भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

www.ibbi.gov.in

Section-wise jurisprudence on IBC upto 30.09.2022

PREFACE

One of the key functions of law is to ensure safety, security, and stability in the society. Law structures economic, social, and political interactions in a secure, stable and effective manner. It thus stipulates the mandate apropos acceptable and unacceptable behaviour in the society writ large. Stated simply, law channels the outcomes and allows the decision makers to anticipate likely outcomes and thereby, predicts consequences of their actions. Clarity and certainty are, thus, strongly connected to the pursuit of the rule of law and suffuses an element of predictability for the stakeholders. Legal clarity and certainty, of course, also adds to the legitimacy of the judiciary while it fosters the rule of law. The Indian legal system has adopted a host of features that enhances legal certainty and clarity, chief of which is the adoption of the doctrine of stare decisis (binding nature of precedents). In fact, precedents convey information that allows the decision makers and stakeholders to predict, within certain bounds, the likely legal consequences of different choices and infer the possible range of outcomes of potential disputes and differences.

Legal discourse, in large part, determines the rules of the game and informs the players of those rules so that they can best seek out their potential within the confines of the law. Precedents serve as a primary source of legal research, insights and analysis, while stimulating the development of law. They illuminate on the interpretive strides made by the Courts when wading through the statutes. Legal research often begins with statutes or regulations, the primary law passed by the legislature or regulatory agency in the relevant jurisdictions. However, matters interpreting the terms and intent of the statute are invaluable source of law. It is essential to acquire familiarity with this body of law to determine the elements of a cause of action, the latest and updated stance of the Courts, and to increase an understanding of the litigation process.

In this milieu, this publication/compilation of Section-wise case laws is the sprouting of a seed long implanted, nurtured, and caressed by the Insolvency and Bankruptcy Board of India. It is the culmination of a scholarly and professional journey that began with the enactment of the Insolvency and Bankruptcy Code in May, 2016. As a dynamic and progressive economic legislation, the Code has been interpreted by the judiciary with deference to legislative intent in economic matters. Judicial pronouncements under the Code are very important resources to understand the various provisions of this ever-evolving law. This publication is *unique*, as it represents the largest up-to-date account of the jurisprudential development into the nuances of corporate insolvency resolution and other processes. It is *topical*, since it delineates the pronouncements, as per the statutory provisions applied and interpreted by the judiciary in much simpler manner.

The overall idea of this compilation is to encourage and publish material that is of scholarly depth, precision and independence, and at the same time, readable and engaging. Understood as a whole, this publication attempts to cover the case laws emerged till 30th September, 2022 and raises as many new questions as it concomitantly provides answers to. The discourse will generate further fruitful debates, and will continue with every emerging jurisprudence; undoubtedly, challenging the best minds in the field. It is envisioned that this compilation serves as a worthy part of the changing face of insolvency and bankruptcy law in the country.

30th September , 2022.

Legal Affairs Division
Insolvency and Bankruptcy Board of India

Disclaimer: The contents of this publication are intended to provide inputs to the stakeholders more of academic value. The summary provided against each case law shall not be used as opinion of the IBBI before any court/tribunal/legal forum/other authority. The readers are advised to go through the original order/judgment as available on the concerned official websites for authentic usage. No claim or liability is to be cast on the IBBI for any spelling/typographical/other mistakes.

LIST OF ABBREVIATIONS

Abbreviation	Full Form
AA	Adjudicating Authority
AA Rules	The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
AFA	Authorisation for Assignment
Board/ IBBI	Insolvency and Bankruptcy Board of India
CCI	Competition Commission of India
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CoC	Committee of Creditors
Code	Insolvency and Bankruptcy Code, 2016
DRT	Debts Recovery Tribunal
ED	Enforcement Directorate
EPFO	Employees' Provident Fund Organisation
FC	Financial Creditor
FSP	Financial Service Provider
HC	High Court

Abbreviation	Full Form
ICD	Insolvency Commencement Date
IP	Insolvency Professional
IP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016
IPE	Insolvency Professional Entity
IRP	Interim Resolution Professional
IU	Information Utility
Liquidation Process Regulations	The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
MSME	Micro, Small and Medium Enterprise
MSME Act	The Micro, Small and Medium Enterprises Development Act, 2006
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCLT Rules	National Company Law Tribunal Rules, 2016
OC	Operational Creditor
PMLA	The Prevention of Money-Laundering Act, 2002
RBI	Reserve Bank of India
RP	Resolution Professional
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Abbreviation	Full Form
SC	Supreme Court of India
SEBI	Securities Exchange Board of India
UNCITRAL Legislative Guide	UNCITRAL (United Nations Commission on International Trade Law) Legislative Guide on Insolvency Law
UP RERA	Uttar Pradesh Real Estate Regulatory Authority

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
Long title					
1.	**Objectives of Code**	The Code is a beneficial legislation which puts the CD back on its feet and is not a mere recovery legislation for creditors. The interests of the CD have, therefore, been bifurcated and separated from that of its promoters/those who are in management. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
2.		One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal No. 8337-8338 of 2017]**	**SC**	**31.08.2017**
3.		CIRP is not a recovery proceeding to recover the dues of the creditors. The Code is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues.	**Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017]**	**NCLAT**	**18.08.2017**
4.		To get conversant to new law and to see fruits of it, it will take time, but just for the sake of this reason, we cannot wish away the mandate	**DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/I & BP/NCLT/MAH/2017]**	**NCLT, Mumbai**	**10.04.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of this nation which has come through Parliament.			
5.		In view of Statement of Objects and Reasons of the Code read with section 53, the Government cannot claim first charge over the property of the CD.	**Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]**	**NCLAT**	**19.12.2019**
6.		What is sought to be achieved in the Code is not shutting down of the CD, but reviving it by ousting the defaulter promoters/directors who were in control and management of the CD.	**V Hotels Ltd. Vs. Asset Reconstruction Company (India) Ltd. [MA 693/2018 in CP No. 532/IBC/NCLT/MB/MAH/2018]**	**NCLT, Mumbai**	**01.05.2019**
7.		The object of the Code is no doubt to protect the genuine CD with a view to maximise its value of assets and find out a resolution plan to revive the CD.	**Bharatbhai Vrajlalbhai Selani Vs. State Bank of India [C.P. (IB) No. 63/10/NCLT/AHM/2017]**	**NCLT, Ahmedabad**	**21.08.2017**
8.		The proceedings under Code are independent and have an object different from the one envisaged under the scheme of liquidation provided in the company law. The former aims for resolution by way of revival in a manner that benefits all stakeholders, the creditors as well as the CD.	**Action Ispat & Power Pvt. Ltd. Vs. Shyam Metalics & Energy Ltd. & Ors. [Company Appeal 11/2019 & CM No. 31047/2019, CM No. 34726/2019]**	**HC, New Delhi**	**10.10.2019**
9.		Time is a crucial facet of the scheme under the Code and to allow such proceedings to lapse into an indefinite delay will plainly defeat the object of the Code.	**Kridhan Infrastructure Pvt. Ltd. (now known as Krish Steel and Trading Pvt. Ltd.) Vs. Venkatesan Sankaranarayan & Ors. [Civil Appeal No. 3299 of 2020]**	**SC**	**01.03.2021**
10.		One of the principal objects of the Code is providing for revival of the CD and to make it a going concern. Every attempt has to be first made to revive the	**K.N. Rajakumar Vs. V. Nagarajan & Ors. [Civil Appeal No. 2901 of 2021]**	**SC**	**15.09.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		concern and make it a going concern, liquidation being the last resort.			
11.		An objective of the Code is to free up resources of unviable companies by permitting an easy exit. It cannot be misconstrued to keep unviable units afloat by some sleight of hand under the guise of keeping it as a going concern, thereby defeating a key objective of the Code.	**Basavaraj Koujalagi & 82 Ors. Vs. Sumit Binani, Liquidator of Gujarat NRE Coke Ltd. [IA No. 865/KB/2020 in CP (IB) No. 182/KB/2017]**	**NCLT, Kolkata**	**03.05.2021**
12.		One of the objects of the Code is to conduct the CIRP in a time bound manner, therefore, to save the time, upon coming to knowledge of the order of admission of the CD into CIRP, the statutory authorities should withdraw their direction of attachment of the assets of the CD.	**Ram Ratan Modi Vs. ICICI Bank [IA No. 1477/KB/2020 in CP (IB) No. 184/KB/2018]**	**NCLT, Kolkata**	**19.05.2021**
13.		The provisions of the Code are essentially intended to bring the CD to its feet and are not of money recovery proceedings as such.	**Invent Asset Securitisation and Reconstruction Pvt. Ltd. Vs. Girnar Fibres Ltd. [Civil Appeal No. 3033 of 2022]**	**SC**	**25.04.2022**
14.		The provisions of the Code and the rules and regulations framed thereunder be construed liberally, in a purposive manner to further the objects of enactment of the statute. The Code is essentially a statute which works towards the revival of a corporate body, unable to pay its debts, by appointment of a RP.	**Asset Reconstruction Company (India) Ltd. Vs. Tulip Star Hotels Ltd. & Ors. [Civil Appeal Nos. 84-85 of 2020]**	**SC**	**01.08.2022**
	2	**Application**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
15.		Section 2(e), which was brought into force on 23.11.2017 would, when it refers to the application of the Code to a personal guarantor of a CD applies only for limited purpose contained in sub-sections (2) and (3) of section 60. This is what is meant by strengthening the CIRP in the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Act, 2018.	**State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595 of 2018 with 4553 of 2018]**	**SC**	**14.08.2018**
	3	**Definitions**			
16.		The CD cannot use the provisions of section 3, as a blanket cover to claim exclusion from proceedings under the Code on the ground that it is a financial service provider.	**Apeejay Trust Vs. Aviva Life Insurance Co. India Ltd. [(IB)-1885(ND)2019]**	**NCLT, New Delhi**	**04.11.2019**
	3(6)	**Claim**			
17.		'Claim' under section 3(6) means a right to payment, even if it is disputed.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
18.		'Claim' gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
19.		The different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, as the cause of action is separate.	**International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. and D. A. Toll Road Pvt. Ltd. [CA (AT) (Ins.) No. 72 and 77 of 2017]**	**NCLAT**	**01.08.2017**
20.		The tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of the Code is	**K. K. V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No. 9/9/HDB/2017]**	**NCLT, Hyderabad**	**21.02.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time bound manner for maximisation of value of assets.			
21.		Fees of an RP cannot be considered to be a claim and cannot be determined or verified by a liquidator.	**CA Rita Gupta (Erstwhile RP in the matter of Shilpi Cable Technologies Ltd.) Vs. Shilpi Cable Technologies Ltd. & Ors. [CA (AT) (Ins.) No. 10 of 2020]**	**NCLAT**	**01.08.2022**
22.		The claims of the workmen/employees may be classified as 'service claims' which arise during the terms of employment and 'welfare claims' which arise after cessation of employment.	**Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd. [CA (AT) (Ins.) No. 934 of 2021]**	**NCLAT**	**10.05.2022**
	3(7)	**Corporate Person**			
23.		National Highway Authority of India (NHAI) is a statutory body which functions as an extended limb of the Central Government and performs Governmental functions which obviously cannot be taken over by an RP, or by any other corporate body nor can NHAI ultimately be wound up under the Code. For all these reasons, it is not possible to either read in, or read down; the definition of 'corporate person' in section 3(7) to include NHAI.	**Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals]**	**SC**	**27.11.2019**
24.		There is no exemption provided under the Companies Act, 2013 or the Code from the insolvency proceedings with regard to a company which is substantially owned by the government.	**Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO) Vs. The Union of India & Ors. [W.P. No. 19785 of 2021]**	**HC, Madras**	**08.11.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
25.		Under section 3(7) of the Code, Co-operative Societies are not 'corporate persons' to whom the provisions of the Code applies.	**Asset Reconstruction Company (India) Ltd. Vs. Mohammadiya Educational Society and other matters [CA (AT) (Ins.) No. 495 and 496 of 2019]**	**NCLAT**	**03.08.2021**
	3(8)	**Corporate Debtor**			
26.		If a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in section 3(8).	**Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]**	**SC**	**26.03.2021**
	3(10)	**Creditor**			
27.		The parties who have entered into agreement, for purchase of flat or shop or any immovable property, which contains a clause of assured or committed returns are 'financial creditors' under the Code.	**Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 7 of 2017]**	**NCLAT**	**21.07.2017**
28.		A 'decree holder' though covered under the definition of 'creditor' under section 3(10) would not fall within the class of FCs or OCs and therefore, a decree holder cannot initiate CIRP against the CD with an objective to execute the decree.	**Biogenetics Drugs Pvt. Ltd. Vs. Themis Medicare Ltd. [C.P. (I.B) No. 696/ NCLT/ AHM/2019]**	**NCLT, Ahmedabad**	**18.02.2021**
29.		To equate the unitholders in mutual funds with the creditors under the Code, will be unsound and incongruous.	**Franklin Templeton Trustee Services Pvt. Ltd. and Anr. Vs. Amruta Garg and Ors. [Civil Appeal No. 498-501 of 2021 with other appeals]**	**SC**	**14.07.2021**
	3(11) and 3(12)	**Debt and Default**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
30.		When the definitions of 'operational debt', 'debt' and 'default' are read together, it can be said that the definition of 'debt' as defined under the Code does not mean 'operational debt' only, rather it includes 'financial debt' as well as liability or obligation in respect of a claim, which is due from any person, and 'default' means non-payment of 'debt', but in order to trigger section 9 of the Code, an OC is required to establish a 'default' for non-payment of 'operational debt' as defined under section 5(21) of the Code and if a person fails to establish that, they cannot initiate CIRP.	**Brand Realty Services Ltd. Vs. Sir John Bakeries India Pvt. Ltd. [(IB)1677(ND)/2019]**	**NCLT, New Delhi**	**22.07.2020**
31.		It is latently and patently clear that once the 'debt' is converted into 'capital', it cannot be termed as 'financial debt'.	**Rita Kapur Vs. Invest Care Real Estate LLP and Ors. [CA (AT) (Ins.) No. 111 of 2020]**	**NCLAT**	**02.09.2020**
32.		The 'debt' is disputed so long as the 'debt' is 'due' i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the AA, that it may reject an application and not otherwise.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
33.		Existence of an undisputed 'debt' is *sine qua non* of initiating CIRP.	**Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Ltd. [Civil Appeal No. 9597 of 2018]**	**SC**	**23.10.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
34.		If in terms of any agreement, interest is payable to the OC or the FC, then 'debt' will include interest, otherwise, the principal amount is to be treated as 'debt' which is the liability in respect of the 'claim' which can be made from the CD.	**Krishna Enterprises Vs. Gammon India Ltd. [CA (AT) (Ins.) No. 144 of 2018 and other appeals]**	**NCLAT**	**27.07.2018**
35.		Mere fact of 'debt' being due and payable is not enough to justify the initiation of CIRP at the instance of the FC, unless the 'default' on the part of the CD is established.	**Park Energy Pvt. Ltd. Vs. Syndicate Bank and Anr. [CA (AT) (Ins.) No. 270 of 2020]**	**NCLAT**	**24.08.2020**
36.		'Default' is defined in section 3(12) in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
37.		The context of section 3(12) is actual non-payment by the CD when a 'debt' has become due and payable.	**B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017 and other appeals]**	**SC**	**11.10.2018**
38.		An amount not released to FC due to misunderstanding between the consortium of banks, cannot be treated as 'default'.	**R. Sridharan Vs. Assets Care & Reconstruction Enterprise Ltd. [CA (AT) (Ins.) No. 241 of 2018]**	**NCLAT**	**25.07.2018**
39.		The legislature was conscious regarding liabilities arising from a particular type of lease and it made specific provision in section 5(8)(d) to make it a 'financial debt'. No such provision was made in respect of an operational debt.	**Promila Taneja Vs. Surendri Design Pvt. Ltd. [CA (AT) (Ins.) No. 459 of 2020]**	**NCLAT**	**10.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
40.		CIRP can be initiated against a CD which has 'defaulted' in repaying the loan in the capacity of co-borrower/pledgor, as the liability of borrower and co-borrower/pledgor is co-extensive under the Indian Contract Act, 1872.	**Anand Rathi Global Finance Ltd. Vs. Doshi Holdings Pvt. Ltd. [C.P.(IB)-1220/(MB)/2020]**	**NCLT, Mumbai**	**19.02.2021**
41.		It is beyond purview of the AA to venture into the question of the reason for the 'default' and the intention behind the 'default' as submitted by the CD especially when the application is filed under section 7 of the Code.	**State Bank of India Vs. Shri Lal Mahal Ltd. [IB-613/ND/2019]**	**NCLT, New Delhi**	**25.02.2021**
42.		Share purchase with exit option of *inter alia* "Annual Put Option" cannot be considered as a debt which is disbursed against consideration of time value for money. Equity is not a debt and as such any contract for acquisition of shareholding in a company can never result in the formation of a debt.	**Hubtown Ltd. Vs. GVFL Trustee Company Pvt Ltd. [M.A 2411/2019 in C.P. 4128/I&B/MB/2018 and other MAs]**	**NCLT, Mumbai**	**29.11.2021**
	3(23)	**Person**			
43.		A sole proprietary concern, not being a 'person' under section 3(23) of the Code and also when there is a pre-existing dispute, cannot file application under section 9.	**R.G. Steels Vs. Berrys Auto Ancillaries (P) Ltd. [IB-722/ND/2019]**	**NCLT, New Delhi**	**23.09.2019**
44.		A 'trade union' is an entity established under a statute i.e. the Trade Unions Act, 1926 and is therefore, a 'person' under section 3(23) of the Code.	**JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]**	**SC**	**30.04.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
45.		A proprietorship concern does not fall within the purview of "person" as per section 3(23) for the purpose of filing an application under section 9 of the Code. Proprietorship concern cannot sue and be sued unless it is represented by a proprietor.	**Shri Shakti Dyeing Works Vs. Berawala Textiles Pvt. Ltd. [CP (IB) No. 854/NCLT/AHM/2019]**	**NCLT, Ahmedabad**	**25.01.2021**
	3(30)	**Secured Creditor**			
46.		The State Tax Officer does not come within the meaning of 'secured creditor' as defined under section 3(30) read with section 3(31).	**Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]**	**NCLAT**	**19.12.2019**
	4	**Application of Part-II**			
47.		The enhancement of threshold *vide* Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, is prospective in nature and would not apply to the pending applications filed prior to the issuance of the said Notification.	**Madhusudan Tantia Vs. Amit Choraria & Anr. [CA (AT) (Ins.) No. 557 of 2020]**	**NCLAT**	**12.10.2020**
48.		The Notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, whereby the minimum amount of default limit was specified as ₹ 1 crore, is prospective in nature and not a retrospective one.	**Al Sadiq Sweets Vs. Krisenter Impex Pvt. Ltd. [IBA/35/KOB/2020]**	**NCLT, Kochi**	**26.02.2021**
49.		The law is very clear that it is enough if under section 4 of the Code the unpaid debt is more than the threshold value of ₹ 1 lakh for acceptance of application under section 9 of the Code.	**Manipal Media Network Ltd. Vs. Vishwakshara Media Pvt. Ltd. [CA (AT) (Ins.) No. 369 of 2020]**	**NCLAT**	**21.06.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
50.		Where the default has occurred prior to the issuance of Notification dated 24.03.2020 and demand notice was also delivered prior to that notification but the application has been filed after 24.03.2020, the enhancement of the threshold limit from ₹ 1 lakh to ₹ 1 crore rupees is not applicable.	**BLS Ploymers Ltd. Vs. RMS Power Solutions Pvt. Ltd. [CP No. IB-340(ND)/2021]**	**NCLT, New Delhi**	**27.07.2021**
51.		The interest amount cannot be clubbed with the principal amount of debt to arrive at the minimum threshold of Rs.1 crore for complying with the provisions of section 4 of the Code, for an application filed under section 9 of the Code. The threshold has to be applicable on the date of filing of the application.	**CBRE South Asia Private Ltd. Vs. United Concepts and Solutions Pvt. Ltd. [(IB)-797(ND)2021]**	**NCLT, New Delhi**	**19.01.2022**
52.		From the date of amendment, Part II of the Code can apply only to matters relating to insolvency and liquidation of CD, where the minimum amount of default is Rs.1 Crore. The application of Part II itself is taken away with effect from 24.03.2020 as far as defaults less than Rs.1 Crore are concerned and hence, no application can be filed after 24.03.2020 regarding an amount where the default is less than Rs.1 Crore.	**Tharakan Web Innovations Pvt. Ltd Vs. National Company Law Tribunal & Anr. [W.P(C) 27636 of 2020]**	**HC, Kerala**	**01.02.2022**
	5(5A)	**Corporate Guarantor**			
53.		If CIRP has been initiated against the CD, the insolvency and bankruptcy process against the personal guarantor can be filed under section 60(2) before the	**State Bank of India Vs. D. S. Rajender Kumar [CA (AT) (Ins.) No. 87 to 91 of 2018]**	**NCLAT**	**18.04.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		same NCLT and not before the DRT.			
54.		Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC *qua* corporate guarantor.	**Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. & Ors. [Civil Appeal No. 1484 of 2019]**	**SC**	**11.02.2019**
55.		The principal debtor (CD) is discharged under the Code not on the instance of a creditor but due to operation of law, i.e., approval of resolution plan. Hence, the guarantor is not discharged of its liability merely because the creditor consented to a resolution plan of the principal debtor.	**State Bank of India Vs. Sungrowth Shares & Stocks Ltd. [CP (IB) No. 796/KB/2018]**	**NCLT, Kolkata**	**04.09.2019**
56.		The corporate guarantees given by the CD can be invoked only in the event of a default on the part of the borrower.	**Export Import Bank of India Vs. CHL Ltd. [CA (AT) (Ins.) 51 of 2018]**	**NCLAT**	**16.01.2019**
57.		It makes no difference as to whether the corporate person stood as guarantor to an individual or a corporate person, and as so long as the obligation in respect of a claim is due from a corporate person falling within the definition of 'financial debt', then it is obvious that the creditor can proceed under Section 7 of the Code against such corporate person.	**The Karur Vysya Bank Ltd. Vs. Maharaja Theme Parks and Resorts Pvt. Ltd. [CP/1314/IB/2018]**	**NCLT, Chennai**	**08.04.2019**
58.		The Code is at a nascent stage and it is better that the interpretation of the provisions is taken up by the SC to avoid any	**Insolvency and Bankruptcy Board of India Vs. Lalit Kumar Jain & Ors. [TP (Civil) No.(s) 1034/2020 with other TPs]**	**SC**	**29.10.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		confusion and to authoritatively settle the law. It directed that no further petitions involving the challenge to the notification dated November 15, 2019, which brought into force certain provisions relating to the personal guarantors (PGs) to CDs, shall be entertained by any High Court.			
