

# The Insolvency and Bankruptcy Code

Select judgements

February 2018



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he Insolvency and Bankruptcy Code (IBC) was approved by both houses of the Parliament of India and received presidential assent in May 2016. It was made effective on 1 December 2016. Everyone involved has been surprised with the speed and commitment with which the Code has progressed in the past 18 months.

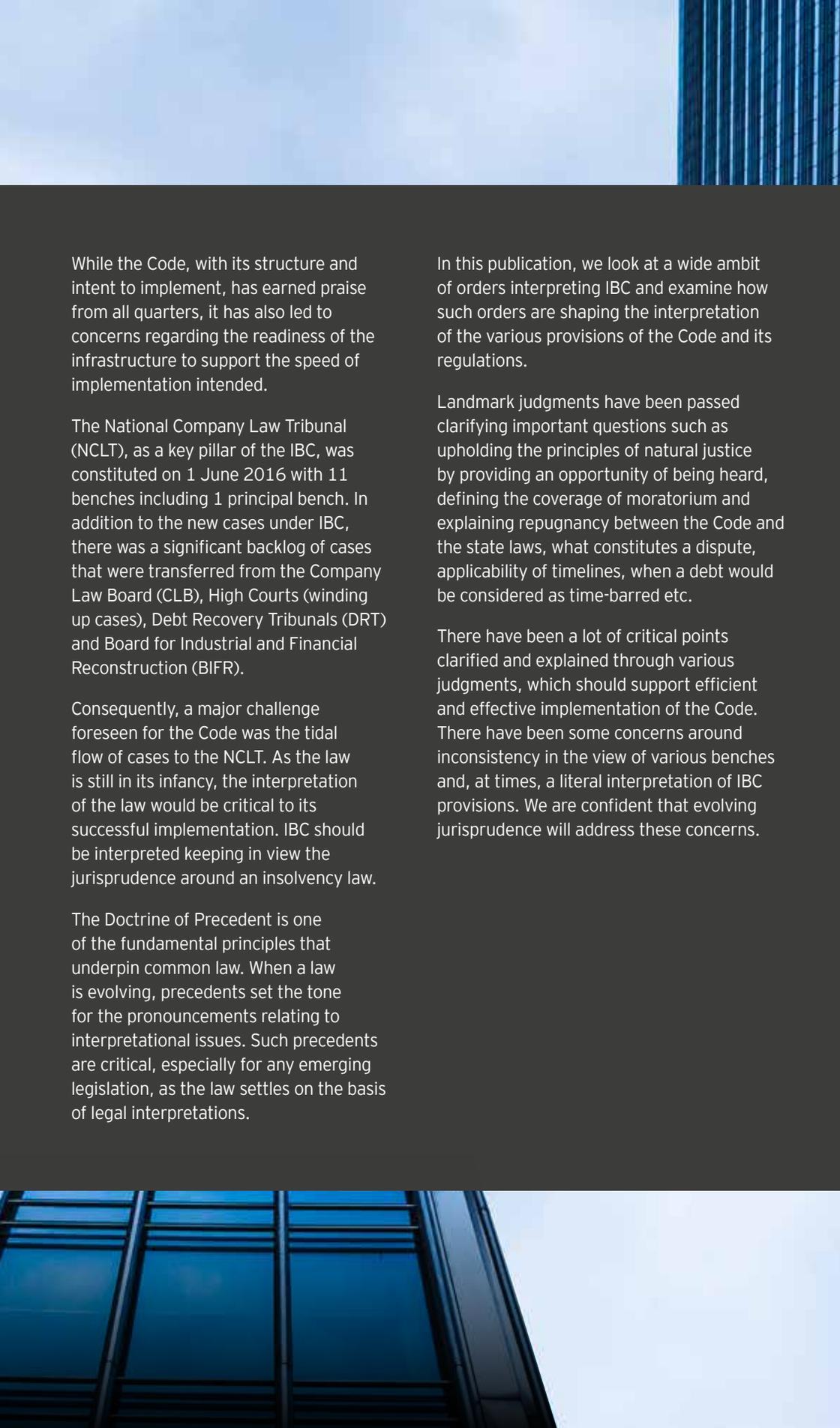
After GST, IBC is probably the most important legislative reform of our times, as it is expected to resolve the prevailing NPA crisis, the resultant logjam in the availability of credit and the consequential impact on GDP growth.

