. 10,000 was imposed on the Operational Creditor to be paid to the Respondent. On appeal, NCLT refused to interfere with the above order acknowledging the argument in another judgement that once second stage i.e. liquidation (winding up) proceedings has already initiated, the question of reverting back to the first stage of CIRP or resolution plan does not arise. However, the cost imposed was set aside.

2.	04.12.2017	Energy Infra consulting India Private Limited (Applicant) v/s Athena Chattisgarh Power Limited (Respondent/Corporate Debtor)
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OC should not file cases before NCLT where it is not in position to support IRP or bear the basic costs of an IRP or RP.

In the present matter the OC did not support the IRP. The fees of the IRP

including the cost of public announcement were not paid by the OC. NCLT dismissed the application of the OC and warned the counsel for the OC not to bring such cases wherein the parties are not in a position to bear the basic costs.

3.	03.04.2018	OPGS Power Gujarat Private Limited (Applicant) Vs. R.L. Steels and Energy Limited (Respondent/ Corporate Debtor)
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OC is directed not to file an application when pre- existing dispute is summary suit or matter suitable for arbitration.

In case of a pre existing dispute in the nature of a summary suit or a matter suitable for arbitration, the OC should not file an application under the Code. The Section 8 application was dismissed since the facts were not clear and was not for the Tribunal to decide.

7. DIRECTIONS TO ADJUDICATING AUTHORITIES

The judicial pronouncements/Regulatory orders relating to directions made to other Adjudicating Authorities regarding the extent to which they can use their authority and who they can give directions to.

I- SUPREME COURT ORDERS

1.	25.01.2018	Shivam Water Treaters Pvt. Ltd. (Petitioner) Vs. Union of India & Ors. (Respondents)
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The High Court is requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016

Apex Court directed the High Court to address the relief limited to any action taken by the respondents or any order passed by the NCLT. Barring this, the High Court should not address any other relief sought in the prayer clause. The High Court is requested not to enter into the debate pertaining to the validity of the Insolvency and Bankruptcy Code, 2016 or the constitutional validity of the National Company Law Tribunal.

II- HIGH COURT ORDERS

2.	05.01.2018	Jotun India Private Limited (Petitioner) Vs. PSL Limited (Respondent)
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Company Courts have no authority to injunct proceedings initiated under the Bankruptcy Code

The High Court stated that NCLT is not a court subordinate to the High Court and hence as prohibited by the provisions of Section 41 (b) of the Specific Relief Act, 1963 no injunction can be granted by the High Court against a corporate debtor from institution of proceedings in NCLT. It further held that since IBC is admittedly a successor statute to SICA, and Section 64 (2) of IBC being pari-materia to Section 22 of SICA, the argument that

the Company Court has the power to injunct proceedings before under NCLT in cases of pending winding up petitions is entirely misplaced and contrary to legislative intent. It ordered NCLT that in the circumstances, there is no bar on NCLT from proceedings with IBC application.

III- NCLAT ORDERS

3.	20.02.2018	Quantum Limited (Appellant/Corporate Debtor) vs. Indus Finance Corporation Ltd. (Respondent)
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It is the duty of AA to find out whether a suitable resolution plan is there to be approved instead of going for liquidation

If within 180 days, a resolution is passed by the CoC by a majority vote of 75% of the voting shares instructing the RP to file an application for extension of period, and there is no other ground for rejection of application, the AA should allow time up to 90 days beyond 180 days. The NCLAT accordingly extended the period of resolution process for another 90 days and excluded the period between 181st day and passing of the order by the NCLAT for all purposes. It observed that it is the duty of the AA to find out whether a suitable resolution plan is there to be approved instead of going for liquidation, which is the last recourse on failure of resolution process and there are no other ground for rejection of application

4.	08.05.2018	Quinn Logistics India Pvt. Ltd. (Appellant) Vs. Mack Soft Tech Pvt. Ltd. & Ors. (Respondents)
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It is always open to the AA to exclude certain period for the purpose of counting the total period of 270 days.