59.		Neither section 14 nor section 31 of the Code place any fetters on a bank/financial institutions from initiation and continuation of proceedings against the guarantor for recovering of their dues. The liability of the principal borrower and guarantor remain co-extensive and a bank/financial institution is entitled to initiate proceedings against the personal guarantor under the SARFAESI Act during the continuation of the CIRP against the principal borrower.	**Kiran Gupta Vs. State Bank of India & Anr. [W.P.(C) 7230/2020 & CM.APPL. 24414/2020 (stay)]**	**HC, New Delhi**	**02.11.2020**
60.		CIRP can be proceeded against the principal borrower as well as guarantor.	**State Bank of India Vs. Athena Energy Ventures Pvt. Ltd. [CA (AT) (Ins.) No. 633 of 2020]**	**NCLAT**	**24.11.2020**
	5(6)	**Dispute**			
61.		Any observations with regard to individual officer if made by a court of law or in any communication made by the operational creditor, the same cannot be treated to be an existence of dispute.	**Yogendra Yasupal Vs. Jigsaw Solutions & Anr. [CA (AT) (Ins.) No. 222 of 2017]**	**NCLAT**	**16.10.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
62.		The test of existence of a dispute is: (a) whether the corporate debtor has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence (b) whether the defence is not spurious, mere bluster, plainly frivolous or vexatious (c) a dispute, if it truly exists in fact between the parties, which may or may not ultimately succeed.	**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017]**	**SC**	**21.09.2017**
63.		The dispute should not be a mere eyewash and attempt to derail the OC's entitlement to initiate the proceedings under sections 8 and 9 of the Code.	**Simplex Infrastructures Ltd. Vs. Agrante Infra Ltd. [IB No. (IB)-167(ND)/2017]**	**NCLT, New Delhi**	**10.08.2017**
64.		A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) and an inter-se dispute between two groups of shareholders of the CD does not constitute a 'dispute' in reference to OCs. The 'dispute' under section 5(6) of the Code must be between the CD and the OCs.	**Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd. & Anr. [CA (AT) (Ins.) No. 66 of 2017 and other appeals]**	**NCLAT**	**10.05.2018**
65.		On the *'existence of a dispute'*, it was observed that section 5(6) is an inclusive provision and does not confine the AA from considering the existence of a dispute from a broader angle. Therefore, dispute in terms of section 8(2)(a) of the Code shall not be limited to instances	**Anuj Khanna Vs. Wishwa Naveen Traders & Anr. [CA (AT) (Ins.) No. 555 of 2020]**	**NCLAT**	**25.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		specified in the definition under section 5(6).			
	5(7)	**Financial Creditor**			
66.		Mere invocation of pledge of shares will not result in automatic conversion of debt into equity and repayment of debt.	**State Bank of India Vs. Meenakshi Energy Ltd. [CP(IB) 184/7/HDB/2019]**	**NCLT, Hyderabad**	**07.11.2019**
67.		The assignee of the debt is also entitled to file application and such assignee steps into the shoes of the FC.	**Edelweiss Asset Reconstruction Company Limited Vs. Kalptaru Alloys Pvt. Ltd. [CP (IB) No. 84/7/NCLT/AHM/2017]**	**NCLT, Ahmedabad**	**05.09.2017**
68.		The grouping of FCs in accordance with the amount of security holding is not discriminatory.	**Canara Bank Ltd. Vs. Deccan Chronicle Holdings Ltd. [IA 121 and 24/2019 in CP(IB)No. 41/7/HDB/2017]**	**NCLT, Hyderabad**	**09.05.2019**
69.		Essential criteria for being an FC: (i) A person to whom a financial debt is owed and includes a person whom such debt has been legally assigned or transferred to (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5.	**B.V.S. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd. [CA (AT) (Ins.) No. 38 of 2017]**	**NCLAT**	**22.12.2017**
70.		The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The *Explanation* was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the *Explanation* is to put beyond doubt the fact that allottees are to be regarded as financial	**Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]**	**SC**	**09.08.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		creditors within section 5(8)(f) of the Code.			
71.		Home buyers are brought within the purview of the financial creditors under the Code.	**Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]**	**SC**	**09.08.2018**
72.		In a 'Recurring Investment Plan' wherein the CD failed in its commitment to offer the allotment of plots of land as promised by it or pay the assured returns, or repay the sums collected by it along with interest on the maturity of the schemes etc, the investor's position is that of a FC as per section 5(7) read with section 5(8) of the Code.	**Mohanlal Dhakad Vs. BNG Global India Ltd. [CA (AT) (Ins.) No. 684 of 2020]**	**NCLAT**	**22.02.2021**
73.		The SC reiterated that a person having only security interest over the assets of CD, even if falling within the description of 'secured creditor' by virtue of collateral security extended by the CD, would not be covered by the definition of 'financial creditor' under the Code. It held that the CD in the matter has only extended security through pledge of shares and there was no liability to repay the loan taken by the borrower on the CD. Therefore, the creditor in such a case will at best be secured creditor *qua* CD and not the FC *qua* CD.	**Phoenix ARC Pvt. Ltd. Vs. Ketulbhai Ramubhai Patel [Civil Appeal No. 5146 of 2019]**	**SC**	**03.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
74.		Banks/Financial Institutions which have advanced loans to home buyers cannot be considered as FCs and included in CoC specifically in the light of the fact that the liability to repay the home loan is on the individual home buyers.	**Axis Bank Ltd. Vs. Value Infracon India Pvt. Ltd. & Anr. [I.A. No. 1502 of 2020 & I.A. No. 1503 of 2020 in CA (AT) (Ins.) No. 582 of 2020]**	**NCLAT**	**20.12.2021**
75.		A liability in respect of a claim arising out of a recovery certificate would be a financial debt and the holder of a recovery certificate would be a FC. A person would be entitled to initiate CIRP, within a period of three years from the date of issuance of the recovery certificate.	**Kotak Mahindra Bank Ltd. Vs. A. Balakrishnan & Anr. [Civil Appeal No. 689 of 2021]**	**SC**	**30.05.2022**
	5(8)	**Financial Debt**			
76.		The Joint Development Agreement entered, is a contract of reciprocal rights and obligations, both parties are admittedly Joint Development Partners, who entered into a consortium of sorts for developing an Integrated Township and for any breach of terms of contract, Section 7 Application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.	**Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020]**	**NCLAT**	**18.08.2020**
77.		Pledge of shares would not fall within the concept of guarantee and indemnity so as to bring it within the meaning of financial debt.	**Vistara ITCL (India) Ltd. & Ors. Vs. Dinkar Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 703 of 2020]**	**NCLAT**	**24.08.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
78.		The payment received for shares, duly issued to a third party at the request of the payee as evident from official records would not be a debt.	**Radha Exports (India) Pvt. Ltd. Vs. K.P. Jayaram & Anr. [Civil Appeal No. 7474 of 2019]**	**SC**	**28.08.2020**
79.		In order to satisfy the requirement of this provision, the financial transaction should be in the nature of debt and no equity has been implied by the opening words of section 5(8) of the Code.	**Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 07 of 2017]**	**NCLAT**	**21.07.2017**
80.		A financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
81.		A transaction will be considered as an operational debt if the payment is made to goods or services and if money is lent in contemplation of returns in the form of interest will be a financial debt.	**DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/I & P/NCLT/MAH/2017]**	**NCLT, Mumbai**	**10.04.2017**
82.		It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the CD as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of CD notwithstanding the fact that no provision is made for interest thereon.	**Shailesh Sangani Vs. Joel Cardoso & Anr. [CA (AT) (Ins.) No. 616 of 2018]**	**NCLAT**	**30.01.2019**
83.		In real estate projects, money is raised from the allottee, against consideration for the time value	**Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs.**	**SC**	**09.08.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of money. Thus, allottees are to be regarded as FCs.	**Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]**		
84.		If Inter-Corporate Deposit is made for a certain period which was to be paid back with interest, then such transaction will fall in the definition of 'financial debt'.	**Narendra Kumar Agarwal & Anr. Vs. Monotrone Leasing Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 549 of 2020]**	**NCLAT**	**19.01.2021**
85.		The amount raised under a Forward Purchase Agreement (FPA) would not come within the definition of a 'financial debt' unless it bears the dual attributes of (i) having been disbursed against the consideration for time value of money and (ii) has the commercial effect of a borrowing.	**State Bank of India Vs. Rajendra Bhuta, IRP of Prabhat Technologies (India) Ltd. & Ors. [IA No. 440 of 2020 in C.P. No. 1874/MB/2019]**	**NCLT, Mumbai**	**06.01.2021**
86.		The definition of 'financial debt' does not expressly exclude an interest free loan. 'Financial debt' would have to be construed to include interest free loans advanced to finance the business operations of the corporate body.	**Orator Marketing Pvt. Ltd. Vs. Samtex Desinz Pvt. Ltd. [Civil Appeal No. 2231 of 2021]**	**SC**	**26.07.2021**
87.		When lease involves real estate with a fair value different from its carrying amount, the lease can be classified as a finance lease if the lease transfers ownership of the property to the lessee with substantially all the risks and also rewards incidental to ownership of the asset.	**New Okhla Industrial Development Authority Vs. Anand Sonbhadra, RP [CA (AT) (Ins.) No. 1183 of 2019]**	**NCLAT**	**16.04.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
88.		'Security Deposit' and the interest thereon would fall within the ambit of the definition of 'Financial Debt' as defined under section 5(8)(f) of the Code. The said amount of debt was treated as 'Financial Debt'.	**Sach Marketting Pvt. Ltd. Vs. Resolution Professional of Mount Shivalik Industries Ltd. [CA (AT) (Ins) No. 180 of 2021]**	**NCLAT**	**07.11.2021**
89.		Being a profit sharing owner, who in the event of the success of the Project would receive the residual gain, the amount invested in the land cannot be said to be a 'Financial Debt' under section 5(8) of the Code.	**Mukesh N. Desai Vs. Piyush Patel & Ors. [CA (AT) (Ins.) No. 780 of 2020]**	**NCLAT**	**24.02.2022**
90.		The refund of share application money in the event of non-allotment of shares attracts interest as provided for under section 42(6) of the Companies Act, 2013 and therefore qualifies the essential ingredients of 'Financial Debt' under section 5(8) of the Code.	**Kushan Mitra Vs. Amit Goel & Anr. [CA (AT) (Ins.) No. 128 of 2021]**	**NCLAT**	**16.12.2021**
91.		The refundable security deposit arranged by 'the Joint Developer' through a third entity cannot constitute a 'financial debt' under section 5(8) of the Code. Further, the mere fact of dishonouring of cheques, by itself, cannot be construed as existence of 'financial debt' and 'default'.	**Magnate Industries LLP Vs. Safal Developers Pvt. Ltd. [CP (IB) No. 1167/MB-IV/2020]**	**NCLT, Mumbai**	**06.10.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
92.		Speculative investor, cannot claim status and benefits as 'financial creditor' under explanation (i) of section 5(8)(f) of the Code.	**Nidhi Rekhan Vs. Samyak Projects Pvt. Ltd. [CA (AT) (Ins.) No. 1035 of 2020]**	**NCLAT**	**31.01.2022**
93.		Interest *per se* in any business contract cannot be termed to make the debt as a financial debt, if it is in the nature of liquidated damages or in the nature of penal interest, which is a result of compensation for breach of contract which is stipulated for penal interest.	**Budhpur Buildcon Pvt. Ltd. Vs. Abhay Narayan Manudhane, RP of HDIL [CA (AT) (Ins.) No. 589 of 2021 & I.A. No. 1739/2021 & 753/2022]**	**NCLAT**	**09.09.2022**
	5(13)	**Insolvency Resolution Process Cost**			
94.		If any cost is incurred towards supply of essential services during the period of moratorium, it may be accounted towards the insolvency resolution process costs.	**Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017]**	**NCLAT**	**08.02.2018**
95.		In case where a CoC has not been appointed as a result of non-initiation of the interim resolution process, it is clear that, whatever the AA fixes as expenses will be borne by the creditor who moved the application.	**S3 Electricals and Electronics Pvt. Ltd. Vs. Brian Lau & Anr. [Civil Appeal No. 103 of 2018]**	**SC**	**05.08.2019**
96.		The direction requiring the appellant to bear 27% of the CIRP cost is in consonance with and proportionate to the share of the appellant, is not arbitrary and unreasonable.	**Newogrowth Credit Pvt. Ltd. Vs. Resolution Professional, Bhaskar Marine Services Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1053 of 2020]**	**NCLAT**	**10.12.2020**
	5(14)	**Insolvency Resolution Process Period**			
97.		It is always open to the NCLT/NCLAT to exclude certain	**Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd.**	**NCLAT**	**08.05.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		period for the purpose of counting the total period of 270 days. The grounds include the following: (i) If the CIRP is stayed by a court of law or the NCLT/NCLAT/Supreme Court (ii) If no RP is functioning for one or other reason during the CIRP (iii) 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 (iv) On hearing a case, if order is reserved by the NCLT/NCLAT/Supreme Court and finally pass order enabling the RP to complete the CIRP (v) If the CIRP is set aside by the NCLAT or order of the NCLAT is reversed by the Supreme Court and CIRP is restored (vi) Any other circumstances which justifies exclusion of certain period.	**& Ors. [CA (AT) (Ins.) No. 185 of 2018]**		
	5(20)	**Operational Creditor**			
98.		The OCs can be classified in three different classes for determining the manner in which the amount is to be distributed to them (as per section 5(21). However, they are to be given the same treatment, if similarly situated.	**Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.) No. 242 of 2019 and Other appeals]**	**NCLAT**	**04.07.2019**
99.		Custom Duty as a statutory due is only operational in nature when it is paid to the relevant authority, and not when it is repaid to a party that has paid such statutory authority.	**IRK Raju Vs. Immaneni Eswara Rao & Ors. [CA (AT) (Ins.) No. 1058 of 2019]**	**NCLAT**	**30.01.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
100.		It is clear that an OC who has assigned or legally transferred any operational debt to an FC, the assignee or transferee shall be considered as an OC to the extent of such assignment or legal transfer.	**Cooperative Rabobank U.A. Singapore Branch Vs. Shailendra Ajmera [CA (AT) (Ins.) No. 261 of 2018]**	**NCLAT**	**29.04.2019**
101.		The workmen of a Company come within the meaning of an OC in terms of section 5(20) r/w section 5(21) of the Code.	**Suresh Narayan Singh Vs. Tayo Rolls Ltd. [CA (AT) (Ins.) No. 112 of 2018]**	**NCLAT**	**26.09.2018**
102.		An OC means a person to whom an operational debt is owed, and an operational debt under section 5(21) means a claim in respect of provision of goods or services.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
103.		A Trade Union or Association of workmen/employee does not come within the meaning of OC as no services is rendered by the Workmen's Association/Trade Union to the CD to claim any dues which can be termed to be debt as defined in sub-section (11) of section 3.	**JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Co. Ltd. [CA (AT) (Ins.) No. 82 of 2017]**	**NCLAT**	**12.09.2017**
	5 (21)	**Operational Debt**			
104.		The advance amount paid for supply of sugar is not an operational debt.	**Andal Bonumalla Vs. Tomato Trading LLP & Anr. [CA (AT) (Ins.) No. 752 of 2019**	**NCLAT**	**20.08.2020**
105.		The dues towards the Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly.	**Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA - 666/2019 in (IB)-250(ND)/2017]**	**NCLT, New Delhi**	**22.10.2019**
106.		In case assets seized by the ED were purchased out of the proceeds of crime, the amount as	**JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA**	**NCLAT**	**25.10.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		may be generated out of the assets would come within the meaning of operational debt payable to the ED for which it may file claim in terms of the Code.	**(AT) (Ins.) No. 957 and other appeals]**		
107.		Lease of immovable property cannot be considered as supply of goods or rendering of any services. For a debt to be operational, claim must be regarding provision of goods, services, employment or the Government dues.	**M. Ravindranath Reddy Vs. G. Kishan & Ors. [CA (AT) (Ins.) No. 331 of 2019]**	**NCLAT**	**17.01.2020**
108.		Claim arising out of lease of immovable property neither falls in the category of goods or services including employment nor is it a debt of repayment of dues arising under any law.	**Sudhir Garg Vs. ASG Hospital Pvt. Ltd. [CP No. (IB)-12/9/JPR/2019]**	**NCLT, Jaipur**	**10.01.2020**
109.		Lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus cannot fall within the definition of operational debt.	**Parmod Yadav & Anr. Vs. Divine Infracon Pvt. Ltd. [IB - No. (IB) 229 (ND)/2017]**	**NCLT, New Delhi**	**28.09.2017**
110.		All statutory dues including Income Tax, Value Added Tax, etc., come within the meaning of operational debt.	**Pr. Director General of Income Tax (Admn. & TPS) Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) No. 205 of 2017 & other appeals]**	**NCLAT**	**20.03.2019**
111.		Operational debt would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Government or any local authority.			
112.		The amount due from the buyer of the goods, and which is due to the seller and is guaranteed by the guarantee agreement, is also an operational debt.	**Renish Petrochem FZE Vs. Ardor Global Pvt. Ltd. [C.P. (I.B) No. 33/9/NCLT/AHM/2017]**	**NCLT, Ahmedabad**	**31.07.2017**
113.		Transaction of sale of share is an operational debt.	**Samskar Financial Services Pvt. Ltd. Vs. Votary Trading Pvt. Ltd. [C.P. (IB) No. 735/KB/2019]**	**NCLT, Kolkata**	**21.08.2019**
114.		The property seized by Kolkata Municipal Corporation (KMC) towards recovery of municipal tax dues from CD, can be the subject-matter of the CIRP under the Code as the claim of KMC had attained finality and fastened a liability upon the CD, thus constituting an 'operational debt' under section 5(21) of the Code.	**Kolkata Municipal Corporation and Anr. Vs. Union of India and Ors. [WPA No.977 of 2020]**	**HC, Calcutta**	**29.01.2021**
115.		Dues of Central Government / Department of Telecommunications under the License Agreement fall within the ambit of 'operational debt' under the Code.	**Union of India Vs. Vijaykumar V. Iyer [CA (AT) (Ins.) No. 733/2020 with other appeals]**	**NCLAT**	**13.04.2021**
116.		A 'claim' based on an agreement where the petitioner has appointed the respondent as a contractor to collect toll tax from commercial vehicles is not covered under the definition of 'operational debt' under section 5(21) of the Code.	**South Delhi Municipal Corporation Vs. MEP Infrastructure Developers Ltd. [IA 1670 of 2021 in CP(IB) 246/MB/2021]**	**NCLT, Mumbai**	**08.10.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
117.		The sales tax demand paid by the OC cannot be claimed as reimbursement from a CD as an 'operational debt' as it is neither arising out of provisions of goods and services nor is a claim in respect of employment nor represents the dues payable to the Government. So the dues do not fall within the meaning of section 5(21) of the Code.	**Transit Geo System Integrators Pvt. Ltd. Vs. Stahl Teeniks Pvt. Ltd. [(IB)-265/ND/2021]**	**NCLT, New Delhi**	**20.10.2021**
118.		Listing fees comes under the ambit of regulatory dues and is not 'operational dues'. Thus it cannot be recovered as an 'operational debt'.	**BSE Ltd. Vs. KCCL Plastic Ltd. [CA (AT) (Ins.) No. 134 of 2021]**	**NCLAT**	**17.12.2021**
119.		Section 5(21) defines 'operational debt' as a "*claim in respect of the provision of goods or services*". The operative requirement is that the claim must bear some nexus with a provision of goods or services, without specifying who is to be the supplier or receiver. A debt which arises out of advance payment made to a CD for supply of goods or services would be considered as an 'operational debt'.	**Consolidated Construction Consortium Ltd. Vs. Hitro Energy Solutions Pvt. Ltd. [Civil Appeal No. 2839 of 2020]**	**SC**	**04.02.2022**
120.		The journal entries not supported by any other additional evidence cannot be 'solely' relied upon to prove that the amount claimed arises out of 'supply of goods and services' to fall within the ambit of the definition of 'operational debt'.	**G.L. Engineering Industries Pvt. Ltd Vs. Supreme Engineering Ltd. [CA (AT) (Ins.) No. 431 of 2021]**	**NCLAT**	**02.03.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
121.		Granting an exclusive right and license to the CD to use, manufacture, sell, distribute and advertise the licensed products and to use the trademark in association with the licensed products as well as on packaging, promotional advertising material has a direct nexus with the business operations and sales and also with the actual product supplied by the CD. The claim in respect of such 'goods and services' is an operational debt.	**Somesh Choudhary Vs. Knight Riders Sports Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 501 of 2021]**	**NCLAT**	**18.08.2022**
	5(24)	**Related Party in relation to a corporate debtor**			
122.		The interchange of the managerial personnel between various legal entities *inter-se* without any association with the CD is not a valid basis to hold that such parties fall under the category of related party of the CD, though they may be belonging to the same group. The object of provisions relating to exclusion of related parties from the CoC is to maintain the independence of CoC in the interest of all the stakeholders but that does not mean that parties who were related at some point of time and now they are not related parties, should be excluded from CoC.	**Bank of India Through Its Authorised Representative Chandra Pal Vs. Naren Sheth, RP for Jaybharat Textiles & Real Estate Ltd. [IA 296 of 2020 in CP(IB) 266 of 2019]**	**NCLT, Ahmedabad**	**05.10.2021**
	7	**Initiation of CIRP by FC**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
123.		The Joint Development Agreement entered into, is a contract of reciprocal rights and obligations, both parties are admittedly 'Joint Development Partners', who entered into a consortium of sorts for developing an integrated township and for any breach of terms of contract, section 7 application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.	**Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020]**	**NCLAT**	**18.08.2020**
124.		An application under section 7 admitted by the AA being an independent proceeding has to be decided in terms of the provisions of the Code and the CIRP has to proceed unhindered and notwithstanding pendency of any other proceedings.	**Action Barter Pvt. Ltd. Vs. SREI Equipment Finance Ltd. &Anr. [I.A. Nos. 811/2020, 917/2020, 962/2020 & 1587/2020 in CA (AT) (Ins.) No. 1434 of 2019]**	**NCLAT**	**21.09.2020**
125.		Decree holders under UP RERA seeking execution of decree/recovery of money due under the Recovery Certificate, cannot claim to be allottees of a real estate project and the application under section 7 is impermissible. Though decree holder is included in the definition of 'creditor', they do not fall within the definition of FC and hence cannot seek initiation of CIRP as FC.	**Sushil Ansal Vs. Ashok Tripathi & Ors. [CA (AT) (Ins.) No. 452 of 2020]**	**NCLAT**	**14.08.2020**
126.		There being a continuous cause of action evident from the books of account of the CD wherein liability of loan payable to the FC	**Mack Soft Tech Pvt. Ltd. Vs. Quinn Logistics India Ltd. [CA (AT) (Ins.) No. 143 of 2017 and other appeals]**	**NCLAT**	**21.05.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		is accepted, the application under section 7 cannot be held to be barred by limitation.			
127.		The CD is NBFC and being FSP, section 7 application could not be admitted against it.	**Saumil A. Bhavnagri Vs. Nimit Builders & Anr. [CA (AT) (Ins.) No.710 of 2019]**	**NCLAT**	**21.11.2019**
128.		The AA exceeded its jurisdiction while directing that all FCs should submit information of default of CDs from the IU while filing applications under section 7. This is beyond section 424 of the Companies Act, 2013, and section 7(3)(a) of the Code r/w rule 4 of AA Rules and regulation 8 of CIRP Regulations.	**Univalue Projects Pvt. Ltd. Vs. The Union of India & Ors. [W.P. No. 5595 (W) of 2020 With C.A.N. 3347 of 2020 and another appeal]**	**HC, Calcutta**	**18.08.2020**
129.		While admitting an application under section 7, the AA should be satisfied that the default has occurred, the application is complete and no disciplinary proceeding is pending against the proposed IRP.	**Noor Alam & Ors. Vs. Prism Infracon Ltd. [CP(IB)No. 762/KB/2017]**	**NCLT, Kolkata**	**03.07.2018**
130.		The SC held that the RBI circular dated 12th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is *ultra vires* of section 35AA of the Banking Regulation Act, 1949 and all actions taken under the said circular which has triggered the CIRP under section 7 will fall along with the circular.	**Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors. [Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 and other appeals]**	**SC**	**02.04.2019**
131.		The order of admission by NCLT, which was set-aside by the NCLAT, was restored stating that FC being a foreign company need	**Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794-21795 of 2017]**	**SC**	**03.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.			