The thrust of the Code has been on:

- ▶ Rescue and rehabilitation of companies in due course of time.
- ▶ Shift in control to the creditor via the resolution professional.
- ▶ Empowering the market and commercial stakeholders with timely court intervention.

The Government and Reserve Bank of India (RBI) have taken a number of initiatives to ensure that the law is put to effective use:

- ▶ Amendment to the Banking Regulation Act to enable RBI to force banks to file under IBC
- ▶ RBI, in turn, came up with an initial list of 12 companies and following up with another 28 companies, which amounts to around 50% of total NPAs.



While the Code, with its structure and intent to implement, has earned praise from all quarters, it has also led to concerns regarding the readiness of the infrastructure to support the speed of implementation intended.

The National Company Law Tribunal (NCLT), as a key pillar of the IBC, was constituted on 1 June 2016 with 11 benches including 1 principal bench. In addition to the new cases under IBC, there was a significant backlog of cases that were transferred from the Company Law Board (CLB), High Courts (winding up cases), Debt Recovery Tribunals (DRT) and Board for Industrial and Financial Reconstruction (BIFR).

Consequently, a major challenge foreseen for the Code was the tidal flow of cases to the NCLT. As the law is still in its infancy, the interpretation of the law would be critical to its successful implementation. IBC should be interpreted keeping in view the jurisprudence around an insolvency law.

The Doctrine of Precedent is one of the fundamental principles that underpin common law. When a law is evolving, precedents set the tone for the pronouncements relating to interpretational issues. Such precedents are critical, especially for any emerging legislation, as the law settles on the basis of legal interpretations.

In this publication, we look at a wide ambit of orders interpreting IBC and examine how such orders are shaping the interpretation of the various provisions of the Code and its regulations.

Landmark judgments have been passed clarifying important questions such as upholding the principles of natural justice by providing an opportunity of being heard, defining the coverage of moratorium and explaining repugnancy between the Code and the state laws, what constitutes a dispute, applicability of timelines, when a debt would be considered as time-barred etc.

There have been a lot of critical points clarified and explained through various judgments, which should support efficient and effective implementation of the Code. There have been some concerns around inconsistency in the view of various benches and, at times, a literal interpretation of IBC provisions. We are confident that evolving jurisprudence will address these concerns.

# Select judgements

1

## **Innovative Industries Limited vs. ICICI Bank Limited** Supreme Court, August 2017

*IBC to override state laws passed prior to IBC coming into effect.*

The Apex Court, in this case, ruled against the contentions of the Corporate Debtor (CD). The SC ruled, after acceptance of the application under IBC, that the appeal should have been filed in the name of directors/ shareholders in their personal capacity and not in name of the CD.

The Supreme court (SC) also ruled that IBC will override all the state laws that were passed earlier than IBC, according to Section 238 of the Code.

2

## **RP of Amtek Auto Limited vs. Indian Overseas Bank (IOB)** NCLT Chandigarh, October 2017

*Balance in an account of the CDs, as on the corporate insolvency resolution process (CIRP) commencement date cannot be adjudged against debts of FCs.*

On an application filed by the RP, the honorable NCLT passed an order stating that the bank cannot appropriate the amount lying in any of the CD's accounts for set-off of debt, as it will be in contravention of the moratorium. It also directed the financial institutions to transfer the monies into a common account as directed by the RP within 15 days of receipt of the order.

A further appeal was made to NCLAT to set aside the impugned order but the appellate tribunal rejected the appeal.



## SBI vs. Veasons Energy Systems

NCLT Chennai, September 2017

*Banks cannot sell personal properties of the guarantor of the CD during the CIRP period.*

In this case, the honorable court restrained the FC from selling the assets of the personal guarantor, which in this case was a promoter of the CD, during the moratorium period granted under the insolvency process.