The CIRP was stayed for about 166 days due to an interim order passed by the AA. The AA failed to exclude the period of 166 days from the CIRP period. The NCLAT observed that it is always open to the AA 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. It listed out the following good grounds and unforeseen circumstances, for excluding the intervening period for counting of the total period of 270 days:- (a) If the CIRP is stayed by a court of law or the AA or the Tribunal or the Supreme Court; (b) If no RP is functioning for one

or other reason during the CIRP, such as removal; (c) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP; (d) On hearing a case, if the AA or the Appellate Tribunal or the Hon'ble Supreme Court reserved the order and finally passed order enabling the RP to complete the CIRP; (e) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Hon'ble Supreme Court and CIRP is restored; and (f) Any other circumstances which justifies exclusion of certain period.

5.	28.05.2018	Sharvan Kumar Vishnoi (Appellant) Vs. Crown Alba Writing Instruments P. Ltd. (Respondent)
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Except for special circumstance and good reasons, the AA should only replace the Resolution Professional in special circumstances for good reasons.

The AA appointed Mr. Anurag Goel as RP on the ground that the appellant, Mr. Sharvan Kumar Vishnoi was already appointed as RP in another matter. The NCLAT observed that the ground shown by the AA is not justified as there is no illegality committed by the RP or the IRP nor any departmental proceeding is pending and further held that except for special circumstance and good reasons, the AA should not replace an RP, if named and approved by the FC or CoC. Though it was not inclined to interfere with the impugned order of the AA, it made clear that the said order will not affect the career of the appellant who may be appointed as the IRP or RP in any other case.

6.	30.11.2018	Usha Holdings LLC and Another (Appellants) Vs. Francorp Advisors Private Limited (Respondents)
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The AA not being a Court or Tribunal & CIRP not being litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal

NCLAT held that the Adjudicating Authority (NCLT) not being a Court or 'Tribunal' and 'Insolvency Resolution Process' not being a litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal. NCLAT held that the Adjudicating Authority (NCLT) has no jurisdiction

to decide the question of legality, viability and propriety of a foreign judgment and decree in an application under Sections 7 or 9 or 10 of the Code.

7.	03.01.2019	Sanjay Kumar Ruia (Appellant) Vs. Catholic Syrian Bank Ltd. & Anr. (Respondents)
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NCLT has no power to convert a CIRP into fast track CIRP, to extend it beyond 270 days, and to reject the fees of a RP which has already been decided by CoC

The Adjudicating Authority had no jurisdiction to proceed with the 'CIRP' beyond the period of 270 days and it cannot wrongly exercise its power under sub-section (2) of Section 55 of the Code. 'RP' incurred expenditure against different heads and submitted professional bill totaling Rs. 1,45,92,064/- which was also approved by the 'CoC'.

Thereafter, the Adjudicating Authority while passing order under Section 55, without any basis, reduced the amount to the tune of Rs. 23,69,064/- plus G.S.T., which is not permissible in law. After AA approves the 'Resolution Plan' under Section 31, the 'RP' is entitled to know the actual expenses allowed as approved by the 'CoC' and the AA.

8.	03.09.2019	Bannari Amman Spinning Mills (Appellant) Ltd. Vs. My Choice Knit & Apparels Pvt. Ltd (Respondent/ Corporate Debtor)
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AA has no jurisdiction to reject the application under Section 9 on the ground that Corporate Debtor is MSME.

The NCLAT observed that there being a default of debt of more than Rs. 1 Lakh and further held that, in absence of any pre-existence of dispute, the AA has no jurisdiction to reject the application under Section 9 only on the ground that the Corporate Debtor is MSME. There is no such provision under the Act which stipulates that a Corporate Debtor which is MSME does not come within the purview of Code or application under Sections 7 or 9 or 10 is not maintainable.

9.	06.09.2019	Mr. Vineet Khosla (Appellant/Shareholders and ex- Director) Vs. Edelweiss Asset Reconstruction Financial Creditor Company Ltd. (Respondent/ Financial Creditor & Ors.) in the matter of Margra Industries Ltd. (Corporate Debtor)
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AA, is not required to consider if a resolution for a given company would be possible or not and whether or not it would be possible to keep it a going concern

The NCLAT held that the AA, at the stage of hearing of a Section 7 petition, is not required to consider if a resolution for a given company would be possible or not and whether or not it would be possible to keep it a going concern. If there is a financial debt which is more than Rs.1 lakh and there is a default and if the application is complete, the application would have to be admitted.

10.	11.09.2019	Sreeram E. Techno School Pvt. Ltd. (Appellant) Vs. Beans and More Hospitality Pvt. Ltd. (Respondent/ Corporate Debtor)
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AA is not required to check the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP

The question of viability, feasibility and other conditions of the resolution plan as prescribed under the Code in respect 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 cannot be looked into by the Adjudicating Authority or by the Appellate Tribunal.