132.		If the two CDs collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under section 7 will be maintainable against both of them jointly and not individually against one or other.	**Mamatha Vs. AMB Infrabuild Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 155 of 2018]**	**NCLAT**	**30.11.2018**
133.		The time limit of 7 days for removal of defects in the application as provided in proviso to sub-section (5) of section 7, is directory and not mandatory in nature.	**Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017and other appeals]**	**SC**	**19.09.2017**
134.		The 7 days for rectification of defects is to be counted not from the 'date of the order' passed by the AA but from the 'date of receipt' of such notice from the AA to rectify the defects in the application. Further, the holidays such as Saturdays, Sundays and other holidays of the AA are to be excluded.	**Palogix Infrastructure Pvt. Ltd Vs. ICICI Bank Ltd. [CA (AT) (Ins.) No. 30 of 2017 and other appeals]**	**NCLAT**	**20.09.2017**
135.		The filing of an application may not result into mechanical admission of application. The AA in exercise of judicial discretion needs to deal with such application in accordance with law and based upon facts, evidence and circumstance placed before it. The AA is	**Essar Steel India Ltd. Vs. Reserve Bank of India [Special Civil Application 12434 of 2017]**	**HC, Gujarat**	**17.07.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		certainly required to extend hearing and reasonable opportunity to the company to explain as to why such an application should not be entertained.			
136.		The scheme of section 7 stands in contrast with the scheme under section 8 where an OC is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
137.		A perusal of Form – 1 prescribed under AA Rules would reveal that there is no requirement specified in any part of the proforma with regard to power of attorney. It does not however lead to the conclusion that there is no requirement of filing a power of attorney. But then it is a different matter and would not be hit by the defect in the proforma. It is not that every defect is hit by section 7(2) of the Code.	**Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [C.P. No. IB-104(PB)/2017]**	**NCLT, New Delhi**	**03.07.2017**
138.		Initiation of a CIRP is not an adversary litigation nor is a money claim. If the application is complete and the AA is satisfied that there is a 'debt' and 'default' on the part of the CD, the application is to be admitted.	**AVON Capital Vs. Tattva & Mittal Lifespaces Pvt. Ltd. [CA (AT) (Ins.) No. 256 of 2017]**	**NCLAT**	**09.08.2018**
139.		Application under section 7 is not a recovery proceeding or a proceeding for determination of claim on merit, which can be decided only by a court of	**V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [CA (AT) (Ins.) No. 213 of 2018]**	**NCLAT**	**29.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		competent jurisdiction. Application under section 7 or 9 or 10 of the Code being not money claim or suit and not being an adversarial litigation, the AA is only required to be satisfied that there is a 'debt' and default has occurred.			
140.		In the application filed for commencement of CIRP, the AA is not required to get into the merits of a foreign decree, because the AA under the Code does not have the powers of a Civil Court.	**V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [Civil Appeal No. 9980 of 2018]**	**SC**	**12.10.2018**
141.		The AA being not a Court of law and as the AA does not decide a money claim or suit, it cannot exercise any of the power vested under sections 3 or 4 of the Usurious Loans Act, 1918.	**Naveen Luthra Vs. Bell Finvest (India) Ltd. & Anr. [CA (AT) (Ins.) No. 336 of 2017 and other appeals]**	**NCLAT**	**29.11.2018**
142.		When the NCLT receives an application under section 7, it must afford a reasonable opportunity of hearing to the CD as section 424 of the Companies Act, 2013, mandates it to ascertain the existence of default as claimed by the FC in the application.	**Sree Metaliks Ltd. & Anr. Vs. Union of India & Anr. [W.P. 7144 (W) of 2017]**	**HC, Calcutta**	**07.04.2017**
143.		Section 7 application filed under the Code is an independent proceeding and must run its entire course, which has nothing to do with the pendency of winding up proceedings before the HC.	**Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]**	**SC**	**22.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
144.		Once the application under section 7 of the Code, which was the basic edifice for order of admission, was dismissed and proceedings emanating therefrom and consequential thereto were closed, the incidental and ancillary applications will not survive for further consideration.	**Micro Dynamics Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 875 of 2020]**	**NCLAT**	**12.10.2020**
145.		The AA directed the CD to provide information about the allottees of the project to the respondent for meeting the threshold criteria to initiate the class action. While dismissing the appeal, the NCLAT observed that no legal right vested in the CD has been infringed by such direction and no prejudice can be claimed by the CD on account of providing such information. It directed the CD to display the information about the allottees with full particulars on its website within two weeks.	**Supertech Township Project Ltd. Vs. Inderpal Singh Khandpur HUF [CA (AT) (Ins.) No. 17 of 2021]**	**NCLAT**	**18.01.2021**
146.		i. The term 'allotment' under second proviso to section 7 means allotment in the sense of documented booking as mentioned in section 11(1)(b) of the Real Estate (Regulation and Development) Act, 2016. A person to whom allotment of a plot, apartment, or a building has been made is an allottee. The allottee would also include a person who acquires the allotment either through sale,	**Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions]**	**SC**	**19.01.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		transfer or otherwise. What is required is allotment *qua* apartments, and not promised flats as per a brochure. ii. The default under section 7 need **not** be *qua* the applicant or applicants. Any number of applicants, without any amount being due to them, could move an application under section 7, if they are financial creditors (FCs) and there is a default, even if such default is owed to none of the applicants but to any other FC. iii. It does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees.			
147.		An action under section 7 of the Code could be legitimately invoked against a corporate guarantor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a "corporate person".	**Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]**	**SC**	**26.03.2021**
148.		Purely contractual disputes cannot be decided by the AA under section 7 of the Code in a summary proceedings.	**Ketaki Shah Talati Vs. Mirador Constructions Pvt. Ltd. [C.P.(IB) 1707/MB/2019]**	**NCLT, Mumbai**	**02.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
149.		Any proceeding which is pending before the AA under section 7 of Code and if the petition is admitted by the AA recording the satisfaction with regard to the default and the debt being due from the CD, any application under section 8 of the Arbitration and Conciliation Act, 1996 made thereafter will not be maintainable.	**Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Ltd.) & Ors. [Arbitration Petition (Civil) No. 48/2019 with another appeal]**	**SC**	**26.03.2021**
150.		The burden of *prima facie* proving occurrence of the default and that the application filed under section 7 is within the period of limitation, is entirely on the FC.	**Rajendra Narottamdas Sheth & Anr. Vs. Chandra Prakash Jain & Anr. [Civil Appeal No. 4222 of 2020]**	**SC**	**30.09.2021**
151.		An FC can simultaneously or one after another initiate CIRP against the CD as well as corporate guarantor for the same debt and default.	**Kanwar Raj Bhagat Vs. Gujarat Hydrocarbons and Power SEZ Ltd. & Anr [CA (AT) (Ins.) No. 1096 of 2020]**	**NCLAT**	**11.05.2021**
152.		The AA is empowered only to verify whether a default has occurred or not. Based upon its decision, the AA must then either admit or reject an application. These are the only two courses of action which are open to the AA in accordance with section 7(5). The AA cannot compel a party to the proceedings before it, to settle a dispute.	**E S Krishnamurthy & Ors. Vs. Bharath Hi Tech Builders Pvt. Ltd. [Civil Appeal No. 3325 of 2020]**	**SC**	**14.12.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
153.		Application under section 7 of the Code is not akin to a plaint in a civil suit. The filing of an application under section 7 in Form-1 is procedural requirement. The requirement in procedural rule was not to read in a manner, which may preclude an affected party from bringing other materials on records to bring home his point.	**Bishal Jaiswal Vs. Asset Reconstruction Company & Anr. [CA (AT) (Ins.) No. 385 of 2020]**	**NCLAT**	**10.12.2021**
154.		Threshold limit of Rs. 1 crore will be applicable for applications filed under section 7 or 9 on or after 24.03.2020 even if the debt is of a date earlier than 24.03.2020.	**Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd. [CA (AT) (Ins.) No. 813 of 2021]**	**NCLAT**	**04.10.2021**
155.		The AA is not a 'court of law' and that CIRP is not a litigation. The AA, at the time of determination as to whether to admit or reject an application under section 7 of the Code, is not to take into account the reasons for the CD's default.	**Drip Capital Inc. Vs. Concord Creations (India) P. Ltd. [CA (AT) (CH) No. 167 of 2021]**	**NCLAT**	**08.11.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
156.		The acceptance of the settlement proposal by the FC is a matter entirely in the ambit of the FC and the proceedings before the AA should not have been held up and delayed, waiting for a response by the FC. The Code does not provide for keeping the proceedings in abeyance and the application for admission has to be decided in a stipulated timeframe. If a settlement would have been reached, the appellant would have had recourse to section 12A of the Code.	**Ananta Charan Nayak Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 870 of 2021]**	**NCLAT**	**10.11.2021**
157.		Debenture holders are FCs under the Code and have a valid and legal right to file section 7 application under the Code.	**T. Prabhakar Vs. S. Krishnan & Ors. [CA (AT) (CH) (Ins.) No. 217 of 2021]**	**NCLAT**	**03.12.2021**
158.		The petitioner has absolute rights in the mortgaged property and cannot initiate any action under section 7 upon non-payment of dues under the Debenture Trust Deed, when the petitioner has agreed to recourse and sell the mortgaged assets and recover the money due.	**Beacon Trusteeship Limited Vs. Neptune Ventures and Developers Private Limited [CP(IB)993/MB/C-IV/2020]**	**NCLT, Mumbai**	**07.10.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
159.		The AA observed that the IBBI has been made respondent in the application when there was absolutely no need for the RP to do so. Due to such inclusion of IBBI in the array of parties, the AA had to issue notice to IBBI although IBBI is not concerned with the relief sought. AA ordered cost 25000/- on the RP personally for unnecessary making the IBBI, as a party.	**Bank of India Vs. B.B Foods Pvt Ltd [CP No. (IB) 349/ALD/2018]**	**NCLT, Allahabad**	**09.11.2021**
160.		Inter-Corporate Deposits are financial debts but in a transaction of a deposit of money or a loan, a relationship between the parties must come into existence. Mere transfer of money from one account to another would not constitute loan/deposits unless the intention of the parties is considered and substantiated with valid documents.	**Seaview Merchants Pvt. Ltd. Vs. Ashish Vincon Pvt. Ltd. [C.P (IB) No. 2011/KB/2019]**	**NCLT, Kolkata**	**15.12.2021**
161.		If the 'CIRP' is initiated by admitting the application under section 7 or 9 or 10, it cannot be set aside or withdrawn except for any illegality, to be exhibited or if it is without jurisdiction or for some other justiciable ground. Just because a promoter desires to pay all dues including the default amount, cannot be a ground to set aside the CIRP.	**Vallal RCK Vs. Siva Industries and Holdings Ltd. (In Liquidation) & Anr. [CA (AT) (CH) (Ins.) No. 211 & 212/2021]**	**NCLAT**	**28.01.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
162.		Mere filing of the proceedings under section 7 of the Code cannot be treated as an embargo on the court exercising jurisdiction under section 11 of the Arbitration and Conciliation Act, 1996.	**Jasani Realty Pvt. Ltd. Vs. Vijay Corporation [Commercial Arbitration Application (L) No. 1242 of 2022]**	**HC**	**25.04.2022**
163.		At the stage of admission of the application, the only requirement is that the minimum outstanding debt should be more than the threshold amount provided for under the Code. The actual amount of claim is to be ascertained by the RP after collating the claims and their verification which comes at a later stage.	**Rajesh Kedia Vs. Phoenix ARC Pvt. Ltd. [CA (AT) (Ins.) No. 996 of 2021]**	**NCLAT**	**11.04.2022**
164.		In case the record of IU shows that there is a debt which is in default, the AA or the Appellate Authority are not required to further examine the record maintained by the IU.	**Vipul Himatlal Shah & Anr. Vs. Teco Industries [CA (AT) (Ins.) No. 470 of 2022]**	**NCLAT**	**18.05.2022**
165.		Section 7(5)(a) of the Code confers discretionary power on the AA to admit the application of the FC. Considering the facts and circumstances including the overall financial health and viability of the CD, the AA can admit, reject or keep the admission in abeyance. On review, the SC had observed that "*observations in judgments are not to be read as provisions of statute. Judicial utterances*	**Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. [Civil Appeal No. 4633 of 2021]** **and** **Axis Bank Ltd. Vs. Vidarbha Industries Power Ltd. [Review**	**SC**	**12.07.2022** **&** **22.09.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and/or pronouncements are in the setting of the facts of a particular case."	**Petition (Civil) No. 1043 of 2022 in Civil Appeal No. 4633 of 2021]**		
166.		Merely because there is a 'debt' and 'default', it cannot be construed that a section 7 application is required to be admitted.	**Ocean Deity Investment Holdings Ltd., PCC Vs. Suraksha Asset Reconstruction Ltd. and Anr. [CA (AT) (Ins.) No. 795 of 2021 & other IAs]**	**NCLAT**	**08.09.2022**
167.		An appeal being the continuation of original proceedings, the provision of section 7(5)(b) of the Code, would be attracted.	**Kotak Mahindra Bank Ltd. Vs. Kew Precision Parts Pvt. Ltd. & Ors. [Civil Appeal No. 2176 of 2020]**	**SC**	**05.08.2022**
168.		FC can proceed against the guarantor without first suing the principal borrower.	**K. Paramasivam Vs. The Karur Vysya Bank Ltd. & Anr. [Civil Appeal No. 9286 of 2019]**	**SC**	**06.09.2022**
169.		A group of FCs can converge and join hands to touch the threshold limit, under section 7 of the Code.	**Vishnu Oil Mill Pvt. Ltd. Vs. Union of India & Ors. [D.B. Civil Writ Petition No. 2507/2022]**	**HC, Rajasthan**	**07.07.2022**
	8	**Insolvency Resolution by OC**			
170.		The CD did not raise the dispute before the statutory notice and the dispute raised in reply to the application does not require any investigation. Such dispute is a patently feeble legal argument and is not supported by evidence.	**Gaurang Nipinbhai Nagarsheth Vs. POSCO - India Pune Processing Center Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 214 of 2020]**	**NCLAT**	**20.08.2020**
171.		A dispute must truly exist in facts and should not be spurious, hypothetical and illusory.	**Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr. [Civil Appeal No. 2730 of 2020]**	**SC**	**20.07.2020**
172.		The expression 'existence of a dispute, if any', infers that a dispute shall not only be limited to instances specified in the definition as provided under section 5(6) of the Code, as it has	**Kuntal Construction Pvt. Ltd. Vs. Bharat Hotels Ltd. [CA (AT) (Ins.) No. 542 of 2020]**	**NCLAT**	**04.09.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		far arms, apart from pending Suit or Arbitration.			
173.		The moment there is pre-existence of a dispute, the OC gets out of the clutches of the Code.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
174.		The expression 'an operational creditor may on the occurrence of a default deliver a demand notice' under section 8 of the Code must be read as including an OCs authorised agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the AA Rules.	**Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]**	**SC**	**15.12.2017**
175.		So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.	**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017**	**SC**	**21.09.2017**
176.		OCs cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.	**K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos.21824 & 21825 of 2017]**	**SC**	**14.08.2018**
177.		Pendency of the case under section 138/141 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, cannot be held to be a dispute pending before a court of law. Such pendency actually amounts to admission of debt and not an existence of dispute.	**Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Ins.) No. 623 of 2018]**	**NCLAT**	**13.11.2018**
178.		The legislative intent of issuance of demand notice under section 8(1) is not a mere formality but a mandatory provision.	**Prajna Prakash Nayak Vs. ASAP Info Systems Pvt. Ltd. &Anr. [CA (AT) (Ins.) No. 196 of 2018]**	**NCLAT**	**11.07.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
179.		Due to the demand notice not being served by the OC, the NCLAT quashed all orders, interim arrangement, moratorium, appointment of IRP, as declared earlier by AA.	**Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt. Ltd. [CA (AT) (Ins.) No. 31 of 2017]**	**NCLAT**	**03.05.2017**
180.		The CD can show and satisfy the AA that a default has not occurred in the sense that the debt, which may also include a disputed claim, is not due or payable in law or in fact.	**Neha Himatsingka & Anr. Vs. Himatsingka Resorts Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 201 and another appeal]**	**NCLAT**	**30.11.2018**
181.		The OC had a relief open under the MSME Act and utilising the same does not mean that there is a pre-existing dispute. The context of the word 'dispute' in section 18 of the MSME Act takes colour from section 17 thereof and is different from the context of section 5(6) read with section 8 of the Code.	**iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd. [CA (AT) (Ins.) No. 1142 of 2019]**	**NCLAT**	**13.01.2020**
182.		Since arbitration proceedings u/s 37 of Arbitration and Conciliation Act, 1996, on the same subject matter was pending, the AA dismissed the application holding that the dispute has already been in pre-existence in between the petitioner and the CD even before section 8 notice was issued by the petitioner.	**CG Power & Industrial Solutions Ltd. Vs ACC Ltd. [CP No. 1681/IB &C/2017]**	**NCLT, Mumbai**	**16.02.2018**
183.		A mistake in a demand notice does not necessarily mean it is defective, and if a CD wants to question the validity of the demand it must show that a prejudice was suffered as a result of such defect.	**Rajendra Bhai Panchal Vs. Jay Manak Steels & Anr. [CA (AT) (Ins.) No. 592 of 2020]**	**NCLAT**	**20.10.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
184.		If the CD did not choose to appear in response to the notice issued upon it at the pre-admission stage and did not take stand as regards a pre-existing dispute *qua* the operational debt, then it cannot be said that no opportunity of being heard was provided to it.	**Ravinder Kumar Kalra (Director of Suspended Board of Evershine Solvex Pvt. Ltd.) Vs. Ricela Health Foods Ltd. & Ors. [CA (AT) (Ins.) No. 54 of 2020]**	**NCLAT**	**01.02.2021**
185.		As the arbitration was invoked after the service of the first demand notice, the AA rightly concluded that there was no pre-existing dispute prior to the demand notice, in terms of section 8 of the Code preventing the initiation of CIRP.	**Naresh Sevantilal Shah Vs. Malharshanti Enterprises & Anr. [CA (AT) (Ins.) No. 415 of 2020]**	**NCLAT**	**19.01.2021**
186.		In case of a CD who refuses to accept the delivery of notice under section 8 of the Code, it would not be justified to say that the notice has not been served on the CD.	**D. Srinivasa Rao Vs. Vaishnovi Infratech Ltd. [CA (AT) (Ins.) No. 880 of 2020]**	**NCLAT**	**05.01.2021**
187.		Mere fact that reply to notice under section 8(1) having not been given within 10 days or no reply to demand notice having been filed by the CD, does not preclude the CD to bring relevant materials before the AA to establish that there are pre-existing dispute which may lead to the rejection of section 9 application.	**Brand Realty Services Ltd. Vs. Sir John Bakeries India Pvt. Ltd. [CA (AT) (Ins.) No.958 of 2020]**	**NCLAT**	**10.03.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
188.		An operational creditor can issue a notice in relation to an operational debt either through a demand notice or an invoice. As such, the presence of an invoice (for having supplied goods or services) is not a *sine qua non*, since a demand notice can also be issued on the basis of other documents which prove the existence of the debt.	**Consolidated Construction Consortium Ltd. Vs. Hitro Energy Solutions Pvt. Ltd. [Civil Appeal No. 2839 of 2020]**	**SC**	**04.02.2022**
	9	**Application for initiation of CIRP by OC**			
189.		Except the CD, no other party has the right to intervene at the stage of admission of an application under section 7 or 9 of the Code.	**Damont Developers Pvt. Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 436-437 of 2019]**	**NCLAT**	**24.04.2019**
190.		The AA is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of CIRP under sections 7 and 9 of the Code based on the application, if filed by an FC or OC or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of section 248 of the Companies Act, 2013.	**Hemang Phopalia Vs. The Greater Bombay Co-operative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 765 of 2019]**	**NCLAT**	**05.09.2019**
191.		While admitting an application under section 9 of the Code, the AA directed the OC to pay an advance of Rs. 25,000/- to the IRP within two weeks from the date of receipt of the order, for the purpose of smooth conduct of the CIRP and that the IRP has to file a proof of receipt of such	**Shashikant Thakar Vs. Windsor Paper Pvt. Ltd. [CP(IB)No. 701/9/NCLT/AHM/2019]**	**NCLT, Ahmedabad**	**04.09.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		amount to the AA with the First Progress Report.			
192.		Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. A cost of Rs. 5 lakh was imposed on the OC.	**Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019]**	**NCLAT**	**18.11.2019**
193.		CIRP is not a 'suit', a 'litigation' or a 'money claim' for any litigation and no one is selling or buying the CD a 'resolution plan'. It is not an auction or a recovery or liquidation. It is a resolution process so that the CD does not default on dues.	**Excel Metal Processors Ltd. Vs. Benteler Trading International GMBH and Anr. [CA (AT) (Ins.) No. 782 of 2019]**	**NCLAT**	**21.08.2019**
194.		Once an application under sections 7 or 9 is filed, it is not necessary for the AA to await hearing of the parties for passing order of moratorium under section 14 of the Code. To ensure that one or other party may not abuse the process or for meeting the ends of justice, it is always open to the AA to pass appropriate interim order.	**NUI Pulp and Paper Industries Pvt. Ltd. Vs. Roxcel Trading GMBH [CA (AT) (Ins.) No. 664 of 2019]**	**NCLAT**	**17.07.2019**
195.		The applicability of Form 3 or Form 4 under of the AA Rules depends on whether invoices were generated during the course of transaction or not. Further, a copy of invoice is not mandatory if the demand notice is issued in Form 3 provided the documents to prove the existence of operational debt and the amount in default is attached with the application. Also,	**Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1354 of 2019]**	**NCLAT**	**24.02.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, if demand notice is delivered in Form 3 and documents to prove the existence of operational debt and the amount in default is attached with the application.			
196.		Unless the decree of a foreign court and decretal amount is adjudicated upon by a Civil Court as a legally payable claim, the same would not constitute a debt in the hands of OC and unless the debt is crystallized and payable in law, the issue of default would not be attracted.	**Peter Johnson John (Employee) Vs. KEC International Ltd. [CA (AT) (Ins.) No. 188 of 2019]**	**NCLAT**	**03.07.2019**
197.		A copy of the certificate required under section 9(3)(c) of the Code from the financial institution maintaining accounts of the OC confirming that there is no payment of an unpaid operational debt by the CD is certainly not a condition precedent to triggering the insolvency process under the Code.	**Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]**	**SC**	**15.12.2017**
198.		The definition of the word 'dispute' is not exhaustive but is, in fact illustrative. In other words, a CD is not left with the only option of showing the existence of dispute by way of a pending suit, arbitration or to show the breach of representation or warranty. The CD would be well within its right to show that	**Annapurna Infrastructure Pvt. Ltd. & Ors Vs. Soril Infra Resources Ltd. [C.P. No. (IB)-22(PB)/2017]**	**NCLT, New Delhi**	**24.03.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		'goods' and services were not supplied at all or the supply was far from satisfactory in case of demand raised by an OC. Hence, a CD would be well within its rights to reject the demand on any sustainable grounds. It would therefore, depend on the facts and circumstances of each case.			