The applicant stated if such property is sold by the Bank, the personal guarantor will assume the rights of a creditor against the CD and in a way, a charge will be created on the property, which would be against the purpose and object of the moratorium granted by the Code.

The Tribunal on hearing the petition restrained the FC from selling the assets of the personal guarantor during the moratorium period granted under the insolvency process on the grounds that such action to recover debt by selling of the guarantor's property will be a violation of the provisions of the moratorium.

A similar stand was taken by the Allahabad High court in **Sanjeev Shriya vs. State Bank of India**. However, the honorable NCLT Delhi Bench, in the case of **Phoenix ARC Private Limited vs. Schweitzer Systemtek India Private Limited**, ruled that the word "its" in Section 14(1) only refers to the properties and security interests of the CD, not the promoters or guarantors.





## **Roofit Industries** NCLT Mumbai, January 2018

*Bidders should look to acquire all the assets of a distressed corporate debtor and piecemeal offers to buy assets might not be given preference.*

In the case, the RP filed an application for liquidation of the corporate debtor under IBC since the CIRP period of 180 days ended and no resolution plan had been received by the RP, except for a Factory. Considering the fact that the resolution plan submitted was only for Factory, excluding other units, the NCLT Bench was of the view that the resolution plan could not be considered as a resolution under the Code. Roofit Industries has other immovable assets, including land, building, plant and machinery, shop and office.



## **Palogix Infrastructure Private Limited vs. ICICI Bank Limited** NCLAT, September 2017

*Authorized persons as provided in the Code can make an application.*

The honorable court ruled that a power of an attorney holder is not competent to file an application on behalf of an FC, an operational creditor (OC) or a corporate applicant. Only an authorized person as provided in the Code as distinct from a power of attorney holder can make an application under Section 7.

The authorized person is required to state his or her position in relation to the FC. Provisions of the Power of Attorney Act, 1882 cannot override the specific provision of IBC.



## **IDBI Bank vs. Jaypee Infratech, NCLT Allahabad**

**NCLT Allahabad, August 2017**

*The honorable NCLT grants a temporary exemption to the IRP for sending the notice to FCs for first Committee of Creditors (CoC) meeting.*

On the request of the IRP, the honorable court granted temporary exemption to the IRP from serving a mandatory notice for the first CoC meeting to all the FCs, particularly those who had made fixed deposit with the company, since they were very large in numbers (more than 99%) but not significant in value (less than 2%).

This was done in view of the practical difficulty in inviting such large numbers of creditors. However, the court did not give a final opinion on whether such requirement can be waived off according to the law, and has asked the MCA/government to submit a formal reply in respect of it.



## **Falcon Tyres Limited vs. Edelweiss Asset Reconstruction Co. Limited, Supreme Court, June 2017**

**Supreme Court, June 2017**

*Opportunity of being heard to given to the CD*

The Apex Court ruled that to follow the principles of natural justice, NCLT must give the CD the opportunity of being heard before passing any order in case an application is made by an FC to initiate CIRP against the CD.

A similar ruling was made by the High Court in the case of Sree Metaliks Limited vs. Union of India and by NCLAT in the case of Innoventive Industries vs. ICICI Bank.





## **Surendra Trading Company vs. Juggilal Kamlat Jute Mills Company Limited and Others**

Supreme Court, September 2017

*Timelines in IBC are recommendatory and not mandatory.*

The Apex Court ruled that the timelines provided in Sections 7, 9 and 10 for deciding a matter within 14 days as well as the time to remove a defect within 7 days are directory and not mandatory.

The SC ruled that rejecting an application on lapse in 7 days alone will not debar the applicant from filing a fresh application and therefore, not serve any apparent purpose in holding the provision mandatory. The Court also opined that it is only in the interest of the applicant to remove the defect and therefore the applicant has no reason to cause any undue delay.

However, the applicant needs to submit in writing showing sufficient cause as to why the applicant could not remove the objections within 7 days. It is for the adjudicating authority to decide as to whether sufficient cause is shown. If it is satisfied that such cause is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application. The SC held that no purpose is going to be served by treating this period as mandatory.