11.	12.09.2019	Bank of Baroda (Appellant) Vs. Maa Tara Ispat Industries Private Limited (Respondent/Corporate Debtor)
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AA should not have passed order for replacement of IRP when the CoC with 100% majority has taken decision under Section 22

In view of the decision taken by CoC with 100% majority of voting share

regarding replacement of IRP, the NCLAT held that that the AA should not have replaced the IRP in accordance with the provisions of Section 22 of the Code.

NCLAT was also of the view that the CoC' should not have given any reason against the IRP, which otherwise would have affected the career of the person.

12.	20.09.2019	Mr. Lagadapati Ramesh (Appellant) Vs. Mrs. Ramanathan Bhuvaneshwari (Respondent) in the matter of Bhuvana Infra Projects Private Limited, Corporate Debtor
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AA cannot straight away direct any investigation to be conducted by the Serious Fraud Investigation Office

The NCLAT held that the NCLT cannot straight away direct any investigation to be conducted by the Serious Fraud Investigation Office. The NCLT being competent to pass order under Section 213 of the Companies Act, 2013, it was always open to the NCLT to give notice to the accused parties and after giving a reasonable opportunity of hearing, if it finds a prima-facie case exists, it may refer the matter to the Central Government for investigation by an Inspector or Inspectors as may be appointed by the Central Government by following the procedure in terms of Section 213 of the Companies Act, 2013 and/or on such report after investigation by the Inspector, the Central Government feels that the matter is further required to be investigated by the 'Serious Fraud Investigation Office' it may do so and thereafter, if actionable material making out case of fraud is made out after such investigation by the 'Serious Fraud Investigation Office', it may act in terms of sub-section (2) of Section 236 of the Code for referring the matter to the Special Court.

13.	30.09.2019	Pratima P. Shah, (Appellant/Ex-Director) Vs. IDBI Bank Limited & Ors. (Respondents) in the matter of Amar Remedies Limited, Corporate Debtor
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Subsequent bench of AA has no jurisdiction to sit in appeal over the order passed by earlier bench and neither it is competent to deliberate on such issue

The CIRP was initiated more than a year back by a separate Bench of the NCLT in the year 2017. Subsequently, at the stage of approval of the 'Resolution Plan' under Section 31(1), it was not open to another Bench of the NCLT to declare the initiation of CIRP as illegal. A subsequent Bench of the AA has no jurisdiction to sit in appeal over the order passed by the earlier Bench of the Adjudicating Authority nor it is competent to deliberate on such issue.

IV- NCLT ORDERS

14.	01.10.2019	In the matter of Karan Goel. (Appellant) Vs. Pashupati Jewellers & Anr. (Respondent)
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It is not open to the AA to deliberate on the issue whether e-Stamp is a forged document or not

From the finding of the Hon'ble Supreme Court in the matter of "Innoventive Industries Ltd. Vs. ICICI Bank and Anr.", the NCLAT held that "it is clear that once the AA is satisfied on the basis of records that the debt is payable and there is default, the AA is required to admit the application."

The respondent having enclosed the copy of the 'Corporate Guarantee and Undertaking' Agreement instituted on e-Stamp, issued by Government of NCT of Delhi, it was not open to the AA 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 Code. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9 of the Code.

15.	14.10.2019	Padmaiah Vuppu (Appellant) Vs. Reliance Capital AIF Trustee Company Pvt. Ltd. & Ors. (Respondent)
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AA has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor.

The Corporate Guarantee was given by the Managing Director of the Corporate Debtor against the provisions of Section 185 of the Companies Act, 2013 and no Board or Special Resolution was passed. The Corporate Guarantee was executed in the year 2014 and since then the matter

was not challenged by any of the Shareholder / Director of the Corporate Debtor before any competent authority or Court of Law. The appellant filed challenged the admission order passed by AA on the said ground.

The Appellate Tribunal held that “In such circumstance, it is not open to any Shareholder/ Director/ Managing Director to raise such issue in petition under Section 7 of the Code, as the AA has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor.”

16.	23.10.2019	Saregama India Limited (Appellant) Vs. Home Movie Makers Private Limited (Respondent)
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The Adjudicating Authority is not a civil court to decide the breach of contracts between the parties.