199.		In view of Rule 8 of AA Rules, it was open to the OC to withdraw the application under section 9 before its admission but once it was admitted, it cannot be withdrawn even by the OC, as other creditors are entitled to raise claim pursuant to public announcement under section 15 read with section 18 of the Code.	**Mother Pride Dairy India Pvt. Ltd. Vs. Portrait Advertising & Marketing Pvt. Ltd. [CA (AT) (Ins.) No. 94 of 2017]**	**NCLAT**	**13.07.2017**
200.		The 'operational debt' under the Code is a claim in respect of provision of goods or services, including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Central/State Government/local authority. Hence, it is confined to four categories like goods, services, employment and the Government dues.	**Vinod Awasthy Vs. AMR Infrastructures Ltd. [C.P No. (IB)-10 (PB)/2017]**	**NCLT, New Delhi**	**20.02.2017**
201.		Since the OC has not submitted the information as required for admission of application under section 9 before the AA, and in the absence of non-supply of requisite information in terms of Rule 5 of the AA Rules, the	**Transparent Technologies Pvt. Ltd. Vs. Multi Trade [CA (AT) (Ins.) No. 207 of 2017]**	**NCLAT**	**25.10.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		application cannot be treated as an application under section 9 for initiation of CIRP against the CD.			
202.		A dispute could be proved by showing that a suit has been filed or arbitration is pending.	**One Coat Plaster Vs. Ambience Pvt. Ltd. [CA No. (I.B.) 07/PB/2017 and [CA (I.B.) No. 08/PB/2017]**	**NCLT, New Delhi**	**01.03.2017**
203.		The OC had no account in India and it was not possible to produce a certificate from any bank in India in terms of definition of 'financial institution' in section 3(14) of the Code. The AA observed that this interpretation will render the provisions of the Code otiose and the purpose and object of the legislation would be defeated.	**Rio Glass Solar SA Vs. Shriram EPC Ltd. [CP/537/(IB)/CB/2017]**	**NCLT, Chennai**	**10.08.2017**
204.		Section 16G(1)(c) of the Tea Act, 1953, relates to winding up, while section 9 of the Code is for initiation of CIRP to ensure revival and continuation of the CD. Therefore, these provisions occupy different fields. Accordingly, no permission of the Central Government is required for initiation of CIRP of the CD in terms of section 16G (1) of the Tea Act, 1953.	**A.J. Agrochem Vs. Duncans Industries Ltd. [CA (AT) (Ins.) No. 710 of 2018]**	**NCLAT**	**20.06.2019**
205.		As the amount is due from the partnership firm, application under section 9 is not maintainable against one of the members of the partnership firm.	**Gammon India Ltd. Vs. Neelkanth Mansions & Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 698 of 2018]**	**NCLAT**	**19.12.2018**
206.		Since money was paid as advance for supply of goods but the goods were not supplied, the payment	**Roma Infrastructures India Pvt. Ltd. Vs. A.S. Iron & Steel (I) Pvt.**	**NCLAT**	**22.04.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		cannot be considered to be an 'operational debt' and hence, application under section 9 was not maintainable.	**Ltd. [CA (AT) (Ins.) No. 223 of 2019]**		
207.		'Proceedings' under section 138 of the Negotiable Instruments Act, 1881 as well as Order 37 of the Code of Civil Procedure, 1908, will not prohibit an application under section 9 of the Code.	**Shailendra Sharma Vs. Ercon Composites & Ors. [CA (AT) (Ins.) No. 159 of 2020]**	**NCLAT**	**13.01.2021**
208.		Dismissal of an application under section 9 of Code as being non-maintainable for a technical defect such as incomplete Form 5, is not warranted.	**Silvassa Cement Products Pvt. Ltd. Vs. Noor India Buildcon Pvt. Ltd. [CA (AT) (Ins.) No. 675 of 2020]**	**NCLAT**	**22.01.2021**
209.		The SC upheld the direction of NCLAT which ordered OC to pay the CIRP costs and fees of the IRP/RP, after the dismissal of its section 9 application by NCLAT.	**Rajkumar Brothers and Production Pvt. Ltd. Vs. Harish Amilineni Shareholder and erstwhile Director of Amilionn Technologies Pvt. Ltd. & Anr. [Civil Appeal No. 4044 of 2020]**	**SC**	**22.01.2021**
210.		The CD is a healthy company, not substantiated by the corresponding balance sheet, cannot be a sole basis to substantiate that it does not require to go to CIRP. High turnover with positive net worth may reflect good fund flow but it does not substantiate a good cash flow.	**Anoop Kumar Chhawchharia Vs. Emgreen Impex Ltd. & Anr. [CA (AT) (Ins.) No. 350 of 2021]**	**NCLAT**	**26.07.2021**
211.		The CD calling the representative of the OC with all the papers to settle the dispute cannot be considered as an acknowledgement of debt in	**State of West Bengal Vs. Keshav Park Private Ltd. & Anr. [CA Appeal (AT) (Ins.) No.330-331 of 2020]**	**NCLAT**	**08.12.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		terms of section 18 the Limitation Act, 1963.			
212.		The Code is not a recovery mechanism to recover dues of listing fees etc. The code is not to be resorted to for recovery of such dues from creditors.	**BSE Ltd. Vs. Asahi Infrastructure & Projects Ltd. [CA (AT) (Ins.) No.346 of 2019]**	**NCLAT**	**21.12.2021**
213.		A mediation order and dishonoured cheques shall not give extension of the limitation for the application under section 9 of the Code.	**Ravi Iron Ltd. Vs. Jia Lal Kishori Lal & Ors. [CA (AT) (Ins.) No. 122 of 2022]**	**NCLAT**	**08.02.2022**
214.		An application filed by an OC under section 9 of the Code cannot be said to be non-maintainable on the ground that CD is a going concern.	**Mukul Agarwal Vs. Royale Resinex Pvt. Ltd. & Anr. [CA (AT) (Ins.) No.777 of 2020]**	**NCLAT**	**30.03.2022**
215.		CIRP under section 9 of the Code cannot be initiated on non-payment of the TDS amount by the CD.	**Amitabh Roy Vs. Master Development Management (India) Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 274 of 2022]**	**NCLAT**	**18.05.2022**
216.		For application under section 9 of the Code, the interest component can be included with the principal debt to arrive at the default threshold, if the interest payment for delay is stipulated in the invoice.	**Mr. Prashat Agarwal Vs. Vikash Parasrampuria & Anr. [CA (AT) (Ins.) No. 690 of 2022]**	**NCLAT**	**15.07.2022**
217.		Non-payment of 'LTC' and 'EL Encashment' dues, is not a ground to initiate CIRP.	**Kishore K. Lonkar Vs. Hindustan Antibiotics Ltd. [CA (AT) (Ins.) No. 934 of 2021]**	**NCLAT**	**10.05.2022**
	10	**Initiation of CIRP by Corporate Applicant**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
218.		Since the applicant was not a director and was disqualified under section 164 of the Companies Act, 2013, he had no authority to file the application.	**Neesa Infrastructure Ltd. Vs. State Bank of India & Ors. [C.P. (I.B.) 61/10/NCLT/AHM/2018]**	**NCLT, Ahmedabad**	**17.09.2020**
219.		The IRP moved the AA stating that the application filed by the CD under section 10 of the Code was based on fraud and non-disclosure of material particulars. While holding that the application had been actuated by fraudulent and malicious intent, the order of admission and initiation of CIRP was recalled. The corporate veil was also pierced to identify the persons behind fraudulent initiation of CIRP.	**Alpfly Private Ltd. Vs. Ravi Kant Gupta & Ors. [CA No. 448-C/3-ND of 2019 in C.P. IB No. in 358/ND/2018]**	**NCLT, New Delhi**	**30.09.2019**
220.		Section 10 does not empower the AA to go beyond the records as prescribed under section 10 and the information as required to be submitted in Form 6 of the AA Rules, subject to ineligibility prescribed under section 11.	**Unigreen Global Pvt. Ltd. Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 81 of 2017]**	**NCLAT**	**01.12.2017**
221.		The shareholder has a right to decide whether approving or disapproving the decision be proceeded with the CIRP under section 10 of the Code.	**Export-Import Bank of India & Anr. Vs. Astonfield Solar (Gujarat) Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 754 of 2018]**	**NCLAT**	**04.12.2018**
222.		CIRP was ordered to speed up preferably within a period of 100 days as the Corporate Applicant had already availed the moratorium as provided under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.	**Amit Spinning Industries Ltd. [IB-131 (PB)/2017]**	**NCLT, New Delhi**	**01.08.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
223.		An order of CIRP under section 10 cannot be passed, as the applicant obtained a fresh certificate of incorporation as well as new registered office address, and the name of CD as appearing in the application is not in existence. It is necessary to relook the provisions of section 10 and tighten the same to avoid any further misuse. If a company chooses to file application under section 10, the company ought to maintain a *status quo* as on the date of filing of the application and this *status quo* shall not prevent the creditors and others from proceeding against it, till the disposal of the application by the AA.	**Prithivraj Spinning Mill Pvt. Ltd. Vs. Indian Overseas Bank, Coimbatore & Ors. [IBA/120/2020]**	**NCLT, Chennai**	**09.12.2020**
	10A	**Suspension of initiation of CIRP**			
224.		The *Explanation* given under section 10A reinforces the retrospectivity in the applicability of section 10A and because of the applicability of the newly inserted section, the primary application under section 9 cannot be proceeded with as the date of default was beyond the prescribed date under the section.	**Siemens Gamesa Renewable Power Pvt. Ltd. Vs. Ramesh Kymal [IA/395/2020 in IBA/215/2020]**	**NCLT, Chennai**	**09.07.2020**
225.		The substantive part of section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the	**Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd. [Civil Appeal No. 4050 of 2020]**	**SC**	**09.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		filing of applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. The retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it. The decision of the NCLAT was upheld that the bar on filing application for initiation of CIRP applies to defaults committed after March 25, 2020 though such application was filed after March 25, 2020 but before June 5, 2020.			
	11	**Persons not entitled to make application**			
226.		Since the HC already admitted the winding up proceedings and ordered for winding up of the CD, therefore the question of initiation of CIRP against same CD does not arise.	**Innoventive Industries Ltd. Vs. Kumar Motors Pvt. Ltd. [CA (AT) (Ins.) No. 181 of 2017]**	**NCLAT**	**09.02.2018**
227.		Two parallel insolvency proceedings cannot run against a CD.	**Jai Ambe Enterprise Vs. S.N. Plumbing Pvt. Ltd. [MA 78/2018 in CP 1268/I&BC/NCLT/MB/MAH/2017]**	**NCLT, Mumbai**	**06.02.2018**
228.		CD under liquidation is not entitled to make an application to initiate CIRP in terms of section 11(d).	**Abhay N. Manudhane Vs. Gupta Coal India Pvt. Ltd. [CA (AT) (Ins.) No. 786 of 2019]**	**NCLAT**	**01.10.2019**
229.		Section 11 is of limited application and only bars a CD from initiating an application	**Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]**	**SC**	**22.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of the section, it does not follow that until a liquidation order has been made against the CD, an insolvency application may be filed under section 7 or 9 of the Code.			
230.		The intention of the legislature was always to target the CD only insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never had been the intention to create an obstacle in the path of the CD, in any of the circumstances contained in section 11, from maximizing its assets by trying to recover the liabilities due to it from others.	**Manish Kumar Vs. Union of India & Anr. [Writ Petition(C)No.26 of 2020 with other writ petitions]**	**SC**	**19.01.2021**
	12	**Time-limit for completion of insolvency resolution process**			
231.		The matter was admitted on 16.08.2017 and on intimation, the RP took charge on 14.09.2017. Accordingly, NCLAT directed AA to exclude the 30 days for the purpose of counting the period of CIRP.	**Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT) (Ins.) No. 161 of 2018]**	**NCLAT**	**16.05.2018**
232.		The resolution plan, which had consumed the time available under section 12 of the Code, has failed owing to nonfulfillment of the commitment by Liberty House. However, the SC noted that the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16.08.2019)	**Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal]**	**SC**	**24.09.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. Accordingly, it permitted the RP to invite fresh offers within a period of 21 days.			
233.		The NCLAT was not inclined to set-aside the order for re-starting the CIRP, even if there was some infirmity in the impugned order during the resolution process as almost two years had elapsed since the time CIRP was initiated.	**Sunil S. Kakkad Vs. Parag Sheth & Anr. [CA (AT) (Ins.) Nos. 1260-1261 of 2019 and another appeal]**	**NCLAT**	**19.11.2019**
234.		Time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
235.		The statutory scheme laying down time limits sends a clear message that time is the essence of the Code.	**Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals]**	**SC**	**19.09.2017**
236.		It was AA's duty to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.	**Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins.) No. 35 of 2018]**	**NCLAT**	**20.02.2018**
237.		The AA can extend the time limit provided under section 12 of the Code if it is satisfied that grave injustice would be caused in case the prayer of extension is made for no fault of the applicant.	**RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [CA (IB) Nos. 270/KB/2017, 238/KB/2018, 288/KB/2018 in CP (IB) No. 170/KB/2017]**	**NCLT, Kolkata**	**18.04.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
238.		It is always open to the AA/Appellate Tribunal 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.	**Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018]**	**NCLAT**	**08.05.2018**
239.		Section 12, construed in the light of the object sought to be achieved by the Code, and in the light of the consequence provided by section 33, makes it clear that the periods mentioned are mandatory and cannot be extended. Regulation 40A of the CIRP Regulations presents a model timeline of the CIRP, and it is of utmost importance for all authorities concerned to follow this model timeline as closely as possible.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]**	**SC**	**04.10.2018**
240.		While leaving the provision otherwise intact, the term "mandatorily" was struck down from second proviso to section 12(3), as being manifestly arbitrary under Article 14 of the Constitution and as being unreasonable restriction on the litigant's right to carry on business under Article 19(1)(g) of the Constitution. The effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal	**Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals andWP(C)s]**	**SC**	**15.11.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		proceedings. If the delay or a large part thereof is attributable to the tardy process of the AA and/or the NCLAT itself, it may be open in such cases for the AA and/or NCLAT to extend time beyond 330 days.			
241.		CIRP must be conducted and carried on in accordance with the Code which prescribes timelines. Although withdrawal of the applications based on the consideration by the CoC and settlement are part of the same process, but whatever emerges s should materialise within the prescribed timelines.	**Maharashtra Seamless Ltd. Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 1039 of 2020]**	**NCLAT**	**07.12.2020**
242.		The time period can very well be extended beyond 330 days. It further observed that it will be in the best interest of the CD as well as the stakeholders if the resolution plan is considered, liquidation being the last resort.	**IDBI Bank Ltd. Vs. Cyclo Transmissions Ltd. [IA No. 1053 of 2020 in CP(IB) No. 381 of 2018]**	**NCLT, Mumbai**	**07.10.2020**
243.		The extension of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP rather than going into liquidation of the CD which should only be initiated as a last resort. It approved the extension of the period by 90 days.	**Abhilash Lal, RP of Sevenhills Healthcare Pvt. Ltd. [IA No. 137 of 2020 in CP(IB) No. 282/7/HDB/2018]**	**NCLT, Amravati**	**06.10.2020**
244.		The extension of CIRP period beyond 330 days was allowed to prevent the CD from being pushed into liquidation and a	**Committee of Creditors of Trading Engineers International Ltd. Vs. Trading Engineers International Ltd. through RP [CA (AT) (Ins.) No. 61 of 2021]**	**NCLAT**	**02.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		viable resolution plan being approved by the CoC.			
245.		RP should file an application to the AA for extension of the period of the CIRP, only if instructed to do so by a resolution passed at a meeting of the CoC by a vote of 75% of the voting shares.	**George Vinci Thomas & Ors. Vs. Sasitharan Ramaswamy, Resolution Professional in the matter of India Techs Ltd. & Ors. [IA/218/KOB/2020 & MA/22/KOB/2020 in TIBA/14/KOB/2019]**	**NCLT, Kochi**	**12.02.2021**
246.		The approved resolution plan has to be implemented at the earliest and that is the mandate under the Code. The entire resolution process has to be completed within the period stipulated under section 12 and any deviation would defeat the object and purpose of providing such time limit.	**Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Dinkar T. Venkatsubramanian and Ors. [Civil Appeal No. 6707 of 2019]**	**SC**	**01.12.2021**
247.		Where CIRP is pending and not completed within 330 days within which the resolution of stressed asset is to take place, only in an exceptional/ extraordinary case, the outer time limit of 330 days can be extended with a view to secure the ends of justice.	**Committee of Creditors of Meenakshi Energy Ltd. Vs. Consortium of Prudent ARC Ltd. & Vizaag Minerals and Logistics Pvt. Ltd. [CA (AT) (CH) (Ins.) no.166 of 2021]**	**NCLAT**	**25.10.2021**
	12A	**Withdrawal of application admitted under section 7, 9 or 10**			
248.		Section 12A, of the Code enacted with effect from 06.06.2018 will not come into the picture since the admission of the petition was on 01.06.2018.	**Shipra Hotels Ltd. Vs. Value Lines Interiors Pvt. Ltd. [Civil Appeal No. 7405 of 2018]**	**SC**	**03.08.2018**
249.		At any stage where the CoC is not yet constituted, a party can approach the NCLT directly,	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459,**	**SC**	**25.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.	**598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**		
250.		Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.	**Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018]**	**SC**	**14.12.2018**
251.		It is the promoter who can settle the matter with creditors and submit such proposal to RP and that he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A.	**Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019]**	**NCLAT**	**07.08.2019**
252.		The exit route prescribed in section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking sections 7, 9 and 10 of the Code.	**Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and other appeals]**	**SC**	**22.01.2020**
253.		The application under section 12A having been approved by the CoC with more than 90% of the voting share, it was not open to the AA to reject the same and that too on a ground of ineligibility under section 29A, which is not applicable.	**Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. [CA (AT) (Ins.) No. 601 of 2019 and other appeals]**	**NCLAT**	**28.08.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
254.		Regulation 30A of the CIRP Regulations cannot override the substantive provisions of section 12A of the Code, according to which the applicant can only move application for withdrawal before the AA and not by the RP.	**Francis John Kattukaran Vs. The Federal Bank Ltd. & Anr. [CA (AT) (Ins.) No. 242 of 2018]**	**NCLAT**	**13.11.2018**
255.		As CoC has already been constituted, the application for withdrawal can only be filed to the RP and not directly in the court under section 60(5) of the Code read with Rule 11 of NCLT Rules.	**A. K. Corporation Vs. Anupam Extraction Ltd. [MA 2746/2019 in CP (IB) 2781/(MB)/2018]**	**NCLT, Mumbai**	**14.08.2019**
256.		Once the terms of settlement providing a repayment schedule was incorporated in the order, thereby making it an order/ decree of the Court, the grant of liberty to the FC to come back in case of breach of settlement terms could only be interpreted to mean that the revival of CIRP would be sought for non-compliance with the terms of settlement.	**Himadri Foods Ltd. Vs. Credit Suisse Funds AG [CA (AT) (Ins.) No. 1060 of 2020]**	**NCLAT**	**07.01.2021**
257.		While allowing an application of withdrawal, the AA concluded that in a situation where CoC is not formed after admission of CD into CIRP, rule 11 of NCLT Rules under the Companies Act, 2013, and not regulation 30A of the CIRP Regulations, shall apply to withdrawal of CIRP. It observed that a situation, which is not covered under section 12A, cannot be covered under regulation 30A of the CIRP	**Sintex Plastics Technology Ltd. Vs. Zielem Industries Pvt. Ltd. & Anr. [IA 18 (AHM)/2021 in CP (IB) 759 (AHM) 2019]**	**NCLT, Ahmedabad**	**29.06.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Regulations. However, the AA can exercise inherent jurisdiction under rule 11 for a situation not covered under any provisions of the Code. [***Note: IBBI has preferred an appeal in the matter before the Hon'ble NCLAT, New Delhi.***]			
258.		Once the CIRP is triggered in relation to a CD, the same is an order in *rem* and not in *personam* and that whether the CD is required to be wriggled out of the CIRP is to be decided by the AA by exercising its judicial wisdom and cannot be carried away by the commercial wisdom of CoC.	**In the matter of Siva Industries and Holdings Limited [MA/43/CHE/2021 & IA/647/IB/2020 & IA-586/CHE/2021 in IBA/453/2019]**	**NCLT, Chennai**	**12.08.2021**
259.		Once an application for insolvency resolution is admitted on behalf of a creditor then the process would be one of *rem*, and therefore, all creditors of the same class would have their respective rights at par with each other.	**Bank of Baroda & Anr. Vs. MBL Infrastructures Ltd. & Ors. [Civil Appeal No. 8411 of 2019]**	**SC**	**18.01.2022**
260.		When 90% and more of the creditors, in their wisdom after due deliberations, find that it will be in the interest of all the stakeholders to permit settlement and withdraw CIRP, AA or the NCLAT cannot sit in an appeal over the commercial wisdom of CoC. The interference would be warranted only when the AA or the NCLAT finds the decision of the CoC to be wholly capricious, arbitrary, irrational	**Vallal RCK Vs. Siva Industries and Holdings Ltd. & Ors. [Civil Appeal Nos. 1811-1812 of 2022]**	**SC**	**03.06.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and de hors the provisions of the statute or the rules.			