Further, in the same case, NCLAT held that time period of 180 or 270 days for completion of CIRP is mandatory.



## **Shobha Limited vs. Pan Cards Club Limited**

NCLT Mumbai, July 2017

*Existence of dispute may render an application invalid.*

The Hon'ble NCLAT ruled that even though initiation of CIRP under I&B Code cannot be nullified by any order passed by SEBI, but since there is an "existence of dispute" with regard to invoices raised by operational creditor, the application under section 9 of I&B Code was not maintainable.

Accordingly NCLAT dismissed the plea under section 9 on account of existence of dispute.



10

**Edelweiss Asset Reconstruction Company vs. Raj Oils Mills**  
NCLT Mumbai, September 2017

*Appointment of RP allowed with less than 75% votes by FCs.*

The IRP moved an application in the NCLT seeking direction to remove the dead-lock to an unclear verdict of the CoC with regard to Section 22(2) of the Code, which requires 75% of the voting share of FCs to either appoint or replace the IRP as RP.

The NCLT ruled that 2 FCs with a 62.4% share should have their way in appointing the RP as opposed to 10 other FCs with a 31.5% voting share even though they are more in number.

The court found that the intention of the Code states that the largest stakeholder should be taken into account while choosing an RP and that FCs with the largest percentages of voting rights in CoC should be given preference over stakeholders with a nominal percentage of voting rights.

11

**Rajinder Kapoor (Proprietor, R.K. Kapoor & Co.) vs. Anil Kumar (IRP)**  
NCLT Delhi, September 2017

*IRP to continue to administer the day-to-day operations till the time the honorable NCLT appoints a new RP.*

In this case, according to the appellants, a change in RP had been approved by the majority of the financial creditors and that the tenure of IRP for 30 days had already expired, so it should be allowed to replace the RP.

The appellate tribunal, however, cited that the IRP may be asked to continue to administer the day-to-day operations, strictly in accordance with the provision of the Code until the honorable NCLT passes an appropriate order.



12

## **Essar Steel India Limited vs. Standard Chartered Bank (SCB) and SBI**

NCLT Ahmedabad, August 2017

*The court gives priority to the IRP nominated by FCs having a larger percentage of voting rights in the CoC.*

The honorable court, in this case, admitted the CIRP application filed by SBI and SCB. The IRP nominated by SBI and Joint Lenders Forum (JLF) lenders had been appointed as they would have had a larger share in the CoC.

The court dismissed SCB's petition for according their application a superior status owing to the fact that it was filed before the SBI application.

13

## **Falcon Tyres Limited vs. Belthangady Taluk Rubber Growers Marketing & Processing Co-op. Society Limited & Anr.**

NCLAT, October 2017

*Once the application is admitted by NCLT, the workmen association has no real basis to challenge the admission and, should file a claim with RP.*

In this case, the main plea taken was that an association of workmen had been impleaded due to the admission of the application under the Code.

In this appeal filed by Falcon Tyres, the honorable NCLAT in its order stated that after the admission of an application for the initiation of corporate insolvency resolution, the association of workmen has no role to play except their members, individually, may file a claim to the RP. The RP would then process the claim in accordance with the provision of the Code.



14

## Lokhandwala Kataria Construction Private Limited vs. Nisus Finance and Investment Manager LLP

Supreme Court, July 2017

*SC may terminate IBC proceedings after considering the status of the dispute between the parties.*

The SC (under Article 142 of the Indian Constitution) ruled that a settlement can be considered and a case can be withdrawn even after insolvency proceedings have started against a company.

Since this order is under Article 142, it should be treated on the facts of that particular case and not as a precedent of general applicability.

A similar stand was taken by the NCLT Principal Bench in the case of Mother Pride Dairy India Private Limited vs. Portrait Advertising & Marketing Private Limited.

The honorable bench noted if a CD has settled all the claims raised as at the CIRP date, then such facts should be brought forward by the resolution professional, and the adjudicating authority, after perusal, may withdraw such an application.