In this case, NCLAT held that under the Code, the Adjudicating Authority or Appellate Tribunal will not go into the aspects of the veracity of the agreement, its breach, void, voidable etc. The Adjudicating Authority is not a Civil Court to decide the breach of the contract between the parties. IBC is a code by itself and will have to go strictly by the provisions of the Code, whether a claim is made under Section 9 by the Operation Creditor and under Section 7 by Financial Creditor and under Section 10 by a Corporate Applicant.

17.	20.02.2018	In the matter of Gupta Energy Pvt. Ltd. (Corporate Debtor)
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AA neither has the jurisdiction to question the actions of the CoC nor any discretion to examine the resolution plan

It made clear that the AA has neither jurisdiction to question the actions of the CoC nor any discretion to examine the resolution plan to dig into, as to whether resolution plan is better or the liquidation better. As per the statute, the CoC is the competent authority and it cannot transgress into the jurisdiction of CoC. A resolution plan accepted by voting in CoC with less than 75% cannot even be looked into by the AA under section 31 of the Code.

8. DIRECTIONS TO OTHER MISCELLANEOUS STAKEHOLDERS

The Judicial Pronouncements/Regulatory orders by the Adjudication Authority relating to the other stakeholders in respect of untruthful/ willful submissions made by them and their roles in the CIR Process.

I- NCLAT ORDERS

1.	30.04.2019	In the matter of M/s Ingen Capital Group LLC (Appellant) Vs Ramkumar S. V. & Anr. (Respondents)
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NCLAT imposed a cost of Rs Ten Lakh on successful resolution applicant for failure to implement the Resolution plan approved by COC and AA and also directed Ministry of Corporate Affairs to take appropriate steps against it and its Managing Director and other Directors.

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 Appellate Tribunal directed the matter to MCA by observing the following, “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.”

2.	13.05.2019	Industrial Services (Appellant) v. Burn Standard Company Ltd. & Anr. (Respondents) in the matter of Burn Standard Company Ltd. (Corporate Debtor)
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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.

In the matter, the CoC had approved a resolution plan without analysing as to whether the plan in question is in conformity with Section 30(2)(e), 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. Relying on the judgment of *Swiss Ribbons v. Union of India*, the Hon'ble Appellate Authority concluded as follows:

"29.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'."

3.	28.08.2019	Shweta Vishwanath Shirke & Ors. (Appellants) Vs. The Committee of Creditors & Anr. (Respondents) in the matter of Sterling Biotech Ltd, corporate debtor
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If the assets of the corporate debtor are result of proceeds of crime, it would always be open to ED to seize the assets under PMLA.

The Appellate Tribunal held that ED has the power to seize the assets of the corporate debtor in accordance with PMLA, if it is based on the proceeds of the crime. In a subsequent appeal, the Appellate Tribunal also held that the ED can claim the amount from these assets as Operational Debt in a CIRP.

4.	05.09.2019	Mr. Arunava Sikdar (Appellant) Vs. Sanjeev Saxena & Ors. (Respondents) in the matter of Jaipur Metals And Electricals Ltd. (Corporate Debtor)
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State Government cannot change the Board of Directors as it stands suspended during CIRP

The 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 in terms of Section 17 of the Code.

5.	26.09.2019	Jet Airways (India) Ltd. (Appellant/Offshore Regional Offices Through its Administrator) Vs. State Bank of India & Anr. (Respondents)
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Dutch Trustee is equivalent to the RP of India and has the right to attend the CoC meetings but shall have no right to vote in such meetings

The Dutch Trustee/Administrator is equivalent to the RP of India, therefore, as per law, the Dutch Trustee has a right to attend the meetings of the Committee of Creditors but shall not have a right to vote in such meetings. The Dutch Trustee/Administrator will work in cooperation with the RP of India and, if any, suggestion is required to be given, he may give it to the RP.