	14	**Moratorium**			
261.		A conjoint reading of section 14(1)(a) and section 238 of the Code clearly shows that the Code overrides section 44 of the Gujarat Value Added Tax Act, 2003, as the same is inconsistent with the provisions of the Code and thus the action of the Assistant Commissioner of State Tax directing a payment out of the account of the CD is clearly barred by the provisions of section 14(1)(a).	**Sundaresh Bhat Vs. Assistant Commissioner of State Tax and Anr. [IA No. 1043 of 2020 in CP(IB)No. 490/MB/2018]**	**NCLT, Mumbai**	**22.09.2020**
262.		The sale of goods by custom department through e-auction notice was violative of section 14 of the Code.	**Ramsarup Industries Ltd. Vs. ICICI Bank Ltd. [CA (IB) No. 116/KB/2018 in CP(IB) No. 349/KB/2017]**	**NCLT, Kolkata**	**03.07.2018**
263.		'Security Interest' does not include 'Performance Bank Guarantee' and it is not covered by section 14 of the Code.	**Indian Overseas Bank Vs. Arvind Kumar [CA (AT) (Ins.) No. 558 of 2020]**	**NCLAT**	**28.09.2020**
264.		Section 14(1)(d) of the Code prohibits recovery of any property by an owner or lessor in possession of the CD. This prohibition is also applicable to Department of Telecom (DoT). Use of licence / spectrum is akin to "*essential goods or services*" without which the CD cannot run its telecom business. The AA instructed the DoT not to make any attempt to cancel the CD's licence.	**Vijaykumar V. Iyer Vs. Union of India [MA-337/2018 in C.P. (IB)-298/(MB)/2018 and MA-336/2018 in C.P. (IB)-302/(MB)/2018]**	**NCLT, Mumbai**	**27.11.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
265.		The asset in question being owned by a third party but in possession of the RP, that too due to a contractual arrangement, must not be retained but to be returned.	**Weather Makers Pvt. Ltd. Vs. Parabolic Drugs Ltd. [CA 206/2019 in CP(IB)-102/CHD/2018]**	**NCLT, Chandigarh**	**26.04.2019**
266.		Once the counterclaims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, section 14 could be triggered.	**SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC(COMM) 73/2017]**	**HC, New Delhi**	**18.07.2019**
267.		Any amount deposited by any person in the account of CD cannot be appropriated by bank towards its own dues, during the period of moratorium.	**State Bank of India Vs. Debashish Nanda [CA (AT) (Ins.) No. 49 of 2018]**	**NCLAT**	**27.04.2018**
268.		Once moratorium is over, no further embargo remains for continuing to hear suits and other proceedings to which the CD is a party.	**Sirpur Paper Mills Ltd. Vs. I.K. Merchants Pvt. Ltd. [A.P. No. 550 of 2008]**	**HC, Calcutta**	**10.01.2020**
269.		The appropriation of Fixed Deposit Receipts (FDRs) was barred by section 14 as it was initiated after the initiation of CIRP. Any withdrawal from the account/FDR by the bank will be regarded as violation of Regulation 19 of the CIRP Regulations and in the absence of such a bar, it will not be possible for RP to verify the claims and the object of moratorium will be defeated.	**Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)/2017]**	**NCLT, New Delhi**	**25.04.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
270.		Once the proceedings under the Code had commenced and an order declaring moratorium has been passed by the AA, then if the assets of the CD are alienated during the pendency of the proceedings under the Code, it will seriously jeopardise the interest of all the stakeholders.	**Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. & Ors. [Civil Appeal Nos. 8800-8801 of 2019]**	**SC**	**18.11.2019**
271.		Since the moratorium has expired, the appellant may pursue the suit pending before the subordinate court in the light of section 60(6) of the Code.	**ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu [CA (AT) (Ins.) No. 655 of 2019]**	**NCLAT**	**05.07.2019**
272.		Section 14 has created a piquant situation i.e., that the CD undergoing insolvency proceedings can continue to pursue its claims, but the counterclaim would be barred under section 14(1)(a). When such situations arise, the court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed, and the court cannot blindly stay the counterclaim and refer the defendant to the NCLT/RP for filing its claims.	**SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC (COMM) 73/2017]**	**HC, New Delhi**	**18.07.2019**
273.		The mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.	**Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan Pvt. Ltd. & Ors. [Civil Appeal No. 16929 of 2017]**	**SC**	**23.10.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
274.		Moratorium will also not affect the power of the HC under Article 226 of the Constitution. However, so far as suit, if filed before any HC under original jurisdiction which is a money suit or suit for recovery, against the CD, such suit cannot proceed after declaration of moratorium under section 14 of the Code.	**Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]**	**NCLAT**	**14.09.2017**
275.		The Debts Recovery Appellate Tribunal should have recalled its order so that the IRP/RP could take over the assets of the CD in exercise of its mandate under the Code, during the period of moratorium.	**Amira Pure Foods Pvt. Ltd. Vs. Canara Bank & Ors. [W.P.(C) No. 5467/2019]**	**HC, New Delhi**	**20.05.2019**
276.		The word 'its' used in section 14(1)(c) was interpreted to denote the property owned by the CD, thus the property not owned by CD would not fall within the ambit of moratorium.	**Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. [T.C.P. No. 1059/I&BP/NCLT/MB/MAH/2017]**	**NCLT, Mumbai**	**03.07.2017**
277.		On determination, even if it is found that the CD is liable to pay certain amount, still no recovery can be made during the period of moratorium.	**Jharkhand Bijli Vitran Nigam Ltd. Vs. IVRCL Ltd. & Anr. [CA (AT) (Ins.) No. 285 of 2018]**	**NCLAT**	**03.08.2018**
278.		Moratorium imposed by section 14 is in the interest of the CD itself, thereby preserving its assets during the CIRP.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
279.		The RP has the right to take control and custody of any asset, though the customs authority is	**Commissioner of Customs, (Preventive) West Bengal Vs. Ram Swarup Industries Ltd. &**	**NCLAT**	**20.06.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		in possession of the same during the period of moratorium.	**Ors. [CA (AT) (Ins.) No. 563 of 2018]**		
280.		The termination of the mining lease with the CD during the moratorium has taken away the interest created in favour of the CD in relation to the mining operations and the CD cannot carry on mining business as a going concern, which frustrates the object of CIRP.	**Vasudevan Vs. State of Karnataka & Ors. [MA/632/2018 in CP/39/2018]**	**NCLT, Chennai**	**03.05.2019**
281.		Freezing of the bank accounts in the name of CD is a proceeding of quasi-judicial nature and being so, such a proceeding is a proceeding before any other authority as contemplated in the provision of law, and as such, continuation of the same during the period when the moratorium is in operation is illegal in view of the prohibitions, rendered in section 14(1)(a) of the Code.	**Kitply Industries Ltd. Vs. Assistant Commissioner of Income Tax (TDS) & Anr. [I.A. No. 54/2018 in C.P. (IB)/02/GB/2018]**	**NCLT, Guwahati**	**15.11.2018**
282.		Section 14 of the Code only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.	**Tayal Cotton Pvt. Ltd. Vs. State of Maharashtra & Ors. [Criminal Writ Petition No. 1437of 2017]**	**HC, Bombay**	**06.08.2018**
283.		Moratorium will not affect any suit or case pending before the SC under Article 32 of the Constitution or where an order is passed under Article 136 of the Constitution.	**Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]**	**NCLAT**	**14.09.2017**
284.		'*Essential service*' is for survival of humankind, but not for making business and earn profits without making payment to the services used. When company is using it	**ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 157 in CP 01/I&BP/2016]**	**NCLT, Mumbai**	**23.08.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		for making profit, then the company must make payment to the services/goods utilised in manufacturing purpose.			
285.		Essential goods or services, including electricity, water, telecommunication services and information technology services, if they are not direct input to the output produced or supplied by the CD, cannot be terminated, or suspended or interrupted during moratorium period.	**Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017]**	**NCLAT**	**03.02.2018**
286.		'Profit Petroleum' is not out of the ambit of section 14 of the Code and moratorium is applicable.	**Videocon Industries Ltd. Vs. State Bank of India & Ors. [MA 1300/2018 in C.P. (IB)-02/(MB)/2018]**	**NCLT, Mumbai**	**13.03.2019**
287.		Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceedings under the PMLA.	**Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement [CA (AT) (Ins.) No. 493 of 2018]**	**NCLAT**	**02.05.2019**
288.		Imposition of fine cannot held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction and cannot come within the purview of section 14. Further, no criminal proceeding is covered under section 14 of the Code.	**Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors. [CA (AT) (Ins.) No. 306 of 2018]**	**NCLAT**	**31.07.2018**
289.		Sections 96 and 101, when contrasted with section 14, would show that section 14 cannot possibly apply to a personal guarantor.	**State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595, 4533 of 2018]**	**SC**	**14.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
290.		'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the CD in respect of 'its' property.	**Alpha and Omega Diagnostics (India) Ltd. Vs. Asset Reconstruction Company of India Ltd. & Ors. [CA (AT) (Ins.) No. 116 of 2017]**	**NCLAT**	**31.07.2017**
291.		In terms of section 14 of the Code, all the proceedings pending before any court against the CD automatically comes to halt and cannot be decided.	**Haravtar Singh Arora Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 567 of 2018]**	**NCLAT**	**20.09.2018**
292.		Section 14 of the Code will prevail over section 28A of the Securities and Exchange Board of India Act, 1992, and SEBI cannot recover any amount including any penalty from the CD.	**Anju Agarwal Vs. Bombay Stock Exchange & Ors. [CA (AT) (Ins.) No. 734 of 2018]**	**NCLAT**	**23.04.2019**
293.		The Government of India issued show cause notice to the CD before issuance of the termination letter much prior to initiation of the CIRP. The CD having failed to act in terms of the said show cause notice and the order of cancellation passed by the Government being before declaration of moratorium, it cannot be held to be in violation of section 14(1)(d) of the Code.	**Monnet Ispat & Energy Ltd. Vs. Government of India, Ministry of Coal [CA (AT) (Ins.) No. 26 of 2018]**	**NCLAT**	**30.11.2018**
294.		It is always fit to appoint local professional, instead of airlifting a person from Delhi, which will be taxing the stressed CD and there is every chance of delay in proceeding.	**Sojitz India Pvt. Ltd. Vs. Oren Hydrocarbons Pvt. Ltd. [CP/1182/IB/2018]**	**NCLT, Chennai**	**12.02.2019**
295.		After admission of application under section 7 of the Code, once moratorium is declared, it is neither open to any person	**Indian Overseas Bank Vs. Dinkar T. Venkatsubramaniam [CA (AT) (Ins.) No. 267 of 2017]**	**NCLAT**	**15.11.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		including FCs and the appellant bank to recover any amount from the account of the CD, nor it can appropriate any amount towards its own dues.			
296.		During the moratorium period, a guarantee cannot be invoked.	**RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [C.A. (I.B.) No. 543/2017 arising out of C.P(IB)/170/KB/2017)]**	**NCLT, Kolkata**	**18.12.2017**
297.		Once moratorium is declared in a CIRP, adjustment of fixed deposits of CD by the appellant against an outstanding loan of CD, cannot be maintained. The plea of lack of knowledge of initiation of CIRP is not relevant.	**UCO Bank Vs. G. Ramachandran [CA (AT) (Ins.) No. 761 of 2020 with IA No. 2038 of 2020]**	**NCLAT**	**03.11.2020**
298.		Once the moratorium is declared, it is not open to any person, including FCs, to recover any amount from the account of the CD nor can it appropriate any amount towards its own dues. It held the actions of the bank to be in violation of section 14 of the Code and directed it to reverse the amount along with any interest accrued as per the nature of the deposit.	**Alliance Broadband Services Pvt. Ltd. Vs. Manthan Broadband Service Pvt. Ltd. [IA No. 853/KB/2020 in CP (IB) No. 1634/KB/2018]**	**NCLT, Kolkata**	**10.12.2020**
299.		The bank guarantee can be invoked even during the period of moratorium in view of section 14(3)(b) of the Code.	**Bharat Aluminium Co. Ltd. Vs. J.P Engineers Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 759 of 2020]**	**NCLAT**	**26.02.2021**
300.		On the issue as to whether institution or continuation of a proceeding under section 138 of the Negotiable Instruments Act, 1881 (NI Act) can be said to be	**P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. [Civil Appeal No. 10355 of 2018 with other appeals]**	**SC**	**01.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		covered under moratorium, the SC held as under: i. A quasi-criminal proceeding which would result in the assets of the CD being depleted as a result of having to pay compensation which can amount to twice the amount of the cheque that has bounced would directly impact the CIRP in the same manner as the institution, continuation, or execution of a decree in such suit in a civil court for the amount of debt or other liability. Judged from the point of view of this objective, it is impossible to discern any difference between the impact of a suit and a section 138 proceeding, insofar as the CD is concerned, on it getting the necessary breathing space to get back on its feet during the CIRP. ii. Section 14(1)(a) refers to monetary liabilities of the CD and section 14(1)(b) refers to the CD's assets, and together, these two clauses form a scheme which shields the CD from pecuniary attacks against it during the moratorium period so that the CD gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences.			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		iii. A moratorium does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, and such shadow is lifted when the moratorium period comes to an end. iv. A section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases. v. A quasi-criminal proceeding contained in Chapter XVII of the NI Act would, given the object and context of section 14 of the Code, amount to a "proceeding" within the meaning of section 14(1)(a) and therefore, the moratorium attaches to such proceeding. vi. Moratorium would apply only to the CD, and the natural persons mentioned in section 141 of the NI Act shall continue to be statutorily liable under Chapter XVII of the NI Act.			
301.		On deferment of payment of loan as per the notification of RBI dated 27.03.2020, the SC held, that there shall not be any charge	**Small Scale Industrial Manufactures Association (Regd.) Vs. Union of India and**	**SC**	**23.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of interest on interest/compound interest/ penal interest for the period during the loan moratorium and any amount already recovered under the same head, shall be refunded to the concerned borrowers and to be given credit/adjusted in the next instalment of the loan account.	**Ors. [Writ Petition (C) No. 476 of 2020]**		
302.		Moratorium creates no hindrance to a proceeding for declaration of a wilful defaulter. An act of wilful default is not obliterated automatically by the filing of an application under section 7.	**Gouri Prasad Goenka Vs. State Bank of India [WPO No. 171 of 2021]**	**HC, Calcutta**	**21.06.2021**
303.		Moratorium is only in relation to CD and not in respect of the director and management of CD.	**Anjali Rathi and Others Vs. Today Homes & Infrastructure Pvt. Ltd. and Others [SLP (C) No. 12150 of 2019 with other appeals]**	**SC**	**08.09.2021**
304.		The power under Section 482 of the Code of Criminal Procedure, 1973 may not be available to the court to countenance the breach of a statuary provision. The words 'to secure the ends of justice' in section 482 cannot mean to overlook the undermining of a statutory dictate, which in this case is section 14, and section 17 of the Code.	**Sandeep Khaitan, Resolution Professional Vs. JSVM Plywood Industries Ltd.& Anr. [Criminal Appeal No. 447 of 2021]**	**SC**	**22.04.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
305.		In the event of telecom spectrum being subjected to proceedings under the Code, protection would be available to telecom licenses and spectrum under section 14(1).	**Union of India Vs. Vijaykumar V. Iyer [CA (AT) (Ins.) No. 733 of 2020 with other appeals]**	**NCLAT**	**13.04.2021**
306.		Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceedings or any Act having essence of crime or crime proceeds.	**Directorate of Economic Offences Vs. Binay Kumar Singhania & Ors. [CA (AT) (Ins.) No. 935 of 2020]**	**NCLAT**	**04.05.2021**
307.		If the supply of electricity is for managing the operations of the CD, the supply cannot be interrupted during moratorium except where CD has not paid dues arising from such supply during the moratorium.	**Executive Engineer Uttar Gujarat VIJ Company Ltd. Vs Devang RP Samapat, RP [CA (AT) (Ins.) No. 371 and 372 of 2021]**	**NCLAT**	**27.05.2021**
308.		Attachment of assets of a company undergoing CIRP following section 79 of the GST Act 2017 constitute violation of the 'moratorium' imposed under section 14 of the Code. Therefore, no notice issued u/s 79 of the State GST/ CGST Act can be acted upon by any Central/ State Authority against the CD undergoing CIRP.	**Astutosh Agarwala, Resolutio Professional Vs. Joint Commissioner of State & Ors. [I.A. 2422/2020 in C.P(IB)-2640(MB)/2019]**	**NCLT, Mumbai**	**01.12.2021**
309.		The prohibition in transferring the assets of the CD under section 14 is on the CD and the said prohibition *ipso-facto* does not prohibit RP or CoC, who were empowered by specific provision	**Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional for Jet**	**NCLAT**	**14.02.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of the Code to undertake any such sale. Despite declaration of moratorium under section 14(1)(b), the RP is empowered to conduct sale of unencumbered assets, if he is of the opinion that it is necessary for better realization of value.	**Airways (India) Ltd. & Ors. [CA (AT) (Ins.) No. 628 of 2020]**		
310.		The FC bank cannot continue the proceedings under SARFAESI Act once the CIRP is initiated and moratorium was ordered.	**Indian Overseas Bank Vs. RCM Infrastructure Ltd. Anr. [Civil Appeal No. 4750 of 2021]**	**SC**	**18.05.2022**
	16	**Appointment and tenure of IRP**			
311.		An ex-employee of the FC cannot be appointed as an IRP.	**State Bank of India Vs. Metenere Ltd. [CA (AT) (Ins.) No. 76 of 2020]**	**NCLAT**	**22.05.2020**
312.		An IP must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignment.	**IDBI Bank Ltd. Vs. Lanco Infratech Ltd. [C.P. (IB) No. 111/7/HDB/2017]**	**NCLT, Hyderabad**	**07.08.2017**
313.		Once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the CD.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]**	**SC**	**31.08.2017**
314.		IBBI *vide* its letter dated 01.01.2018, has recommended a panel of IPs for appointment as IRPs in compliance with section 16(3)(a) of the Code to cut delay. The list of recommended IP provides instant solution to the AA to pick up the name and make appointment. It helps in meeting	**Innovsource Pvt. Ltd. Vs Getit Grocery Pvt. Ltd. [IB-295(PB)/2017]**	**NCLT, New Delhi**	**08.01.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the timeline given in the Code and helps unnecessary time wasted, first by asking the IBBI to recommend the name and then appointing such IRP by AA.			
315.		It was clarified that IRP is acting as a court officer and any hindrance in the work of CIRP will amount to contempt of court.	**Asset Reconstruction Company (India) Pvt. Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [C.P. No. (IB) 1882 (MB)/2018]**	**NCLT, Mumbai**	**02.01.2019**
	17	**Management of affairs of CD by IRP**			
316.		To ensure that the CD remains a going concern, all the directors/employees are required to function and assist the RP who manages the affairs of the CD during moratorium. If an 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 the suspension of the Board of Directors nor can be taken away by the RP.	**Subasri Realty Pvt. Ltd. Vs. N. Subramanian & Anr. [CA (AT) (Ins.) No. 290 of 2017]**	**NCLAT**	**22.02.2018**
317.		Once CIRP has commenced with the appointment of IRP, no doubt the Board of Directors would be suspended. That does not mean the entire machinery of the CD is suspended. Even after appointment of IRP, all the employees of the CD, top to bottom, would continue to function under the control of IRP instead of the Board of Directors.	**State Bank of India Vs. Essar Steel India Ltd. [C.P. (I.B) No. 40/7/NCLT/AHM/2017)]**	**NCLT, Ahmedabad**	**02.08.2017**
318.		IRP has not vested with any specific power to sue any person on behalf of the CD. However, in	**Steel Konnect (India) Pvt. Ltd. Vs. Hero Fincorp Ltd. [CA (AT) (Ins.) No. 51 of 2017]**	**NCLAT**	**29.08.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		case of such difficulty, it is always open to IRP to bring to the notice of the AA for appropriate order.			
319.		RP is required to act in terms of section 17(2)(e) of the Code for complying with the requirements under SEBI and the Regulations framed thereunder as well as the guidelines.	**Bohar Singh Dhillon Vs. Rohit Sehgal (IRP) & Ors. [CA (AT) (Ins.) No. 665 of 2018]**	**NCLAT**	**09.05.2019**
320.		The phrase used in section 17(1)(d) of the Code that fi"nancial institution "*shall act on the ins"tructions of the IRP*" does not mean that it authorises IRP/RP to compel the financial institution for maintaining the accounts of the CD to continue the Non-Fund Based Facility comforted by bank guarantee.	**Union Bank of India Vs. Mr. Dinkar T. Venkatasubramanian, Resolution Professional of Amtek Auto Limited & Ors. [Company Appeal (AT) (Ins.) No. 729 of 2020]**	**NCLAT**	**27.01.2022**
	18	**Duties of IRP**			
321.		It is the duty of the IRP to take control and custody of any asset over which the CD has ownership rights as recorded in the balance sheet of the CD.	**Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai & Ors. [CA (AT) (Ins.) No. 719 of 2018]**	**NCLAT**	**14.05.2019**
322.		The RP will come into picture after IRP having exercised his duties under section 18, so that IRP will hand over the custody of the assets as well as other records that have already been taken into custody, to the RP.	**Rajendra K. Bhutia Vs. Maharashtra Housing and Area Development Authority [MA 96/2018 in C.P. No. 1061/I&BC/2017]**	**NCLT, Mumbai**	**02.04.2018**
323.		In terms of section 21(1), RP is only supposed to collate the claims which implies comparison with the record and verification. Unlike a liquidator who is empowered to admit or reject a	**Avil Menezes, Resolution Professional of AMW Auto Component Ltd. Vs. Shah Coal Pvt. Ltd. [CA (AT) (Ins.) No. 63 of 2021]**	**NCLAT**	**03.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		claim under section 40 of the Code against which an appeal lies to the AA, the RP is not vested with any adjudicatory powers. All actions taken by RP are subject to control of the AA.			
324.		'Maturity of claim', 'default of claim' or 'invocation of guarantee' has no nexus in regard to the filing of claim before the IRP.	**Mohanlal Dhakad Vs. BNG Global India Ltd. [CA (AT) (Ins.) No. 684 of 2020]**	**NCLAT**	**22.02.2021**
	19	**Personnel to extend co-operation to IRP**			
325.		Section 19 of the Code latently and patently imposes an obligation on the personnel and promoters of the CD to extend all assistance and cooperation which the IRP will require in running / managing the affairs of the CD.	**Shailesh Chawla & Anr. Vs. Vinod Kumar Mahajan, RP & Ors. [CA (AT) (Ins.) No. 571 of 2020 and another appeal]**	**NCLAT**	**23.09.2020**
326.		All the personnel connected with the CD, its promoters or any other person associated with the management of the CD are under legal obligation under section 19 of the Code to extend every assistance and cooperation and in case there is any violation, the IRP would be at liberty to make appropriate application to the AA with a prayer for passing an appropriate order.	**Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [CP No. IB-104(PB)/2017]**	**NCLT, New Delhi**	**03.07.2017**
327.		Any interference in RP's discharge of duty/work, action shall be initiated against the CD and it will be presumed that the CD is not obeying the order of the Court. It is expected that CD	**Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd. [C.P. (IB) No.363/KB/17)]**	**NCLT, Kolkata**	**22.12.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		should fully cooperate with the RP.			
	20	**Management of operations of corporate debtor as going concern**			
328.		Section 20(2)(e) gives power to the IRP (subsequently RP) to take all actions as are necessary to keep the CD as a going concern. In such a process of managing the business operations of the CD, if advance payments for supply of goods is received, it cannot be treated as raising an interim finance. It is an advance for payment of goods which the CD as a going concern may be manufacturing. Such amount received as an advance payment for the supply of goods during the CIRP would have to be treated as CIRP cost.	**Tuf Metallurgical Pvt. Ltd. Vs. Impex Metal & Ferro Alloys Ltd. & Ors. [CA (AT) (Ins.) No. 190 of 2020]**	**NCLAT**	**03.02.2021**
	21	**Committee of Creditors**			
329.		It is the settled law of the land that CoC enjoys primacy in the matter of approval or rejection of resolution plan/settlement proposal and the AA as well as the appellate tribunal would be exceeding its jurisdiction in approving or rejecting such plan/proposal which is essentially based on the commercial wisdom of the CoC.	**M.P. Agarwal Vs. Shri Lakshmi Cotsyn Ltd. & Anr. [CA (AT) (Ins.) No. 620 of 2020]**	**NCLAT**	**27.07.2020**
330.		The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties	**Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]**	**NCLAT**	**04.07.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		are not supposed to decide the manner of distribution. The *inter se* distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.			