15

## Essar Steel Limited vs. Reserve Bank of India, Gujarat High Court

Gujarat High Court, July 2017

*The CD's petition of not invoking IBC dismissed as they have complex and large operations.*

The Gujarat High Court ruled in the given case that the RBI, with regard to its powers under the Banking and Regulations Act, 1949, can direct banks to initiate recovery of public money.

Essar also contended that the management of its business by a new person would cause hindrance in the smooth functioning of the company, hence an IRP should not be appointed. To this, the honorable high court noted that such petition shall be made to the NCLT and not the high court.

Hence, all the contentions of Essar were dismissed.



16

## **Super Multicolor Printers Private Limited** NCLT Chandigarh, April 2017

*Electricity supply cannot be discontinued by the electricity board during the CIRP period.*

The Himachal Pradesh State Electricity Board was directed by the honorable NCLT to restore electricity supply to the CD. As per IBC, the supply of essential goods or services to the CD should not be terminated, suspended or interrupted during the moratorium period.

However, in case of Innoventive Industries Limited vs. Maharashtra State Electricity Board, the honorable NCLAT noted that electricity supply is not covered in moratorium and is not an essential service.

In Bharti Defence & Infrastructure Limited vs. Edelweiss Asset Reconstruction Company Limited, the honorable NCLT dismissed the application on the grounds that electricity supply had been disconnected before the start of the CIRP period.

17

## **Anil Nutrients Limited vs. Reliance Commercial Finance Limited** NCLT Ahmedabad, August 2017

*NCLT Ahmedabad admits CIRP application against the guarantor of the CD.*

The associate company for the CD had borrowed money from the FC which was not paid by both the principal borrower and the guarantor of the principal borrower. The FC filed a case against the guarantor and not against the borrower. The court concluded that since the default of corporate guarantee amounts to the default of financial debt, CIRP should be initiated.



18

**Industrial & Commercial Bank of China vs. Alok Industries**  
NCLT Ahmedabad, July 2017

*The pendency of winding up petition shall have no effect on the initiation of CIRP.*

The pendency of the winding up petition could not be a bar under the Code for initiating CIRP unless the winding up order has been passed by the honorable high court and a liquidator has been appointed.

19

**IDBI Bank Limited vs. Lanco Infratech Limited**  
NCLT Hyderabad, August 2017

*IRP to refrain from taking too many assignments.*

The honorable NCLT Hyderabad took note of Clause 22 of the Code of Conduct for Insolvency Professionals as provided in the First Schedule of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations 2016.

The clause provides that an insolvency professional must refrain from accepting too many assignments if they are unlikely to be able to devote adequate time to each of the assignments.

Most of the activities prescribed in the Code are timebound. Therefore, IBBI had suggested the IRP be changed; accordingly, the FC (IDBI) proposed another IRP, which the honorable NCLT approved.





## **Black Pearl Hotel Private. Limited vs. Planet M Retail Limited**

**NCLAT, October 2017**

*All debts shall have a fresh period of limitation after 1 December 2016.*

The honorable NCLAT observed that the right to apply under the Code accrued to the appellant only on and after 1 December 2016, when the Code came into force. Therefore, the time limit of three years as mentioned in the Limitation Act had not lapsed for filing the application and the debt was not time-barred.

NCLAT held that there is nothing on record that the Limitation Act is applicable to IBC. Hence, the period of limitation with regard to the Code would start only from 1 December 2016.

This implies that for all debts, a fresh period of limitation would start from the date the Code came into force, i.e., 1 December 2016, with regard to proceedings under the Code.

A similar judgment was passed in the case of **Neelkanth Township and Construction Private Limited vs. Urban Infrastructure Trustees Limited**.



## **Canara Bank vs. Deccan Chronicle Holdings Limited**

**NCLAT, September 2017**

*Moratorium to not cover or restrict certain provisions of the Constitution.*

The moratorium will not affect any suit or case pending before the SC under Article 32 (Right to constitutional remedy) of the Constitution of India or where an order is passed under Article 136 (Special leave petition) or the power of the High Court under Article 226 (Powers of High Court) of Constitution of India.