II- NCLT ORDERS

6.	15.01.2018	RP (Applicant) Vs. Lakshmi Vilas Bank & Ors. (Respondent) in the matter of Orchid Pharma Ltd (Corporate Debtor)
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AA directed the erstwhile auditor to issue No Objection Certificate (NOC) as well as transfer the necessary papers to the newly appointed statutory auditor of the corporate debtor

The shareholders passed a resolution for the appointment of a new firm as the statutory auditor for a period of five years commencing on 1 April, 2017. However, the erstwhile auditor was not willing to give NOC unless

the RP cleared 50% of its outstanding dues. The RP took up the matter with the AA, which directed the earlier auditor to issue NoC as well as transfer the necessary papers to the newly appointed auditor of the corporate debtor. It has been noted by this tribunal that the dues of the earlier audit has been admitted to the extent of Rs.1,23,69,272/- and it has been included as the operational credit with respect to the corporate debtor.

7.	23.02.2018	Indian Bank (Applicant) Vs. Kadevi Industries Limited (Respondent/Corporate Debtor)
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NCLT imposed a penalty of Rs 1 lakh on each Financial Creditor & the CD and issued a warning for the RP to be more careful in all his future assignments for making untruthful/wilful submissions.

All the parties involved in the CIRP made untruthful/wilful false submissions before the AA and were acting in concert by lying to the Tribunal about the transfer of funds from one party to another. The Tribunal imposed a penalty of Rs 1 lakh on each FC/CoC and the CD to be given to the PM Relief Fund and warned the RP to be more careful in all his future assignments.

8.	04.06.2018	Indiabulls Housing Finance Limited (Applicant) v/s. Forging Pvt. Ltd. (Respondent/Corporate Debtor)
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Municipal authorities are directed to de-seal the properties and to give the possession of same to RP

The NCLT directed the Municipal authorities to de-seal the properties and to give the possession of same to RP so that the factory premises could be inspected and the business could be a going concern as per the Code and the CIR Process could be finished in a timely manner.

9.	14.06.2018	In the matter of Uberlux Concepts LLP (Applicant/Corporate Debtor)
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Application under section 10 should be filed in compliance of provisions of IBBI (Application to Adjudicating Authority) Rules, 2016 along with disclosures under Section 11 of the Code.

In a Section 10 application, Form 6 under IBBI (Application to Adjudicating

Authority) Rules, 2016 is to be filled. If the Annexure and the requirements in the Form 6 were not complied along with disclosures under Section 11 of the Code not being made, the application has to be denied by the AA. The AA imposed a penalty of Rs 25,000 on the applicant for filing a frivolous application.

10.	06.08.2018	Mr. Sumit Binani (Applicant/RP) Vs. Excella Fin Lea Ltd & Another (Respondents) in the matter of Monnet Ispat & Energy Ltd. (Corporate Debtor)
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AA directed the promoter of the CD to restore the entire amount reported under preferential transactions.

On an application filed by the RP under section 43 & 44 regarding reporting of preferential transactions against the respondent companies, being run by the promoters of the corporate debtor, the AA observed: "Most fundamental doctrine underlying the field of insolvency/bankruptcy is equality of distribution of the debtor's assets among his creditors. This objective cannot be achieved if the debtor is free to prefer favourite creditors by distributing assets unequally shortly before onset of insolvency, if such conduct is allowed, liquidations/bankruptcy distributions would become largely meaningless. A preference occurs when a company pays specific creditor or group of creditors and by doing so makes the creditor "better off" than the majority of other creditors before the company going into insolvency." It discussed comparative provisions in the US, UK and India in respect of preference. The AA further ordered the respondents to restore entire transferred amount impugned in the application along with interest till the date of realisation to the corporate debtor.

11.	17.08.2018	Shantanu T Ray (Applicant/RP) v/s AML Steel & power Ltd. & Ors (Respondent/Corporate Debtor)
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The authorities (District Collector/ District Magistrate and the District Police Authorities) are directed to secure and handover the property to the RP.

The tribunal passed an order directing the authorities (District Collector/ District Magistrate and the District Police Authorities) to secure and handover the property, including books of accounts and other records of the Corporate Debtor to the RP appointed under Section 22 of the Code.

12.	31.08.2018	Anil Goel (Applicant/Liquidator) Vs. Dy. Director, Directorate of Enforcement (Respondent) in the matter of REI Agro Limited (Corporate Debtor)
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In case of liquidation of Corporate Debtor, the Liquidator must get possession of those properties which are attached by the Enforcement Director.

The liquidator filed an application under section 35(1)(n) of Code seeking orders against the Directorate of Enforcement to release the attachment of assets of the CD. The AA observed that in any case, the Court established under PMLA Act being a criminal Court can only decide whether the properties attached during investigation from possession of the Corporate Debtor could be said to be the properties acquired by them using proceeds of the crime. It is for this Tribunal to decide as to how the properties and assets of the Corporate Debtor under liquidation can be appropriated. The Liquidator must get possession of those properties attached by the Enforcement Director.