331.		CoC is the fit person to take its own business decision and no reason has been found to disturb or sit on the decision of the CoC taken on by majority vote share.	**State Bank of India Vs. Orissa Manganese & Minerals Ltd. [CA (IB) Nos. 402 and others in CP (IB) No. 371/KB/2017]**	**NCLT, Kolkata**	**22.06.2018**
332.		The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.	**Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
333.		The CoC has no absolute power to change the IRP/RP at their whims and fancies without any valid or tenable reasons. The change of RP must be rational/tenable/reasonable and not at the whims and fancies of the CoC.	**Rama Subramaniam Vs. Sixth Dimension Projects Solutions Ltd. [M.A. No. 1626/2018 in C.P. No. 587/I&BP/2018]**	**NCLT, Mumbai**	**13.03.2019**
334.		All members of the CoC are bound by the resolution approved by it with requisite majority.	**Sai Regency Power Corporation Pvt. Ltd. Vs. CoC of Sai Regency Power Corporation Pvt. Ltd. [MA/872/2019 in IBA/92/2019]**	**NCLT, Chennai**	**21.08.2019**
335.		The decision of CoC taken by requisite majority cannot be questioned by non-applicant respondent and no one is permitted to strangulate the CIRP by refusing to contribute their share of expense.	**IFCI Ltd. Vs. Era Housing & Developers (India) Ltd. [(IB)-489(PB)/2017]**	**NCLT, New Delhi**	**26.04.2019**
336.		All decisions of COC shall be taken by a vote of not less than 51% of	**Asset Reconstruction Company (India) Ltd. (ARCIL) Vs.**	**NCLT, Hyderabad**	**26.02.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		voting share of FCs. It is just like a general provision that all matters other than those referred to in section 28 of the Code require to be approved by a voting of not less than 51% of voting share of FCs.	**Koteswara Rao Karuchola and Anr. [IA No. 344 of 2018 in CP (IB) No. 219/7/HDB/2018]**		
337.		In a number of cases, it has now been seen that members of the CoC are nominated by FCs 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. Suchlike speed brakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIRP.	**SBJ Exports & Mfg. Pvt. Ltd. Vs. BCC Fuba India Ltd. [CP-659/2016]**	**NCLT, New Delhi**	**07.06.2018**
338.		The FCs/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained.	**Jindal Saxena Financial Services Pvt. Ltd. Vs. Mayfair Capital Pvt. Ltd. [C.A. No. 523(PB)/2018 in C.P. No. (IB)-84(PB)/2017)]**	**NCLT, New Delhi**	**04.07.2018**
339.		It is time to recognise the OC's voice in the CoC for payment of minimum amount payable to them as required under the Code.	**Bank of Baroda and Binani Cements Limited & Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]**	**NCLT, Kolkata**	**04.05.2018**
340.		In case of deadlock in voting share in the appointment of RP under section 22 of the Code, preference can be given to the decision taken by highest percentage of the votes in the COC.	**Nikhil Mehta & Sons (HUF) & Ors. Vs. AMR Infrastructure Ltd. [CA No. 811(PB)/2018 in (IB)-02(PB) /2017]**	**NCLT, New Delhi**	**29.09.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
341.		The CoC is also a creature of statute, and, can be termed as the instrumentality of the State, hence, they are under statutory obligation to follow the basic principles of administrative law. The instrumentality of the State has to act in transparent and fair manner and not to take arbitrary decision or to adopt discriminatory practice.	**Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]**	**NCLT, Ahmedabad**	**19.04.2018**
342.		Only the members of the CoC who attend the meeting directly or through video conferencing, can exercise its voting powers after considering the other requirements as may be specified by the IBBI. Those members of the CoC who are absent, their voting shares cannot be counted.	**Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors. [CA (AT) (Ins.) No. 198 of 2018]**	**NCLAT**	**04.02.2019**
343.		The CoC cannot take an adverse decision as against the prospective bidding plan submitted more so by a leading company who is capable of effectively taking over the CD without giving a reasonable opportunity of being heard and the same amounts to being unjust and arbitrary.	**Bank of Baroda and Binani Cements Ltd.& Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]**	**NCLT, Kolkata**	**04.05.2018**
344.		It is absurd to put the employees of CD at par with the erstwhile board of directors seeking information regarding resolution plan and proceedings before the CoC. Once their claims have been admitted, no role is ascribed to them in the deliberation of the CoC.	**Anil N. Surwade & Ors. Vs. Prashant Jain, RP, Sejal Glass Ltd. [CA (AT) (Ins.) No. 1006 of 2020]**	**NCLAT**	**03.12.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
345.		The CoC has no role in deciding or changing the status of a creditor either as FC or OC and such decision of CoC can never be treated as an exercise under its commercial wisdom.	**Rajnish Jain Vs. Manoj Kumar Singh, IRP & Ors. [CA (AT) (Ins.) No. 519 of 2020]**	**NCLAT**	**18.12.2020**
346.		AA had no power to impose RP of its choice. Even for Authorised Representative, the decision of the majority is to be respected.	**Prakash Shanker Mishra & Ors. Vs. Ashok Kriplani & Anr. [CA (AT) (Ins.) No. 34 of 2020 and another appeal]**	**NCLAT**	**13.01.2021**
347.		The SC held: (a) The collusive commercial arrangements between FCs and the CD would not constitute a 'financial debt'; (b) The objects and purposes of the Code are best served when the CIRP is driven by external creditors, so as to ensure that the CoC is not sabotaged by related parties of the CD. The purpose of excluding a related party of a CD from the CoC is to obviate conflicts of interest; (c) Exclusion under the first proviso to section 21(2) is related not to the debt itself but to the relationship existing between a related party FC and the CD.; and (d) The FC, who *in praesenti* is not a related party, would not be debarred from being a member of the CoC. However, in case where the related party FC divests itself of its shareholding or ceases to become a related party in a business capacity with the sole intention of participating in the CoC and sabotage the CIRP, it would be in keeping with the	**Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. [Civil Appeal No. 2842 of 2020 with 3063 of 2020]**	**SC**	**01.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		object and purpose of the first proviso to section 21(2), to debar the former related party creditor.			
348.		The AA reiterated that they have no power to interfere in the commercial wisdom of the CoC, until and unless there is gross violation of principle of law.	**Sunit Jagdishchandra Shah, RP for Sungracia Tiles Pvt. Ltd. Vs. Sungracia Tiles Pvt. Ltd. and Ors. [IA 678 of 2020 in C.P. (IB) No. 750/NCLT/AHM/2019]**	**NCLT, Ahmedabad**	**18.02.2021**
349.		By exercising the commercial wisdom, the CoC cannot avoid compliance with the provisions of the Code and Regulations.	**STCI Finance Limited through Subhash Modi, RP [(IA) No.264 of 2021 in CP No. (IB) 4147/MB/2019]**	**NCLT, Mumbai**	**31.05.2021**
350.		'Commercial wisdom' of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the processes within the timelines prescribed by the Code.	**Ngaitlang Dhar Vs. Panna Pragati Infrastructure Pvt. Ltd. & Ors. [Civil Appeal Nos. 3665-3666, 3742-3743 of 2020]**	**SC**	**17.12.2021**
351.		A removed director from the board of directors cannot 'nterfere in the company's affairs *per contra* a suspended director always remains on the erstwhile Board of the Company and assist the IRP/RP as per requirement.	**Dheeraj Wadhawan Vs. The Administrator, Dewan Housing Finance Corporation Ltd. [CA (AT) (Ins.) No. 785 of 2020 & 647 of 2021]**	**NCLAT**	**27.01.2022**
352.		NCLAT observed that superseded directors are those directors who have been removed or deemed to have demitted office and who were not holding the position of director on the CIRP commencement date, cannot be considered a director simpliciter to benefit from participating in the meeting of CoC. After vacation or removal from the office of the director, the said person cannot	**Dheeraj Wadhawan Vs. The Administrator, Dewan Housing Finance Corporation Limited [CA ompany Appeal (AT) (Insolvency) No. 785 of 2020 & 647 of 2021]**	**NCLAT**	**27.01.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		claim their entitlement to participate in the CoC of the CD. A removed director from the board of directors cannot ’nterfere in the company's affairs per contra a suspended director always remains on the erstwhile Board of the Company and assist the IRP/RP as per requirement.			
353.		It is neither Commercial Wisdom nor a commercial decision of the CoC /FC to reject a resolution plan which offers to them an amount of twenty times more than the Liquidation Value.	**Bank of India Vs. Agnipa Energo Pvt. Ltd [IA No.10 of 2021 in CP(IB) No.37//2019]**	**NCLT,Guwahati**	**04.02.2022**
354.		A valuation consisting of mere naked values without a detailed report is not valid. It is a settled proposition that the valuation exercise is conducted to facilitate the CoC's decision-making process. Therefore, the existence of a valid and accurate valuation report is *sine qua non* for the CoC to exercise its commercial wisdom.	**Periasamy Palani Gounder Vs. Radhakrishnan Dharmarajan & Anr. [CA (AT) (CH) (Ins.) No. 164, 176, 218 & 219 of 2021]**	**NCLAT**	**17.02.2022**
355.		The CoC is fully competent to revise the professional fee even if it was earlier approved by any earlier CoC decision.	**Khushvinder Singhal, Erstwhile RP of Bestways Transport (India) Pvt. Ltd. Vs. Reena Tiwari [CA (AT) (Ins.) No. 469 of 2022]**	**NCLAT**	**04.05.2022**
	22	**Appointment of RP**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
356.		When there is a conflict and no consensus is reached in the CoC where FCs comprising of financial institutions and non-financial institutions by the majority of voting shares to appoint the IRP/RP, proposed by the applicant under section 9 of the Code, it is expedient to appoint an independent IRP/RP to break stalemate between the FCs.	**Allahabad Bank Vs. Anil Kumar [IA No. 691 of 2019 and other IAs in C.P. (IB) 397 of 2018]**	**NCLT, Ahmedabad**	**28.07.2020**
357.		The decision of appointment of IRP as RP or replacement of IRP by another RP falls within the ambit of section 22 of the Code and is a decision based on commercial wisdom of CoC which is not amenable to judicial review. When the CoC has passed the resolution with the requisite majority, it is not proper to say that the legal rights of IRP have been infringed.	**Committee of Creditors of LEEL Electricals Ltd. Through State Bank of India Vs. Leel Electricals Ltd. through its IRP, Arvind Mittal [CA (AT) (Ins.) No. 1100 of 2020]**	**NCLAT**	**21.12.2020**
358.		The IRP has no *locus standi* to maintain an appeal against the decision of the CoC with a 100% majority to replace him with another RP. The outgoing IRP cannot claim invasion of any of his legal rights under the Code as he is not a stakeholder.	**Ranjeet Kumar Verma Vs. Committee of Creditors of Straight Edge Contract Pvt. Ltd. through Resolution Professional [CA (AT) (Ins.) No. 1129 of 2020]**	**NCLAT**	**04.01.2021**
359.		When no order is passed by the AA to continue IRP under section 22(5), he cannot claim continuance. IRP. His claim of continuance will be contrary to the statutory scheme.	**Invent Assets Securitisation & Reconstruction Pvt. Ltd & Anr. Vs. Rajmal Labhchand Mogra & Ors. [CA (AT) (Ins.) No. 709 of 2019]**	**NCLAT**	**26.11.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Regulation 17(3) of the CIRP Regulations cannot be read in a manner which may have effect of defeating the purpose and object of section 22(5) by allowing the IRP to continue without there being any order of the AA in a case where decision has been taken to replace the IRP.			
	24	**Meeting of committee of creditors**			
360.		A combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors of the CD being vitally interested in resolution plans that may be discussed at meetings of the CoC, must be given a copy of such plans as part of documents that have to be furnished along with the notice of such meetings.	**Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018]**	**SC**	**31.01.2019**
361.		If the claim of OCs, on verification is found to be less than 10%, the OCs have no right to claim representation in the meeting of the CoC.	**Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Ins.) No. 501 of 2018]**	**NCLAT**	**12.12.2018**
	25	**Duties of RP**			
362.		The goods lying in the form of raw material in the custody of CD for processing is under the contract of bailment preventing the RP from withholding the same. The RP was directed to handover the goods of the applicant with the liberty to proceed against the applicant under section 25(2) to recover any sum, if due.	**KEC International Ltd. Vs. Bhuvan Madan & Anr. [IA No.139 of 2019 in CP (IB) No. 137/7/NCLT/AHM/2018]**	**NCLT, Ahmedabad**	**04.09.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
363.		The act of RP to accept the resolution plan after opening of other bid cannot be justified by any means and is a blatant misuse of the authority invested in the RP to conduct CIRP. It was further observed that the material irregularity in exercise of powers by the RP, even with the approval of the CoC in the conduct of CIRP, cannot be treated as an exercise of commercial wisdom.	**Kotak Investment Advisors Ltd. Vs. Krishna Chamadia & Ors. [CA (AT) (Ins.) No. 344-345 of 2020]**	**NCLAT**	**05.08.2020**
364.		While making physical verification of debtors appearing in the records of the CD, the RP found that some of them are not even aware of the CD. The AA suggested the RP to initiate all steps available under the Code to proceed against the promoters/directors of the CD.	**Union Bank of India Vs. Paramshakti Steel Ltd. [MA No. 243/2018 in C.P. No. (IB) 727 (MB)/2017]**	**NCLT, Mumbai**	**12.04.2018**
365.		It is pertinent to mention that RP is duty bound to maintain CD as going concern.	**State Bank of India Vs. Jet Airways (India) Ltd. [MA 2955/2019 in C.P.(IB)-2205/(MB)/2019]**	**NCLT, Mumbai**	**25.09.2019**
366.		1. The RP has administrative powers as opposed to quasi-judicial powers. 2. The RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. Under the CIRP Regulations, the RP has to vet and verify claims made, and ultimately, determine the amount of each claim.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
367.		The action or rather inaction by the RP in not taking a decision on	**BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd.**	**NCLT, Mumbai**	**16.10.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the claim is his abuse of the power under the Code, and contrary to justice and public policy.	**[MA No. 2319/2019 in CP(IB) 4301/ 2018]**		
368.		The RP cannot go into investigations and enquiries whether or not a CD is an MSME, and the AA is also not expected to make such investigations, enquiries on such evidence or give findings on such issues.	**Amit Gupta Vs. Yogesh Gupta [CA (AT) (Ins.) No. 903 of 2019]**	**NCLAT**	**20.12.2019**
369.		Whether a person is a secured or unsecured creditor is a question of fact normally determined by the RP or the CoC.	**Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]**	**NCLAT**	**19.12.2019**
370.		RP has no jurisdiction to determine a claim. He can only collate it, based on evidence and the record of the CD, or as filed by the FC.	**S. Rajendran Vs. Jonathan Mouralidarane [CA (AT) (Ins.) No. 1018 of 2019]**	**NCLAT**	**01.10.2019**
371.		After the constitution of the CoC, without its permission, the RP was not competent to entertain more applications after three months to include one or other person as FC.	**Asset Reconstruction Company (I) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola & Ors. [CA (AT) (Ins.) No. 633 of 2018]**	**NCLAT**	**18.11.2019**
372.		The very object of the Code is to revive a company under CIRP and not to liquidate it. In the instant case, it is clear that the RP has omitted to perform his statutory duties. It is amply clear that the RP has not invited prospective resolution applicants as per section 25 of the Code. Therefore, the RP was directed to act as per section 25 of the Code.	**Sunrise Polyfilms Pvt. Ltd. Vs. Punjab National Bank [Inv P.5 of 2018 in IA 27 of 2018 in C.P. (I.B) No. 89/7/NCLT/AHM/2017]**	**NCLT, Ahmedabad**	**04.05.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
373.		The nature of duties as assigned to the RP is/are similar to public servant because he is appointee of the Court.	**Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]**	**NCLT, Ahmedabad**	**19.04.2018**
374.		RP had acted against the mandate of provisions contained in sections 25(2) and 30(3) of the Code by not placing the revised resolution plan before the CoC for consideration. This was also contrary to the objective of maximisation of value of assets of CD.	**Panna Pragati Infrastructure Pvt. Ltd. & Anr. Vs. Amit Pareek & Ors. [CA (AT) (Ins.) No. 515 of 2020 and another appeal]**	**NCLAT**	**19.10.2020**
375.		RP should not be bombarded with criminal prosecution and police investigation, because it would prevent the RP from conducting CIRP without fear and favour. AA while clarifying that it is not passing any orders on the merits of the FIRs filed against RP by the erstwhile directors of the CD, directed the police to give adequate protection to the RP along with his team. It further permitted the police to proceed as per the Code of Criminal Procedure, 1973 but directed that no arrest shall be made until the disposal of the application.	**Subrata Monindranath Maity (Bhatia Coke and Energy Ltd.) Vs. Surender Singh Bhatia & 4 Ors. [IA/05/2021 in IBA/307/2019]**	**NCLT, Chennai**	**12.01.2021**
376.		The SC was appalled with the developments leading to arrest of the IRP, who was working pursuant to the order passed by the Court and entrusted with the functioning of the CD. It observed that the police official dealing with the case is not familiar with the provision of privilege of IRP	**Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No(s). 3395/2020]**	**SC**	**02.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		appointed by the Court in terms of section 233 of the Code. While directing immediate release of the IRP, the SC directed the investigation officer not to take any coercive action against the IRP.			
377.		Allowing the advocate/chartered accountant/company secretary of the CD to attend CoC meetings would serve no purpose. The CD itself is sufficient to provide any of the documents/papers/details sought by the RP during the proceedings. Further, it is the discretion of the RP to appoint accountants, legal and other professionals following the due process as specified by the IBBI under section 25(2)(d) of the Code and he is not permitted to disclose any information pertaining to the CIRP to any third parties including an advocate/chartered accountant/company secretary.	**Propyl Packaging Ltd. Vs. George Varkey, RP of Propyl Packaging Ltd. [M.A. No. 162/KOB/2020 in IBA No.52/KOB/2019]**	**NCLT, Kochi**	**21.01.2021**
378.		Regulation 36(2) of CIRP Regulations provides the mandatory condition for publicatio'n of 'Form-G' on the CD's website and the website designated by the Board for the purpose. Non-publication of notices of Form G is a material irregularity in exercise of the powers by RP during the CIRP.	**Periasamy Palani Gounder Vs. Radhakrishnan Dharmarajan & Anr. [CA (AT) (CH) (Ins.) No. 164, 176, 218 & 219 of 2021]**	**NCLAT**	**17.02.2022**
	27	**Replacement of RP by CoC**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
379.		CoC is not required to record any reason or ground for replacing of the RP, which may otherwise call for proceedings against such RP. The CoC having decided to remove the RP with 88% voting share, it was not open to the AA to interfere with such decision, till it is shown that the decision of the CoC is perverse or without jurisdiction.	**Punjab National Bank Vs. Kiran Shah [CA (AT) (Ins.) No. 749 of 2019]**	**NCLAT**	**06.08.2019**
380.		The proposed RP cannot be regarded as independent umpire to conduct CIRP as required by well settled practice.	**Mussadi Lal Kishan Lal Vs. Ram Dev Int. Ltd. [(IB)-178 (PB)/2017]**	**NCLT, New Delhi**	**15.05.2018**
381.		The AA is also empowered to remove the RP, apart from the CoC, but it should be for the reasons and in the manner as provided under the relevant provisions.	**Devendra Padamchand Jain Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 177 of 2017]**	**NCLAT**	**31.01.2018**
382.		The RP appealed against his replacement in a CIRP. While dismissing the appeal, it was observed that commercial wisdom of the CoC covers matters including replacement of the RP and it is neither under the limited scope of judicial review nor it is justiciable.	**Naveen Kumar Jain Vs. Committee of Creditors of K.D.K Enterprises Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 882 of 2020]**	**NCLAT**	**03.11.2020**
383.		GST amount is an amount of tax levied under the assessment order as per the Goods and Service Act, 2017. It cannot be edited or reduced by the RP himself as he is not having adjudicatory power under the GST Act. If the IRP/RP is aggrieved, he can file the appeal	**Bijoy Prabhakaram Pulipra, RP PVS Memorial Hospital Pvt. Ltd. Vs. State Tax Officer (Works Contract) [CA (AT) (CH) (Ins.) No. 42 of 2021]**	**NCLAT**	**07.10.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		under section 107 of the CGST/SGST Act, 2017, read with rule 108 of the GST Rules 2017.			
384.		The scheme of section 27 does not indicate that the erstwhile RP is entitled to be heard before AA, when taking decision to appoint another RP.	**Sumat Kumar Gupta Vs. CoC of Vallabh Textiles Company Ltd. [CA (AT) (Ins.) No. 1037 of 2022]**	**NCLAT**	**02.09.2022**
	29A	**Persons not eligible to be resolution applicant**			
385.		Section 29A or section 31 would not provide a shield against the operation of section 14(3)(b) of the Code and that CD/Promoter would not come under the immunity blanket of section 14 as the same is contrary to the law governing CIRP and RBI guidelines.	**Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr. [I.A. No. GA 1 of 2020 with (Old G.A. 1062 of 2020) with W.P.O 236 of 2020]**	**HC, Calcutta**	**15.09.2020**
386.		The NCLAT held that if it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a person who is ineligible in terms of section 29A, it is always open to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.	**State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]**	**NCLAT**	**18.11.2019**
387.		The certificate issued by the Ministry of MSME raises no objection to the fact that the CD is an MSME. Hence, clauses (c) and (h) of section 29A are not applicable to the CD.	**K. Periyasamy & 1 another Vs. J. Manivannan [MA/347/2019 in CP/422/IB/2018]**	**NCLT, Chennai**	**01.05.2019**
388.		Promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for taking back the immovable and movable	**Jindal Steel and Power Ltd. Vs. Arun Kumar Jagatramka & Anr. [CA (AT) No. 221 of 2018]**	**NCLAT**	**24.10.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		properties or actionable claims of the CD.			
389.		The intention of the Legislature shows that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of the CoC to regain control of the CD and entrepreneurship by filing resolution plan, which is viable, feasible and fulfils other criteria as laid down by the IBBI.	**Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors. [CA (AT) (Ins.) No. 203 of 2019]**	**NCLAT**	**04.07.2019**
390.		The promoters/employees of the CD without the knowledge of RP had secured the registration certificate under the MSME Act to overcome the bar under section 29A of the Code and submitted their resolution plan. The same was not approved by the CoC although no other resolution plan was submitted and that the AA's order of liquidation of the CD does not have any legal flaw.	**T. Johnson Vs. St. John Freight Systems Ltd. & Anr. [CA (AT) (Ins.) No. 1402 of 2019]**	**NCLAT**	**04.03.2020**
391.		Section 29A is a *de facto* as opposed to a *de jure* position of persons mentioned therein. This is a typical see through provision so that one can see persons who are actually in control, whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to pierce the corporate veil to find out as to who are the real individuals or entities who are acting jointly or in concert for submission of a resolution plan.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]**	**SC**	**04.10.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
392.		The defaulters disqualified under Section 29A should not get any benefit under the Code. This is a clear message conveyed through section 29A. A defaulter must not be benefitted by entering into those very assets through side doors, otherwise not permitted to enter from the front doors, for e.g. by submission of a resolution plan.	**SBI Global Factors Ltd. Vs. Sanaa Syntex Pvt. Ltd. [MA 1123/2018 in CP No. 172/ IBC/NCLT/MB/MAH/2017]**	**NCLT, Mumbai**	**08.04.2019**
393.		Constitutional validity of section 29A was upheld.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
394.		Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section 29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the	**Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. [Civil Appeal No. 9664 of 2019 with other apeeals]**	**SC**	**15.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Code, a scheme is a facet of the liquidation process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a scheme. The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A) permeates the liquidation process under Chapter III (by virtue of the provisions of section 35(1)(f)).			