However, a suit filed before any high court under the original jurisdiction that is a money suit or a suit for recovery against the CD cannot proceed after the declaration of moratorium under the Code.



## **Shilpi Cable Technologies Limited vs. Macquarie Bank Limited**

Supreme Court, December 2017

*Certificate from an Indian Bank for initiating insolvency proceedings will be optional for foreign OC's, and applications by advocates/ lawyers of the OC will be valid*

In the case of Shilpi Cable Technologies Limited vs. Macquarie Bank Limited, the apex court set aside the impugned order of the NCLAT and NCLT as per which the application filed by the the OC was rejected for non-compliance with Section 9(3)(c), and also that the impugned order stated that the advocate/ lawyer cannot issue a notice under Section 8 on behalf of the OC.

The Supreme Court stated that to insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons.

The Apex Court ultimately held that the certificate of an Indian bank required for initiating insolvency proceedings will be optional, and not mandatory, for foreign OCs not having an Indian bank account, and a demand notice on a lawyer's letterhead sent on behalf of the OC will be considered valid.



## **Muskaan Power Infrastructure Limited**

NCLT Chandigarh, October 2017

*Liberty has been given to the RP to seek police assistance in getting its work done if employees of the CD are not cooperating.*

In a petition filed by the RP, it was alleged that some employees of the CD, including the HR manager, were not cooperating in the management of the day-to-day operations of the CD.

The honorable court then directed one of the employees present in the hearing to file a written reply to such allegations and issued non-bailable warrants to the rest of the employees and directed them to appear before the honorable court in due course. The court also ruled that the RP may take police assistance to resolve any such future issues.



24

## **Unigreen Global Private Limited**

**NCLT Principal Bench, May 2017**

*CIRP application filed by the CD dismissed as the CD had a mala fide intention.*

A CD need to disclose facts such as, date of incorporation, details of the financial and OCs, amount of debt, amount in default, details of security provided, documents in support of the existence of financial debt and operational debt, and the amount in default.

Banks demonstrated that the CD had instituted civil suits deliberately engineered and instigated with a view to removing the properties mortgage from the accountability of the creditors.

NCLT stated that the petitioners had not come with “clean hands” before the tribunal in bringing out the necessary facts and rejected the dismissed application filed by the CD.

25

## **Edu Smart Services Private Limited vs. Axis Bank Limited**

**NCLT Principal Bench, October 2017**

*Corporate guarantee cannot be invoked on the CD during CIRP.*

The FC, i.e., Axis Bank, had invoked corporate guarantee on the CD for loans given to the group company. Such guarantee was invoked after the CIRP commencement date. The RP rejected the claim of the FC stating that such claim could not be admitted as guarantee could not be invoked because the CD had a moratorium in place.

The honorable NCLT upheld the stand taken by the RP and dismissed the application filed by Axis Bank.

It is important to note that Axis Bank has appealed against the impugned order in NCLAT, judgment is awaited.



**Bank of India vs. Ravi Kapoor, Renish Petrochem FZE,  
Ardor Global Private Limited**  
NCLT Ahmedabad, November 2017

*The procedure  
laid down in  
the Code is to  
be followed  
without any  
deviations.*

A CIRP application was filed by one of the OCs Renish Petrochem FZE and one individual (Person 1) was named as the IRP by NCLT.

The IRP constituted the CoC and in their first meeting, the CoC resolved to replace the IRP, but did not propose a name for the same. After the expiry of the first 30 days of the CIRP period, the JLF lenders separately called a meeting among themselves and appointed another individual (Person 2) as the RP.

To this, the IRP (Person 1) along with the promoters and Renish Petrochem raised objections that procedures laid down in Section 22 (Continuation of IRP as RP) and Section 27 (Replacement of RP by CoC) had not been followed. To this, NCLT Ahmedabad directed the IRP to call a meeting of the CoC and follow the procedures of Section 27.

NCLT cited various cases of the SC and commented that IBC is a code and a party cannot be permitted to deviate from the procedures laid down in it. Accordingly, appointment of Person 2 (in separate JLF by lenders) was quashed by the Hon'ble NCLT and CoC/ IRP (Person 1) was directed to comply with provisions of IBC in this regard.