13.	04.10.2018	Arete Services Private Limited (Applicant) Vs. Soma Network Engineering Private Limited (Respondent/Corporate Debtor)
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The initiation of insolvency against the Corporate Debtor should be notified to the public at large and the website of the registrar should be updated accordingly.

The initiation of insolvency against the Corporate Debtor should be notified to the public at large and the website of the registrar should be updated accordingly. AA directed that the copy of the admission order be given to the FC, CD, IRP and the Registrar of Companies not later than seven days of the passing of this order.

14.	22.10.2018	Rishav Ranyan & Others (Applicants) Vs. Vardhman Estates & Developers (P) Ltd. (Respondent)
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If the party fails to respond to the advance notices, it does not mean that service is not to be effected in pursuance of directions issued by the Tribunal.

The advance notices are required to be sent to increase efficiency in the

process. If the party fails to respond to the advance notices, it does not mean that service is not to be effected in pursuance of directions issued by the Tribunal. The Tribunal granted another opportunity subject to payment of Rs. 10,000 which shall be deposited with the Prime Minister Relief Fund.

15.	05.12.2018	State Bank of India (Applicant) Vs. ARGL Limited (Respondent/Corporate Debtor)
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The bidder (Liberty House) cannot drag its feet and backtrack after getting its resolution plan approved by the CoC, for asking to furnish a performance bank guarantee as was stipulated by the CoC.

The CIR Process is a time bound process and those who participate in the resolution process must be serious customers and not one with a casual approach. The bidder (Liberty House) cannot drag its feet and backtrack after getting its resolution plan approved by the CoC, for asking to furnish a performance bank guarantee as was stipulated by the CoC. The bidder refused to go ahead with the approved resolution plan even after getting the terms relaxed by the CoC.

16.	14.01.2019	Dhimal Shah, RP (Appliant) Vs. Bharati Defence and Infrastructure Ltd. (Corporate Debtor)
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AA found the conduct of unsuccessful bidders not bonafide/ genuine, not in the interest of resolution process and with malafide intentions and thus imposed a cost of Rs. 20 lakhs.

While rejecting the plan of successful resolution applicant, the AA found the conduct of all the three unsuccessful bidders not bonafide/genuine, not in the interest of the resolution process of the company and also came before AA with a malafide intention to derail/delay the CIRP of the corporate debtor. The Bench has taken a serious view of the same and imposed a cost of Rs. 20 lakhs on each of the three un-successful bidders under Section 235A of the Code and further directed that 50% of the cost to be paid into the account of the corporate debtor which shall be utilized towards payment to employees/workmen and the balance 50% is to be paid into the account of PM's Relief Fund.

9. DIRECTIONS SUPPORTING INSOLVENCY PROFESSIONALS

The Judicial Pronouncements/Regulatory orders support the Insolvency professionals in discharging his duties under CIRP and liquidation process like order for liquidation if the CD did not support the RP, IRP can be changed by the AA if he is unable to discharge his duties due to ill-health etc.

I- NCLAT ORDERS

1.	06.04.2018	Mahesh Kumar Panwar (Appellant) v. Abhishek Anand (Respondent/RP) in the matter of Mega Soft Infrastructure Ltd. (Corporate Debtor)
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Court ordered for liquidation of CD due to non co-operation of the Directors of CD with the RP or the CoC.

In an appeal filed by one of the Directors of the CD, it was held that court ordered for liquidation of CD as the Directors did not co-operate with the RP or the CoC.

2.	01.11.2018	Pravin Patel (Appellant) Vs. Corporate Finance & Investment Services India Pvt. Ltd. & Ors. (Respondents)
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The suspended Board of Directors and the banks having account of the CD shall cooperate with the Insolvency Resolution Professional

The Court held that the suspended Board of Directors and the banks having account of the CD will have to cooperate with the Insolvency Resolution Professional till a suit is pending in the Court.