395.		After CIRP was initiated former promoter/ director cannot suppress from IRP/RP and apply for MSME Certificate and tide over ineligibility under section 29A of the Code.	**Digambar Anandrao Pingle Vs. Shrikant Madanlal Zawar, Erstwhile RP of M/s Pingle Builders Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 43-43A of 2021]**	**NCLAT**	**09.07.2021**
396.		The expression 'control' in section 29A(c) of the Code symbolizes only the positive control i.e., that the mere power to block special resolutions of a Company cannot amount to control. In reality, the word 'control' juxtaposed with the term 'management' means de-facto control of actual management or policy decisions	**Telangana State Trade Promotion Corporation Vs. A.P. Gems & Jewellery Park Private Limited & Anr. [CA (AT) (CH) (Ins.) No. 54 of 2021]**	**NCLAT**	**21.09.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		that may be or are in reality taken.			
397.		Section 29A(a) of the Code, which refers to 'an undischarged insolvent' is applicable to individuals and partnership firms. Section 29A(c) would not be applicable to resolution applicants who acquire a CD pursuant to a prior resolution plan approved under the Code.	**Srei Multiple Asset Investment Trust Vs. IDBI Bank Ltd. & Ors. [CA (AT) (Ins.) No. 593 of 2020]**	**NCLAT**	**18.01.2022**
	30	**Submission of Resolution Plan**			
398.		The AA, in law cannot enter into the arena of majority decision of the CoC other than the groundsmentioned in section 32(a) to (e) of the Code. After due deliberations, when the RP had accepted the conditions of the resolution plan, especially keeping in mind the ingredients of section 25(2)(h) of the code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of plan, then it is not open to the resolution applicant to take a topsy turvy stance and is not to be allowed to withdraw the approved resolution plan.	**CoC of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr. [CA (AT) (Ins.) No. 203 of 2020]**	**NCLAT**	**29.07.2020**
399.		The successful resolution applicant (SRA) cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted and that all claims must be submitted to and decided by	**Shree Sidhivinayak Cotspin Pvt. Ltd. & Anr. Vs. RP of Marurti Cotex Ltd. &Anr. [CA (AT) (Ins.) No. 694 of 2020]**	**NCLAT**	**20.08.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the RP, so that a prospective resolution applicant knows exactly, what has to be paid, in order that it may then take over and run the business of the CD.			
400.		The restructuring plan projected as a resolution plan approved by the CoC could not be termed as a resolution plan within the ambit of section 30 of the Code.	**Bank of Baroda Vs. Sisir Kumar Appikatla Resolution & Ors. [CA (AT) (Ins.) No. 579 of 2020]**	**NCLAT**	**20.07.2020**
401.		The RP, CoC and SRA already took note of the facts and yet took a conscious decision to go ahead with the resolution plan, as such it cannot be stated that the question of viability and feasibility was not examined in the proper perspective.	**The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay & Ors. [Civil Appeal Nos. 2955 of 2020 and 2902 of 2020]**	**SC**	**04.09.2020**
402.		No FC, including a secured creditor, can dissent on the ground that if it dissents against the resolution plan, in spite of plan being feasible and viable and in accordance with section 30(2), just to get more amount than the other secured creditor, can take advantage of the amended section 30(2)(b)(ii).	**DBS Bank Ltd., Singapore Vs. Shailendra Ajmera & Anr. [CA (AT) (Ins.) No. 788 of 2019]**	**NCLAT**	**18.11.2019**
403.		The NCLAT concurred with the observation of the AA that resolution plan should be planned for insolvency resolution of the CD as a going concern and not for addition of value with intent to sell the CD. The purpose to take up the company with the intent to sell the CD is against the basic object of the Code.	**Superna Dhawan & Anr. Vs. Bharti Defence and Infrastructure Ltd. & Ors. [CA (AT) (Ins.) No. 195 of 2019]**	**NCLAT**	**14.05.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
404.		Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 -9405 of 2018 and other appeals]**	**SC**	**04.10.2018**
405.		If goods have been supplied during the CIRP period to keep the CD as going concern, it is the duty of the RP to include the costs on such goods in the CIRP cost. If it is not included, the resolution plan in question can be held to be in violation of section 30(2)(a) of the Code.	**Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]**	**NCLAT**	**24.04.2019**
406.		While scrutinising 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 scrutinise the eligibility of resolution applicants.	**Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. [I.A. No. 594 of 2018 in CA (AT) (Ins.) No. 188 of 2018]**	**NCLAT**	**15.05.2018**
407.		Section 30(2) nowhere provides that each FC must get proportionately equivalent share with other FCs. The only condition for approving the resolution plan by the CoC is by voting share of 75% as per the requirements of section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018).	**Rave Scans Pvt. Ltd. [(IB)-01(PB)-2017]**	**NCLT, New Delhi**	**17.10.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
408.		The RPought to follow provision of section 29A (c) read with section 30 (4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible.	**Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]**	**NCLT, Ahmedabad**	**19.04.2018**
409.		Primacy is given in the process to commercial decisions. The success of the process is contingent upon the competence of the IRP and the CoC.	**Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]**	**SC**	**09.08.2018**
410.		Even though amended sub section (4) of section 30 came into force from 06.06.2018, it is applicable to all resolution plans which were not approved by the CoC or by the AA.	**SICOM Ltd. Vs. Alok Employees Benefit and Welfare Trust & Ors. [CA (AT) (Ins.) No. 344 of 2018]**	**NCLAT**	**29.11.2018**
411.		The CoC is empowered under section 30(4) of the Code to independently consider the question of eligibility of all applicants under section 29A.	**State Bank of India Vs. Electrosteel Steels Ltd. [CA (IB) No. 202-203/KB/2018 in CP (IB) No. 361/KB/2017]**	**NCLT, Kolkata**	**20.03.2018**
412.		The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
413.		The word 'may' in section 30(4) is ascribable to the discretion of the CoC to approve the resolution plan or not to approve the same.	**K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]**	**SC**	**05.02.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
414.		All OCs are ranked equal. Therefore, resolution plan should not create classes of OCs and treat them differently.	**J.R. Agro Industries P Ltd. Vs. Swadisht Oils P Ltd. [CA No. 59 of 2018 in CP No. (IB) 13/ALD/2017]**	**NCLT, Allahabad**	**24'07.2018**
415.		Whenever, a resolution applicant's plan is under consideration of CoC and that plan is not at all placed before the AA for approval, and if another resolution applicant comes forward making an offer beforethe CIRP duration expires, and that it satisfies all the stakeholders of the CD, then there is nothing in the Code or Regulations to prevent the CoC from considering a revised offer of the other applicant.	**Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Mr. Vijay Kumar V. iyer, [CA (IB) NO.201/KB/2018 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]**	**NCLT, Kolkata**	**04.05.2018**
416.		Once the resolution plan has been approved by the CoC, the AA ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself.	**Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and another appeal]**	**SC**	**22.01.2020**
417.		If the resolution plan contemplates a change in the nature of business to another line when the existing business is obsolete or non-viable, it cannot be construed that the resolution plan is not 'feasible' or 'viable'. There is nothing in the Code which prevents a resolution applicant from changing the present line of business to adding value or creating 'synergy' to the existing assets and converting an obsolete line of business to a more 'viable and feasible' option.	**Next Orbit Ventures Fund Vs. Print House (India) Pvt Ltd & Ors. [CA (AT) (Ins.) No. 417 of 2020]**	**NCLAT**	**13.04.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
418.		At a belated stage when the resolution applicants are already before CoC with their resolution plans, if new claims keep popping up and are entertained, the CIRP would be jeopardized, and resolution process may become more difficult.	**Harish Polymer Product Vs. George Samuel & Anr. [CA (AT) (Ins.) No. 420 of 2021]**	**NCLAT**	**18.06.2021**
419.		A 'resolution plan' is not a recovery / sale / auction / liquidation. Through a resolution plan no individual is purchasing or selling the CD.	**Dinesh Gupta Vs. Vikram Bajaj Liquidator M/s Best Foods Ltd. [CA (AT) (Ins.) No.276 of 2021]**	**NCLAT**	**29.09.2021**
420.		There is no embargo for the classification of OCs into separate/different classes for deciding the way in which the money is to be distributed to them by the CoC because of the fact, undoubtedly, they do have the subjective final discretion of 'Collective Commercial Wisdom' in relation to (the quantum of money to be paid, to a certain category or the incidental category of creditors, of course, nicely balancing the interests of the 'stakeholders' and the 'OCs', as the case may be.	**Gail India Ltd. Vs. Ajay Joshi (Resolution Professional of Alok Industries Ltd & Ors.) [CA (AT) (Ins.) 492 of 2019]**	**NCLAT**	**04.10.2021**
421.		The 'Resolution Plan' furnished by one or the other 'Resolution Applicant' is a 'confidential' one and it cannot be disclosed to any 'Competing 'Resolution Applicant' nor any view can be taken, or objection can be asked for from other 'Resolution Applicants' in regard to one or the other 'Resolution Plan'.	**Committee of Creditors of Meenakshi Energy Ltd. Vs. Consortium of Prudent ARC Ltd. & Vizaag Minerals and Logistics Pvt. Ltd. [CA (AT) (CH) (Ins.) No.166 of 2021]**	**NCLAT**	**25.10.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
422.		The resolution plan even prior to the approval of the AA is binding *inter se* the CoC and the SRA. The resolution plan cannot be construed purely as a 'contract' governed by the Indian Contract Act, in the period intervening its acceptance by the CoC and the approval of the AA. The ability of the resolution plan to bind those who have not consented to it, by way a statutory procedure, indicates that it is not a typical contract.	**Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. & Anr. [Civil Appeal No. 3224 of 2020 with other appeals]**	**SC**	**13.09.2021**
	31	**Approval of Resolution Plan**			
423.		Once the resolution plan is approved under section 31 of the Code, all the assets and benefits of the contracts of the CD stands unconditionally transferred and assigned and vested in the SRA free from all encumbrances. All persons including Central and State Governments as well as the Local Authorities are bound by the said Order.	**Shri Dutt India Pvt. Ltd Vs. Office of the Sugar Commissioner [I.A. No. 1055 of 2020 in C.P. (IB) No. 2956 of 2018]**	**NCLT, Mumbai**	**21.09.2020**
424.		A resolution applicant whose resolution plan stands approved by CoC, cannot be permitted to alter his position to the detriment of various stake holders after pushing out all potential rivals during the bidding process, and the same fraught with disastrous consequences for the CD which may be pushed into liquidation, as the CIRP period may by then be over thereby setting at naught	**Kundan Care Products Ltd. Vs. Amit Gupta and Ors. [CA (AT) (Ins.) No. 653 of 2020]**	**NCLAT**	**30.09.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		all possibilities of insolvency resolution and protection of a CD, more so, when it is a going concern.			
425.		Where the AA has approved a resolution plan that provides for taking over the shares of the promoters, it is not required to comply with the provisions of sections 56 and 57 of the Companies Act, 2013. The same can be completed at the stage of implementation of the resolution plan.	**Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]**	**NCLAT**	**24.04.2019**
426.		The proviso to sub-section 31(4) of Code which relates to obtaining the approval from the CCI under the Competition Act, 2002, prior to the approval of such resolution plan by the CoC, is directory and not mandatory.	**Arcelormittal India Pvt. Ltd. Vs. Abhijit Guhathakurta & Ors. [CA (AT) (Ins.) No. 524 of 2019]**	**NCLAT**	**16.12.2019**
427.		The FCs and OCs whose claims have been decided by the AA or the NCLAT, such decision being final is binding on all such FCs and OCs in terms of section 31 of the Code. Their total claims stand satisfied and, therefore, they cannot avail any remedy under section 60(6) of the Code.	**Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]**	**NCLAT**	**04.07.2019**
428.		The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting FCs. The discretion of the AA is circumscribed by section 31 to	**K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]**	**SC**	**05.02.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		scrutiny of resolution plan 'as approved' by the requisite percent of voting share of FCs.			
429.		The resolution applicant is bound by the mandate under section 30(2)(f) and shall ensure that the resolution plan shall not be against any of the provisions of the existing law.	**MSTC Ltd. Vs. Adhunik Metalliks Ltd. & Ors. [CA (AT) (Ins.) No. 519 of 2018 and another appeal]**	**NCLAT**	**15.03.2019**
430.		A resolution by CoC with less than 75% voting share in CoC is *non est* in law.	**ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 557/2017 & other MAs in IA 72/2017 in C.P 01/I&BP/2016]**	**NCLT, Mumbai**	**08.12.2017**
431.		The AA is not expected to substitute its view with commercial wisdom of the RP and COC nor should it deal with technical complexity and merits of resolution plan unless it is found contrary to express provision of law and goes against the public interest. This observation finds support from the UNCITRAL Legislative Guide, which recommends for similar approach to be taken by a court.	**JEKPL Pvt. Ltd. [CA No. 223/2017 in CP No. 24/ALD/2017]**	**NCLT, Allahabad**	**15.12.2017**
432.		Either by principle or by jurisdictional aspect, the AA cannot say that 180/270 days' period as procedural, therefore, it has no jurisdiction to trespass into the domain set out for the CoC except to the extent mentioned in section 31 of the Code.	**Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No.43/I&BP/2017]**	**NCLT, Mumbai**	**20.02.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
433.		i. The RA after taking over the CD is entitled to exercise its right over its subsidiary company. Appellant's objection regarding the inclusion of the subsidiary company of the CD in the resolution plan is not sustainable. ii. An approved resolution plan can deal with the related party claim and extinguish the same which will ensure that the SRA can take over the CD on clean slate. iii. The amendment to regulation 38(1) of CIRP Regulations which mandated priority in payment to dissenting FCs. This amendment came into effect on November 27, 2019, i.e., post the approval of resolution plan by the erstwhile CoC of the CD. iv. The approved resolution plan is not discriminatory as it does not give differential treatment among the same class of FCs merely based on assenting or dissenting FCs.	**Facor Alloys Ltd. and Anr. Vs. Bhuvan Madan & Ors. [CA (AT) (Ins.) No. 340 of 2020]**	**NCLAT**	**25.11.2020**
434.		The law does not enjoin any right or power to challenge the commercial wisdom of the CoC regarding approval of the resolution plan which is undergoing implementation.	**Singh Raj Singh Vs. SRS Meditech Ltd. & Ors. [CA (AT) (Ins.) No. 522 of 2020]**	**NCLAT**	**07.10.2020**
435.		Though it is in the realm of the CoC to approve or reject a plan and of the liquidator to	**Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors. [IB-31(PB)/2018]**	**NCLT, New Delhi**	**15.12.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		determine the value of the assets, such huge variations in values call for enquiry. Considering the fact that the CoC failed to approve a resolution plan valued double the liquidation value and the Liquidator set very low reserve price, the AA directed IBBI to enquire into as to why valuation has become so low after liquidation is ordered and the FCs to enquire as to whether its representatives acted to maximise the value of the CD.			
436.		To assert that there is any scope for negotiations and discussions after the approval of the resolution plan by the CoC, would be plainly contrary to the terms of the Code.	**Committee of Creditors of AMTEK Auto Limited through Corporation Bank Vs. Dinkar T Venkatasubramanian & Ors. [I.A. No. 58156 of 2020 in Civil Appeal No. 6707 of2019 and another petition]**	**SC**	**23.02.2021**
437.		i. The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code. ii. There is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting	**Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr. [Civil Appeal Nos. 2943-2944 of 2020]**	**SC**	**10.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		shares, is a collective business decision. iii. The legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the AA and that the decision of CoC's 'commercial wisdom' is made non justiciable. iv. Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same v. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the Code.			
438.		i. The role of CoC is akin to that of a protagonist, giving finality to the process (subject to approval by the AA), who takes the key decisions in its commercial wisdom and the consequences thereof. The power of judicial review in section 31 of the Code is not akin to the power of a superior authority to deal with the merits of the decision of any inferior or subordinate authority.	**Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No. 3395 of 2020 and other appeals]**	**SC**	**24.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		The AA has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by sections 30(2) and 31 read with the parameters delineated by the SC in its various judgments. Within its limited jurisdiction, if the AA finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the CoC for re-submission after satisfying the parameters delineated by Code and exposited by the SC. ii. The process of simultaneous voting over two plans for electing one of them cannot be faulted. The legislature itself has made the position clear by way of a later amendment with effect from August 7, 2020, by specifically making stipulations for simultaneous voting over more than one resolution plan by the CoC, particularly with amendment of sub-regulation (3) of regulation 39 of CIRP Regulations and insertion of sub-regulations (3A) and (3B) thereto. iii. The dissenting financial creditor is entitled to receive the amount payable in monetary terms and not in any other term. It cannot be forced to remain			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		attached to the CD by way of equities or securities. iv. The homebuyers as a class having assented to the resolution plan of the resolution applicant, any individual homebuyer or any association of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting FC or an aggrieved person.			
439.		A SRA cannot be permitted to withdraw the approved resolution plan, coupled with the fact in the instant case being the sole RA in the CIRP, which is an MSME and having knowledge of the financial health of the CD as a promoter or as a connected person cannot be permitted to seek revision of the approved plan, on the ground which would not be a material irregularity within the ambit of section 61(3) of the Code.	**Seroco Lighting Industries Pvt. Ltd. Vs. Ravi Kapoor, RP for Arya Filaments Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1054 of 2020]**	**NCLAT**	**10.12.2020**
440.		Once a resolution plan is approved by the AA under section 31(1), the claims as provided in the resolution plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the central government, any state government or any local authority, guarantors, and other stakeholders. On the date of approval of resolution plan by the	**Ghanashyam Mishra and Sons Pvt. Ltd. Vs. Edelweiss Asset Reconstruction Company Ltd. & Ors. [CA No. 8129 of 2019 with other appeals]**	**SC**	**13.04.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		AA, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.			
441.		The sanction of a resolution plan and finality imparted to it by section 31 does not *per se* operate as a discharge of the guarantor's liability.	**Lalit Kumar Jain Vs. Union of India & Ors. [Transferred Case (Civil) No. 245/2020 and other writ petitions]**	**SC**	**21.05.2021**
442.		The existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC approved resolution plans, at the behest of the SRA once the plan has been submitted to the AA. A submitted resolution plan is binding and irrevocable as between the CoC and the SRA.	**Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. & Anr. (Civil Appeal No. 3224 of 2020 and other appeals]**	**SC**	**13.09.2021**
443.		Sufficiency or insufficiency of the amount in a resolution plan is a matter of commercial decision of the CoC and it would not be appropriate on the part of NCLAT to interfere with the same.	**Deputy Commissioner, CGST Kalol, Gujrat Vs. Gopala Polyplast Ltd. [CA (AT) (Ins.) No. 477 of 2021]**	**NCLAT**	**16.07.2021**
444.		SRA filed an application to increase the authorised share capital without paying any fees/stamp duty to the Registrar of Companies. It was observed that when a new company takes over and starts on a new slate and take certain management	**BRS Ventures Investment Ltd. Vs. Registrar of Companies, Guwahati [CA (AT) (Ins.) No. 1028 & 1042 of 2020]**	**NCLAT**	**09.08.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		decision then everything cannot be exempted at a later stage.			