27

## **Jindal Steel & Power Limited vs. DCM International Limited (Insolvency)**

**NCLAT, November 2017**

*Claim made by tenant not treated as operational debt unless the claims is in respect of the provisions of good and service.*

Despite the existence of the MOU, the applicant, who is the tenant of the respondent CD, cannot be treated as operational creditor under IBC, as the claims of the tenant against the landlord is not in respect of any goods or services.

28

## **Engenius Engineering Private Limited vs. Onaex Natura Private Limited CA (AT) (Insolvency) No. 249 of 2017**

*Pending money on account of cancellation of allotment of share capital is not financial debt.*

Appellant invested some amount with the respondent company and was allotted equity shares, however it was cancelled by Company Law Board in an application under section 397 & 398 of Companies Act. Therefore, the pending money has been shown as debt in the books of the company. Held, even if it is accepted that the amount has been shown to be a debt, does not mean that the appellant is a Financial Creditor.



29

## **K. Sashidhar vs. Kamineni Steel & Power India Private Limited**

**NCLT, November 2017**

*Resolution plan approved by NCLT despite it approved by only 66.67% the voting powers of COC.*

The RP submitted the resolution plan of OTS which was approved by only 66.67% financial creditors, rejected by 26.97%, and open for the approval by 6.36%. NCLT approved the plan keeping in mind the wider objective of the Code and in light of RBI's guidelines on "Joint Lenders' Forum (JLF) and Corrective Action Plan (CAP)", which requires 60% of creditors by value and 50 % of creditors by number for approval of CAP. It also noted that the functioning of the dissenting PSBs deserve to be carefully scrutinized by the banking sector regulator and forwarded a copy of its order to RBI.

30

## **Smt. Srikanta Sarda vs. Tansway Marketing Private Limited**

**NCLT Kolkata, December 2017**

*Application by FC rejected for lack of document evidencing the loan, which was defective to be a promissory note and was not properly stamped as per WB stamp rules.*

Respondent claimed that company did not exist and its name was struck off MCA records as on the date of filing of petition by the applicant. While this couldn't be reliably ascertained, NCLT observed that the letter filed as evidence for grant of loan was insufficient. It was neither a proper promissory note nor properly stamped as per WB stamp rules, and didn't stipulate any liability on the part of the company.



31

## **Hada Textile Industries Limited**

**NCLT Kolkata, November 2017**

*Adjudicating Authority (AA) does not have power under the Code to review already sanctioned schemes by BIFR.*

The petitioner made an application to NCLT, Kolkata to review and extend the scheme sanctioned by BIFR. AA held that as per IBC 2016, there is no provision that empowers the AA to review the earlier sanctioned scheme under BIFR. It also held that the AA was not authorized to extend the term of such sanctioned scheme even when the matter was pending before BIFR and under Companies Act. It further held that since the scheme was already approved and the applicant was not able to meet its requirement, there was a violation of the terms of the sanctioned scheme and therefore ordered liquidation proceedings against the Company in accordance with provisions of IBC, 2016.

32

## **Nicco Corporation Limited**

**NCLT Kolkata, November 2017**

*Liquidator has to exercise powers given to him under the Code and prior permission of AA need not be sought for every action.*

The liquidator applied to NCLT for seeking various permission with respect to liquidation of the corporate debtor. It was held by the AA that the liquidator has to exercise his power under IBC and does not require the prior permission of NCLT for every action to be performed. The AA further directed the liquidator to constitute a monitoring committee consisting of financial creditors to monitor the work of the liquidator.



33

## Fortune Pharma Private Limited

NCLT Mumbai, November 2017

*Assignment of debt by a related party to a non-related party was set aside by the court as being done with.*

The Applicant Bank, SBI, contended that the Corporate Debtor after initiation of CIRP, created two unsecured financial creditors by assignment debt of related parties to these two unrelated parties thereby reducing Applicant's voting rights in the CoC. Applicant further contended that the same was done with a mala fide intention and ulterior motive. AA held that disqualification at the time of initiation of CIRP, by virtue of being a related party cannot be washed away just because of an assignment made with the sole objective to reduce the voting power of existing financial creditors. AA further stated that 'assignment' refers to transfer of one's right to recover debt to another person and that the rights of 'Assignee' are no better than those of the 'Assignor'. The Court held that the by an assignment the assignee does not get the right to change its status from 'related' to 'unrelated' vis-à-vis the impugned debt.