II- NCLT ORDERS

3.	12.04.2018	Union Bank of India (Applicant) Vs. Paramshakti Steel Limited (Respondent/Corporate Debtor)
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AA appreciated the efforts taken by RP in unraveling the facts for fraud committed by the promoters/directors of the corporate debtor

While making physical verification of debtors appearing in the records of the CD, the RP found that most of the debtors are not even in existence. The AA suggested the RP to initiate all steps available under the Code to proceed against the promoters/directors of the CD. It also suggested the police authority to assist the RP in unraveling the fraud. It observed: "By looking at the sincere efforts of this RP in revelation of all these things before this Bench, the Registry is further directed to communicate this order as well to IBBI, so that IBBI also will be conversant with the progress that is taking place in this case."

4.	13.04.2018	IDBI Bank Limited (Applicant) v. Lakshmi Apparel and Wovens Limited (Respondent/Corporate Debtor)
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IRP can be changed by AA due to health reasons

IRP has not initiated the CIRP Process because of his health reasons and he communicated the same to the AA. The Court held that the IRP can be changed by AA due to health reasons.

5.	26.04.2018	M. K. Shah Exports Ltd. (Applicant) Vs. Assam Company India Ltd. (Respondent/Corporate Debtor)
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RP shall reconsider the eligibility criteria and publish the same in newspaper in accordance with law and given timelines.

The Prospective resolution applicant asked to modify the eligibility criteria as stated in Expression of Interest. The applicant contended that RP ignored qualitative competence. The RP countered that they have sufficiently done evaluation for setting the eligibility criteria. Further,

2 or more companies jointly by forming SPV can participate in CIRP. NCLT directed RP/COC to reconsider the eligibility criteria and publish/advertise the revised eligibility criteria afresh pursuant to such relaxations/modifications in accordance with law and given timelines.

6.	30.08.2018	Deepak Seth (Applicant) v. Moods Hospitality Private Limited (Corporate Debtor)
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IRP can refer any violation / tainted/illegal transaction committed by the ex management/ ex-directors or anyone else to AA

The Court held that the IRP can refer any violation committed by the ex management or any tainted/illegal transaction by ex-directors or anyone else to AA with prayers to pass appropriate orders.

7.	02.01.2019	Asset Reconstruction Company (India) Private Limited (Applicant) Vs. Shivam Water Treaters Private Limited (Respondent/Corporate Debtor)
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AA iterated that IRP has the powers of a Court Officer

While deciding an application under Section 19 of IBC filed by the Resolution Professional seeking direction against the Corporate Debtor and the ex-directors of the Corporate Debtor to assist and cooperate with the IRP, AA clarified that IRP is acting as a court officer and any hindrance in the work of CIRP will amount to contempt of Court. AA also directed the promoter/director, officials and auditor of the CD to fully cooperate with the IRP.

8.	08.08.2019	S. A Consultants & Forwarders Pvt. Ltd. (Applicant) V. Cargo Planners Limited (Respondent/Corporate debtor)
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RPs to be careful for excess claims made by financial creditors against corporate debtor

While admitting the petition to initiate CIRP, the Bench observed that a general complaint had been received that financial creditors, banks, NBFCs and Asset Reconstruction Companies often claimed an amount in excess of what was actually owed to them by the Corporate Debtor,

and many a times at unreasonably exorbitant rates of interest. Therefore, the AA directed the RPs to be cautious of these claims made by creditors and settle them keeping in mind so that no injustice should be caused to the Corporate Debtor, as the Tribunal has no mechanism to rectify such claims.

10. DIRECTIONS BY IBBI FOR IP REGISTRATION

The judicial pronouncement/regulatory orders that direct the Insolvency Professional regarding their code of conduct or requirements for getting registered as an IP, given by IBBI.

1.	26.02.2018	In the matter of XYZ for IP Registration
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IBBI observed that the integrity, conduct, reputation, character and competence of the applicant are of material consideration for registration as IP.

IBBI rejected the application of XYZ for registration as an IP on the ground that he is not a fit and proper person for registration as a criminal proceeding under Section 509 (word, gesture or act intended to insult the modesty of a woman) of the Indian Penal Code, 1860, was pending against him before the Metropolitan Court, Mumbai. It observed that the integrity, conduct, reputation, character and competence of the applicant are of material consideration.

2.	26.02.2018	In the matter of ABC for IP Registration
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Pendency of serious criminal proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP.