34

## Roofit Industries Limited

NCLT Mumbai, November 2017

*De-listing order passed by Stock exchange is not covered under prohibitions given under Sec. 14.*

An application was filed by RP against the order of delisting passed by BSE and NSE, for de-listing shares of the Corporate Debtor. The RP contended that de-listing will affect the revival of Corporate Debtor and prayed that the notices issued by stock exchanges for de-listing the Corporate Debtor be declared void given the moratorium given by NCLT Order.

NCLT stated that Companies are governed by various enactments, they have to run in compliance of laws of this country and it can't be said that companies running under CIRP are free enough to flout all other laws. NCLT held that action of BSE and NSE is neither connected to prohibitions given under Sec 14 of IBC nor inconsistent with the non-obstante clause given under sec 238 of IBC and dismissed the application.



35

**REI Agro Limited**  
NCLT Kolkata, August 2017

*NCLT rejected application for extension of CIRP period beyond 180 days and passed liquidation order.*

RP filed application for extension of time on the basis that COC has passed a resolution to extend the period of CIRP beyond 180 days. However, NCLT noted that no resolution plan was submitted to RP so far and further, there did not appear to be any likelihood of a resolution plan being finalized and approved by COC even if another ninety days' period was granted.

As per NCLT there wasn't any justifiable reason for allowing extension as the ultimate result would be liquidation. Therefore, instead of allowing extension of time, NCLT ordered liquidation of the corporate debtor.

36

**Gupta Coal India Pvt limited**  
NCLT Mumbai, December 2017

*NCLT does not have jurisdiction to examine reasons for rejection of a plan by a CoC.*

Committee of Creditors (COC) did not approve proposed resolution plan and instead, it passed a resolution recommending liquidation of corporate debtor. The resolution applicant prayed before NCLT that RP and COC did not take into consideration certain factors. NCLT observed that it is prerogative of COC whether to approve or disapprove a resolution plan and further, that NCLT does not have jurisdiction to examine reasons for rejection of a plan.

It is only when a resolution plan is approved by COC, that NCLT can go into the merits of the plan and the COC decision. NCLT held that in this case, since the resolution plan was rejected by COC, it was bound to pass liquidation order.



## M/s. Starlog Enterprises Limited vs. ICICI Bank Limited NCLAT, May 2017

*Application to commence CIRP against CD, under section 7 by FC, and order thereon by NCLT, may be invalidated in case the application shows an incorrect claim amount, it is moved in a hasty manner and CD is not given an opportunity to be heard.*

Starlog Enterprises, a CD, was admitted into CIRP after ICICI Bank filed an application. Later, the CD challenged the order in the honorable NCLAT contending that:

- ▶ The order issued by the Hon'ble NCLT did not give the CD due opportunity to be heard. The impugned order being violative of principles of natural justice.
- ▶ The application filed by ICICI Bank is incomplete, misleading and inaccurate
- ▶ The CD further contended that the CIRP has led to termination of contract by a key customer of the Company, due to inaction by the IRP in responding to/ acting on customers requests

The honorable NCLAT noted that the FC had moved the application in a hasty manner, showing incorrect claim amounts and obtaining ex-parte order from the 'adjudicating authority' which admitted such an incorrect claim. The Financial Creditor could not disprove its mala fide intention by stating that the claims submitted is the correct amount. The NCLAT further held that in some cases, an insolvency resolution process can and may have adverse consequences on the welfare of the Company.

Accordingly, the honorable court ruled a reversal of the NCLT order of admitting the application. Consequently, the company was handed back to the promoters, the interim resolution professional (IRP) was removed and a fine of INR 50,000 was imposed on the FC.



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