The IBBI rejected the application of XYZ for registration as an IP on the ground that he is not a fit and proper person for registration as a charge sheet has been filed before the Court of the Special Judge, CBI, Greater Mumbai. It observed what is material is that what others feel about the applicant who has been charge sheeted for offences such as criminal conspiracy, cheating and dishonestly inducing delivery of property, using as genuine a forged document, involved in criminal misconduct which attract imprisonment up to seven years. Pendency of serious criminal

proceedings against the applicant adversely impacts his reputation and makes him not a person fit and proper to become an IP.

3.	22.05.2018	In the matter of LMN for IP Registration
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A key element of management is supervision and getting the task done with the help of people.

The IBBI rejected an application for registration as an IP on the ground that the applicant did not have the required experience in management. The applicant claimed that he was having a practice of uploading E-forms and depositing fee on MCA 21 system and he does it all by himself. One needs to discern the predominant nature of duties of a person to determine if he is having experience in management. A key element of management is supervision and getting the task done with the help of people. A person is said to be in a supervisory capacity when there is at least one person working with him and he supervises the work of the other person.

GUIDELINES FOR INSOLVENCY PROFESSIONALS

1. IP must not engage in any employment at the place where they are appointed as a resolution professional, liquidator, bankruptcy trustee etc.
2. Pendency of criminal proceedings, make a person unfit and improper to be an IP.
3. IP must conduct Corporate Insolvency Resolution Process (CIRP) with fairness and diligence.
4. IP must confirm that the resolution plan does not contravene any of the provisions of the law for the time being in force
5. IP must maintain absolute independence in discharge of his statutory duties.
6. IP must assist the Adjudicating Authority with the correct perspective of the law, including any new provisions that may be a part of the Code.
7. IP must not engage in private communication with any financial creditor irrespective of his voting power.
8. IP must have approval of CoC for laying down the eligibility criteria under section 25(2)(h) of the Code. This cannot be post facto approval.
9. The IP must ensure that the professionals, including forensic auditors and registered valuers, should not have any conflict of interest.
10. IP must do his defined role under the Code and should not usurp the role of others nor should he allow others to usurp his role.
11. If he does not have the resources to handle a CIRP, then he should not take up the assignment.
12. IP must not adjudicate on the matters of verification of claims if the AA has already decided on the matter.
13. IP should not ask for exorbitant fees for any assignment undertaken.

14. On admission of CIRP, the IRP needs to submit disclosure of relationship with Corporate Debtor within 3 days of his appointment as IRP simultaneously with Public announcement to the IPA they are registered with.
15. IRP needs to submit the Disclosure of relationship with professionals, within 3 days of appointment of professionals (say registered valuers, lawyers etc.) to the IPA they are registered with.
16. RP needs to submit Disclosure of relationship with the Corporate Debtor, within 3 days of appointment as resolution professional to the IPA they are registered with.
17. RP/IRP needs to submit Disclosure of fees and other expenses within 7 days of demitting the office (either as IRP/RP) and demitting means resignation, removal, completion of tenure or otherwise to the IPA they are registered with.
18. RPs/IRPs have to submit half yearly returns (status of ongoing and concluded assignments) within 15 days from the end of every half year to the IPA they are registered with.
19. RPs/IRPs have to submit a copy of all the proceedings submitted before adjudicating authority to the IPA they are registered with.
20. RPs/IRPs will also have to submit any other details specifically asked by the IPAs they are registered with.
21. RP/IRP will have to verify the list of claims and maintain a list of creditors within 7 days of receipt of claims.
22. RP/IRP will have to file a list of creditors with NCLT and on the website of the Corporate Debtor within 7 days of appointment.
23. RP/IRP will submit a report certifying the Constitution of Committee with NCLT within 30 days of his appointment.
24. RP/IRP will have to notify any change in the CoC to members of CoC and NCLT within 2 days of such change.
25. RP/IRP will have to submit Information Memorandum (IM) to the members of the CoC within two weeks of appointment of CoC.
26. RP will have to submit IM to the prospective resolution applicants before the date of invitation of resolution plan.

27. RP will identify prospective resolution applicants on or before the 105th day from insolvency commencement.
28. RP will issue an invite atleast 30 days before the last date of submission of resolution plans.
29. RP will submit the evaluation matrix atleast 15 days before the last date for submission of resolution plans.
30. RP is also directed to submit resolution plan approved by the committee of creditors to the Adjudicating Authority at least 15 days before the expiry of the maximum period – which is 270 day from the time of being admitted.