445.		There is no vested right or fundamental right in the resolution applicant to have its resolution plan approved.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]**	**SC**	**04.10.2018**
446.		'Success fees' which is more in the nature of contingency and speculative is not part of the provisions of the Code and the Regulations, and the same is not chargeable by IP.	**Jayesh N. Sanghrajka Vs. The Monitoring Agency nominated by the Committee of Creditors of Ariisto Developers Pvt. Ltd. [CA (AT) (Ins.) No. 392 of 2021]**	**NCLAT**	**20.09.2021**
447.		After portion of Part III has been applied to personal guarantors of CDs, one would have to resort to those provisions under Code if personal guarantors of CDs are to be proceeded against.	**Nitin Chandrakant Naik & Anr. Vs. Sanidhya Industries LLP & Ors. [CA (AT) (Ins.) No. 257 of 2020]**	**NCLAT**	**26.08.2021**
448.		Any statutory or legitimate dues which might be demanded from the SRA for supply of any services should be paid by the SRA and no waiver for any period of time for the future is permissible.	**Damodar Valley Corporation Vs. Cosmic Ferro Alloys Ltd. and Anr. [CA (AT) (Ins.) No. 110 of 2020]**	**NCLAT**	**01.10.2021**
449.		Income Tax Department cannot raise claims against the CD once the resolution plan is approved. Once the public announcement is made calling upon all concerned, including the statutory bodies, to raise claims, it would be expected from all the stakeholders to diligently raise their claims. Having failed to do so, the claim stands extinguished.	**Murli Industries Ltd. Vs. Assistant Commissioner of Income Tax & Ors. [Writ petition no. 2948 and 2965 of 2021]**	**HC, Bombay**	**23.12.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
450.		If the CD is an MSME it is not necessary for the Promoters to compete with other RA to regain the control of the CD.	**C. Raja John Vs. R. Raghavendran & Ors. [CA (AT) (CH) (Ins.) No. 207 of 2021]**	**NCLAT**	**01.12.2021**
451.		Post approval of the resolution plan, the AA does not have any jurisdiction under the Code to reopen or modify or revisit the plan.	**Bank of India Vs. Tirupati Infraprojects Pvt. Ltd [C.A No. 719(PB)/2020 and C.A No. 1247 (PB)/2019 in IB-104 (PB)/2017]**	**NCLT, New Delhi**	**01.11.2021**
452.		The resolution plan even though it is not a confidential document after its approval, cannot be made available to each and to anyone who has no genuine claim or interest in the process. On various grounds the access to resolution plan even if it is not a confidential document after approval, can be denied in proper and appropriate cases.	**Association of aggrieved workmen of Jet Airways (India) Ltd. Vs. Jet Airways (India) Ltd. & Ors. [CA (AT) (Ins.) No. 643 of 2021 & I.A. No. 1700 of 2021]**	**NCLAT**	**20.01.2022**
453.		There is no scope for negotiations between the parties once the resolution plan has been approved by the CoC. The contractual principles and common law remedies, which do not find a tether in the wording or the intent of the Code, cannot be imported in the intervening period between the acceptance of the CoC and the approval by the AA.	**Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. & Anr. [Civil Appeal No. 3224 of 2020 with other appeals]**	**SC**	**13.09.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
454.		The FCs or OCs who are related parties, cannot be discriminated against under the resolution plan, denying their right to get payments under the resolution plan only on being a related party. By getting only payment under the resolution plan, related party creditors could in no way sabotage the CIRP.	**Periasamy Palani Gounder Vs. Radhakrishnan Dharmarajan & Anr. [CA (AT) (CH) (Ins.) No. 164, 176, 218 & 219 of 2021]**	**NCLAT**	**17.02.2022**
455.		The approval of a resolution plan in respect of one borrower cannot certainly discharge a co-borrower. If there are two borrowers or if two corporate bodies fall within the ambit of CD, there is no reason why proceedings under section 7 of the Code cannot be initiated against both the CDs. Needless to mention, the same amount cannot be realised from both the CDs. If the dues are realised in part from one CD, the balance may be realised from the other CD being the co-borrower. However, once the claim of the FC is discharged, there can be no question of recovery of the claim twice over.	**Maitreya Doshi Vs. Anand Rathi Global Finance Ltd. and Anr. [Civil Appeal No. 6613 of 2021]**	**SC**	**22.09.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
456.		Permitting successful resolution applicant to withdraw after the resolution plan has been approved by the CoC and the AA, will have serious disastrous effect on whole purpose and object of the Code.	**Shraddha Buildcon Pvt. Ltd. Vs. The Dhar Textile Mills Ltd. [CA (AT) (Ins.) No. 1128 of 2022]**	**NCLAT**	**28.09.2022**
	32A	**Liability for prior offences, etc.**			
457.		Considering the object behind the introduction of section 32A, the section is also applicable to the CD undergoing liquidation as well, and the liquidator can file an application under the same.	**SBER Bank Vs. Varrsana Ispat Ltd. [C.P. (IB) No. 543/KB/2017]**	**NCLT, Kolkata**	**22.07.2020**
458.		CD would not be liable for any offence committed prior to commencement of the CIRP.	**Tata Steel BSL Ltd. & Anr. Vs. Union of India & Anr. [W.P. (CRL) 3037/2019 & CRL.M.A. 39126/2019]**	**HC, New Delhi**	**16.03.2020**
459.		Section 32A (2) of the Code will not apply to the provisional attachment order under the PMLA.	**Raj Kumar Ralhan Vs. Deputy Director, ED and Ors. [IA No. 54 of 2020 in CP (IB) No. 43/07/HDB/2018]**	**NCLT, Hyderabad**	**06.05.2020**
460.		The ED/other investigating agencies do not have the powers to attach assets of a CD, once a resolution plan stands approved and the criminal investigations against the CD stands abated.	**JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA (AT) (Ins.) No. 957 of 2019 and other appeals]**	**NCLAT**	**17.02.2020**
461.		The extinguishment of the criminal liability of the CD is apparently important to the new management to make a clean break with the past and start on a clean slate. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable.	**Manish Kumar I Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions]**	**SC**	**19.01.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
462.		In light of the facts that (i) a resolution plan in regard to CD has been approved by AA, (ii) same has resulted in change in management of the CD, and (iii) the change in management is in favour of persons who are not related to party of CD, immunities under section 32A of the Code cannot be denied to the CD.	**Deewan Housing Finance Corporation Ltd. Vs. Union of India [Writ Petition No. 3157 of 2021]**	**HC**	**16.11.2021**
463.		The date when the AA came to approve the sale of the CD as a going concern, the cessation as contemplated under section 32A did and would be deemed to have come into effect.	**Nitin Jain Liquidato PSL Ltd. Vs. Enforcement Directorate, PMLA [W.P(C) 3261/2021, CM APPLs. 32220/2021, 41811/2021]**	**HC, Delhi**	**15.12.2021**
	33	**Initiation of Liquidation**			
464.		The CoC unanimously decided to send the CD into liquidation for want of resolution plans. Once the application under section 33 was moved it was left with no option but to order liquidation.	**Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr. [CA (AT) (Ins.) No. 683 of 2020]**	**NCLAT**	**14.08.2020**
465.		Liquidation was ordered by the AA as a last option since there was no response from any viable prospective resolution applicant, despite an extension of time period.	**Siva Rama Krishna Prasad Vs. S Rajendran & Ors. [CA (AT) (Ins.) No. 751 of 2020 and another appeal]**	**NCLAT**	**04.09.2020**
466.		The decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the *Explanation* to sub-clause (2) of section 33 of the Code which is based on the commercial wisdom and is non-justiciable given the law laid by	**Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 194 of 2020]**	**NCLAT**	**10.08.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the SC in case of *K. Sashidhar vs. Indian Overseas Bank.*			
467.		In the event of liquidation, the amount to be paid to the Central Government or the State Government against the operational debt should not be less than an amount to be paid to the OC.	**RMS Employees Welfare Trust Vs. Anil Goel [CA (AT) (Ins.) No. 699 of 2018]**	**NCLAT**	**30.05.2019**
468.		After completion of CIRP period, ordering liquidation, will not have any bearing on PMLA proceedings.	**Nathella Sampath Jewelry Pvt. Ltd. [MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018]**	**NCLT, Chennai**	**03.01.2020**
469.		The AA directed liquidation of the CD without admission and appointment of IRP.	**GNB Technologies (India) Pvt. Ltd. [C.P. (IB) No. 167/BB/2019]**	**NCLT, Bengaluru**	**08.11.2019**
470.		The CoC has no role to play after the order of liquidation. They are mere claimants, whose matters are to be determined by the liquidator. They cannot move an application for removal of the liquidator.	**Punjab National Bank Vs. Mr. Kiran Shah [CA (AT) (Ins.) No. 102 of 2020]**	**NCLAT**	**21.01.2020**
471.		During the liquidation process, it is necessary to take steps for revival and continuance of the CD by protecting it from its management and from a death by liquidation.	**Y. Shivram Prasad Vs. S. Dhanapal& Ors. [CA (AT) (Ins.) No. 224 of 2018 and another appeal]**	**NCLAT**	**27.02.2019**
472.		An appeal against a liquidation order passed under section 33 may be filed on the grounds of material irregularity or fraud committed in relation to liquidation order. The Code is not for initiating proceedings for prevention of oppression and mismanagement but is armed	**Ratna Singh and Anr. Vs. Theme Export Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 917 of 2020]**	**NCLAT**	**18.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		with provisions for initiation of actions against wrong doers/illegal transactions, etc.			
473.		The moratorium under section 14 of the Code comes to an end on passing of the order of liquidation. As per section 33(5) of the Code, the legal proceedings can be continued against the CD during liquidation.	**Bhavarlal Mangilal Jain & Anr. Vs. Metal Link Alloys Ltd. & Ors. [IA 361 of 2018 in CP(IB) 67 of 2017]**	**NCLT, Ahmedabad**	**26.11.2020**
474.		i. Section 279 of the Companies Act, 2013 applies only in cases of winding up under the Companies Act, 2013 and not the Code; ii. Section 279 of the Act deals with both pending suits and institution of new suits, while section 33(5) of the Code deals with new proceedings; and iii. Section 33(5) of the Code overrides section 279 of Act, by virtue of section 238 and by the principle 'special law overrides general law'.	**Chennai Metro Rail Ltd. Vs. Lanco Infratech Ltd. (Represented by the Liquidator) & Ors. [Application No. 2826 of 2019]**	**HC, Madras**	**15.10.2020**
475.		The Code provides for liquidation of the CD in case of failure of the approved resolution plan. Under no circumstance on the failure of the approved resolution plan, CoC is empowered for fresh consideration. While dealing with insolvency matters, the role of AA is confined to the four corners of the Code.	**Orbit Electro Equipments Pvt. Ltd. & Anr. Vs. Mr. Kapil Dev Taneja & Anr. [CA (AT) (CH) (INS.) No. 142 of 2021]**	**NCLAT**	**02.07.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
476.		If no resolution plan is approved by the CoC/AA within the prescribed timeline, the extended timeline the natural corollary, automatic next step is only liquidation of the CD.	**IDBI Bank Ltd. Vs. EPC Constructions India Ltd. [IA 1623 of 2019 in CP (IB) 1832/MB/C-II/2017]**	**NCLT, Mumbai**	**07.05.2021**
	34	**Appointment of Liquidator and fee to be paid**			
477.		AA was well within its jurisdiction to engage another person as RP or Liquidator as the performance of the previous RP was unsatisfactory.	**Sandeep Kumar Gupta Vs. Stewarts & Lloyds of India Ltd. & Anr. [CA (AT) (Ins.) No. 263 of 2017 and another appeal]**	**NCLAT**	**28.02.2018**
478.		Interest of FCs as well as other creditors will remain even during liquidation proceedings. Accordingly, AA should have considered appointing any other IP as liquidator when it was evident that the CIRP has not been conducted in a way desired, before passing the liquidation order.	**Vijay Kumar Singh Vs. Anil Kumar & Ors. [CA (AT) (Ins.) No. 391 of 2020]**	**NCLAT**	**09.11.2020**
	35	**Powers and Duties of Liquidator**			
479.		The liquidator is duty bound to exercise his powers under the Code and does not require the prior permission of AA for every action to be performed under the Code.	**Nicco Corporation Ltd. in Liquidation [C.A. (IB) No. 487/KB/2017 connected to C.P. No. 03/2017]**	**NCLT, Kolkata**	**24.11.2017**
480.		Liquidator has a duty under section 35(1)(k) of the Code but the FC has no right to force the liquidator to take part in the arbitration proceedings. The duty	**Reliance India Power Fund Vs. Raj Kumar Ralhan [CA (AT) (Ins.) No. 318 of 2020**	**NCLAT**	**24.02.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of the liquidator would include a conscious decision not to take part in the proceedings.			
481.		Liquidator is only an additional person and not exclusive person who can move an application under section 391 of the Companies Act, 1956, when the company is in liquidation.	**Rasiklal S. Mardia Vs. Amar Dye Chem Ltd. & Ors. [CA (AT) No. 337 of 2018]**	**NCLAT**	**08.04.2019**
482.		The liquidator is duty bound to make every endeavour to protect and preserve the value of the property of the CD and manage the operations as a going concern.	**B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 and other appeals]**	**NCLAT**	**13.11.2019**
483.		The liquidator has been endowed with very wide powers as a quasi-judicial functionary under the Code. Section 35(2) empowers the liquidator to consult any of the stakeholders entitled to a distribution of proceeds under section 53, but the proviso makes it amply clear that such consultation is not binding on the liquidator.	**IFCI Ltd. & Ors. Vs. BS Ltd. (in liquidation) IA No. 1148/2020 in CP(IB) No. 278/7/HDB/2018]**	**NCLT, Hyderabad**	**07.01.2021**
484.		Liquidator ought to do preliminary investigation of the scheme received by him under section 230(1) of the Companies Act 2013, before filling the application with AA. Unless the person funding the scheme and the person who is willing to invest in the company are verified and only on being satisfied, the same ought to have been filed before the AA for approval.	**In the matter of C. Ramasubramaniam (Liquidator) M/s Aqua Designs India Pvt. Ltd. [CA/342/CAA/2020 in CP/1022/IB/2018]**	**NCLT, Chennai**	**05.07.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
485.		The sale by a liquidator under the Code is a sale on behalf of the CD and cannot be termed as 'involuntary sale'.	**Cotton Casuals (India) Pvt. Ltd. Vs. Kanchan Dutta, Liquidator & Anr. [CA (AT) (Ins.) No. 206 of 2021**	**NCLAT**	**17.12.2021**
486.		The timeline prescribed in regulation 35A of the CIRP Regulations is only directory and any action taken by the RP beyond the time prescribed under regulation 35A of the CIRP Regulations cannot be held to be *non-est* or void only on the ground that it is beyond the period prescribed under regulation 35A of the CIRP Regulations.	**Aditya Kumar Tibrewal Vs. Om Prakash Pandey & Ors. [CA (AT) (Ins.) No. 583 of 2021]**	**NCLAT**	**06.04.2022**
	36	**Liquidation estate**			
487.		All sums due to any workman or employees from the provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.	**Savan Godiwala Vs. Apalla Siva Kumar [CA (AT) (Ins.) No. 1229 of 2019]**	**NCLAT**	**11.02.2020**
488.		The order of attachment by the tax authorities constituting an encumbrance on the property, does not have the effect of taking it out of the purview of section 36(3)(b) of the Code.	**Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) IT Dept. Hyderabad [Writ Petition No. 8560 of 2018]**	**HC, Hyderabad**	**26.07.2018**
489.		Dues payable under sub-section 7A, 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) are statutory dues and not claims that can be submitted to the liquidator.	**V-Con Integrated Solutions Pvt. Ltd. Vs. Acharya Techno Solutions (India) Pvt. Ltd. & Anr. [I.A/176/KOB/2020 in MA/05/KOB/2020 in TIBA/01/KOB/2019]**	**NCLT, Kochi**	**18.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Section 53 of the Code is not applicable to the recovery of dues which do not form part of the liquidation estate under the Code, by virtue of section 36(4)(a)(iii). Further, the Employee's Provident Fund Organization (EPFO) has got first charge over the Assets of the defaulter and its priority of payment over other debts is as per Section 11 of the EPF & MP Act, 1952.			
490.		Provident fund dues are not the assets of the CD as per section 36 of the Code. In line with section 17B of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, a resolution applicant will also be liable to pay the contribution and other sums due from the employer under the said Act in respect of the period upto the date of such transfer. The provisions of the said Act need to be complied with. It is not a commercial wisdom as compliance of law is a must.	**Sikander Singh Jamuwal Vs. Vinay Talwar and Ors. [CA (AT) (Ins.) No. 483 of 2019]**	**NCLAT**	**11.03.2022**
491.		Section 36(4) of the Code has given outright protection to workmen's dues under provident fund, gratuity fund and pension fund which are not to be treated as liquidation estate assets and the liquidator shall have no claim	**Sunil Kumar Jain and Ors. Vs. Sundaresh Bhatt and Ors. [Civil Appeal No.5910 of 2019]**	**SC**	**19.04.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		over such funds which are specifically kept out of liquidation estate assets and as per section 36(4) of the IB Code, they are not used for recovery in the liquidation.			
492.		It is the statutory obligation of the CD to contribute to the dues of workmen and employees towards the provident fund, the pension fund and the gratuity fund. If above funds are deficient or the CD has failed to perform its statutory obligation, it is the CD who has to make payment towards the above funds which amounts have to be kept out of the liquidation assets.	**Employees Provident Fund Organisation Vs. Mr. Subodh Kumar Agarwal RP Ambient Computronics Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 116 of 2022]**	**NCLAT**	**27.05.2022**
493.		The claim of those homebuyers/FC, who could not file their claims, but whose claims were reflected in the record of the CD, ought to have been included in the information memorandum and resolution applicant, ought to have been taken note of the said liabilities and should have appropriately dealt with them in the resolution plan. Non-consideration of such claims, which are reflected from the record, leads to inequitable and unfair resolution.	**Puneet Kaur Vs. K V Developers Pvt. Ltd. & Ors. [CA (AT) (Ins.) Nos. 390, 391, 392, 393 & 394 of 2022]**	**NCLAT**	**01.06.2022**
	37	**Powers of Liquidator to access information**			
494.		The liquidator has to perform his duties as the officer of the court and he should never be afraid of false complaints.	**Hema Manoj Shah Vs. Gaurav Dave & Ors. [IA 2511/2019, MA 2400/ 2019, MA 876/2019, in**	**NCLT, Mumbai**	**17.07.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
			MA 1082/2019, MA 2314/2019 CP (IB)-1882 (MB)/ 2018]		
	42	**Appeal against the decision of Liquidator**			
495.		It is almost impracticable for the liquidator to follow the principles of natural justice before admitting or rejecting a claim because he cannot be selective in his approach and if the same is applied universally, it will make the timeline under the Code haywire and defeat the provisions of Code.	**Bank of India Vs. V. Mahesh & Anr. [IA/497/2020 in MA/289/2018 in TCP/10/IB/2017 and IA/115/2020 in MA/289/2018 in TCP/10/IB/2017]**	**NCLT, Chennai**	**03.09.2020**
	43, 44	**Preferential transactions and relevant time, Order in case of preferential transactions**			
496.		The mortgage of land of the CD in favour of a creditor amounts to transfer of interest in the property of the CD for the benefit of the creditor, and putting it in a beneficial position *vis-à-vis* other creditors, is a preferential transaction.	**Anuj Jain Vs. Manoj Gaur & Ors. [CA No. 26/2018 in CP No. (IB)77/ALD/2017]**	**NCLT, Allahabad**	**16.05.2018**
497.		Section 43 of the Code is applicable during the pendency of resolution process or liquidation proceedings, if there are genuine, reasonable grievances relating to preferential transactions at a relevant time. A liquidator by filing an application can seek one or other order from the AA as per section 44 of the Code.	**K.L. Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. & Ors. [CA (AT) (Ins.) No. 277 of 2019]**	**NCLAT**	**20.02.2020**
498.		To invoke section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest	**S. V. Ramkumar Vs. Orchid Health Care Pvt. Ltd. & Ors. [MA/86/2018 inCP/540/IB/CB/2017]**	**NCLT, Chennai**	**04.07.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		from CD to a creditor, (2) and it must be for the benefit of such creditors in preference to the other creditors of the CD in the event of a distribution of assets being made in accordance with section 53 of the Code.			
499.		(a) **Preferential Transactions:** A CD shall be deemed to have given a preference at a relevant time if: (i) there is a transfer of property or the interest thereof of the CD for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with section 53 of the Code; and (iii) preference is given, either during the period of two years/one year preceding the ICD when the beneficiary is a related/an unrelated party. However, such deemed preference may not be an offending preference, if it falls into any or both exclusions provided by section 43(3). Section 43(3)(a) exempts transfers made in ordinary course of business of the CD or the transferee. This calls for purposive interpretation. The expression 'or', appearing as	**Anuj Jain Vs. Axis Bank Ltd. & Ors. [Civil Appeal Nos. 8512-8527 of 2019 with other appeals]**	**SC**	**26.02.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		disjunctive between the expressions 'corporate debtor' and 'transferee', ought to be read as 'and'. Therefore, a preference shall not include the transfer made in the ordinary course of the business of the CD and the transferee. **(b) Duties and responsibilities of RP:** The RP shall – (i) sift through all transactions relating to the property/interest of the CD backwards from the ICD and up to the preceding two years; (ii) identify persons involved in the transactions and put them in two categories: (1) related party under section 5(24) and (2) remaining persons; (iii) identify which of the said transactions of preceding two years, the beneficiary is a related party of the CD and in which the beneficiary is not a related party. The sub-set relating to unrelated parties shall be trimmed to include only the transactions preceding one year from the ICD; (iv) examine every transaction in each of these sub-sets to find out whether (1) the transaction is of transfer of property of the CD or its interest in it; and (2) beneficiary involved in the transaction stands in the capacity of creditor/surety/guarantor;			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		(v) scrutinise the shortlisted transactions to find, if the transfer is for or on account of antecedent financial debt/operational debt/other liability of the CD; (vi) examine the scanned and scrutinised transactions to find, if the transfer has the effect of putting such creditor/surety/guarantor in beneficial position, then it would have been in the event of distribution of assets under section 53. If answer is in the affirmative, the transaction shall be deemed to be of preferential, provided it does not fall within the exclusion under section 43(3); and then (vii) apply to the AA for necessary orders, after carrying out the aforesaid volumetric and gravimetric analysis of the transactions. **(c) Undervalued and fraudulent transactions:** As the transactions are held as preferential, it is not necessary to examine whether these are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		at a relevant time, while undervalued transaction requires different enquiry under sections 45 and 46 where the AA is required to examine the intent, if such transactions were to defraud the creditors. The AA needs to examine the aspect of preferential, undervalued and fraudulent separately and distinctively.			
500.		In the context of CIRP, it was observed that: i. Avoidance applications cannot survive beyond the conclusion of the CIRP. It is meant to give benefit to the creditors of the CD and not to the CD in its new avatar, after the approval of the resolution plan. ii. The NCLT has the jurisdiction to deal with all applications and petitions *'in relation to insolvency resolution and liquidation for corporate persons'*. After the approval of the resolution plan and the new management has taken over the CD, no proceedings remain pending before the NCLT, except issues relating to the resolution plan itself, as permitted under section 60. It has no jurisdiction to entertain and decide avoidance applications, in respect of a CD which is now under a new	**Venus Recruiters Pvt. Ltd. Vs. Union of India & Ors. [W.P. (C) 8705/2019 & CM APPL. 36026/2019]**	**HC, New Delhi**	**26.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		management unless provision is made in the final resolution plan. iii. The RP cannot continue to act on behalf of the CD under the title of `Former RP', once the plan is approved and the new management takes over. His continuation beyond the closure of the CIRP would in effect mean an interference in the conduct and management of the company. iv. The SRA cannot file an avoidance application, as it is neither for the benefit of the resolution applicant nor for the CD after the resolution is complete. v. Section 26 of the Code cannot be read in a manner to mean that an application for avoidance of transactions under section 25(2)(j) can survive after the CIRP. Once the CIRP process itself comes to an end, an application for avoidance of transactions cannot be adjudicated. If the CoC or the RP are of the view that there are any transactions which are objectionable in nature, the order in respect thereof would have to be passed prior to the approval of the resolution plan.			
501.		Allegations of preferential transaction as also fraudulent trading/wrongful trading carried	**Mohan Lal Jain, in the capacity of Liquidator of Kaliber Associates Pvt. Ltd. Vs. Lalit**	**NCLAT**	**16.12.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		on by the CD during the insolvency resolution can be inquired into by the AA.	**Modi & Ors. [CA (AT) (Ins.) No. 944 of 2020]**		
502.		The RP is duty bound to file the application for preferential transaction within time and also seek for urgent hearing of the application before the plan is approved. Once the resolution plan is approved, the CD is managed by a new management and the RP becomes functus officio. An application for avoidance of preferential transaction cannot be carried on by the RP on behalf of the CD.	**Suraj Fabrics Industries Ltd. & Anr. Vs. Bipin Kumar Vohra & Ors. [IA (IB) No. 750/KB/2020 in CP (IB) No. 1635/KB/2018]**	**NCLT, Kolkata**	**18.02.2021**
	45, 46	**Avoidance of undervalued transactions, Relevant period for avoidable transactions**			
503.		The transactions as has been made i.e. mortgage(s) in favour of the appellants as and when made against the amount payable by Jaiprakash Associates Limited, the amount is not payable by the CD. Therefore, clause (a) of sub-section (2) of section 45 is not attracted. For the same reason, clause (b) of sub-section (2) of section 43 or section 45 cannot be made applicable with regard to transaction in question which are not related to any payment due from the CD.	**Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 with other CAs]**	**NCLAT**	**01.08.2019**
504.		The outcome of the avoidance transaction 'annot be given to the SRA, and it must go to the company's creditors.	**63 Moons Technologies Ltd. Vs. The Administrator of Dewan Housing Finance Corporation Ltd. & Ors. [CA (AT) (Ins.) No. 454, 455 and 750 of 2021]**	**NCLAT**	**27.01.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
505.		Section 46(2) empowers the AA to require an independent expert to assess evidence relating to the value of the transactions. The power under section 46(2) is enabling power and the expression used "may require" indicates that it is not necessary that for all applications under section 46(1), there has to be mandatory expert appointed by the AA.	**Radico Trading Ltd. Vs. Tarun Batra (Insolvency Professional) & Ors. [CA (AT) (Ins.) No. 139 of 2022]**	**NCLAT**	**22.03.2022**
	52	**Secured creditor in liquidation proceedings**			
506.		If one or more secured creditors have not relinquished the security interest and have opted to realise their security interest against the same asset in terms of section 52(1)(b) read with section 52(2) and (3), the liquidator will act in terms of section 52(3) and find out as to who has the first charge (security interest). If any dispute is pending as to the question of who has the first charge, the liquidator may inform the same to parties and proceed as per section 52(3).	**JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 593 of 2019]**	**NCLAT**	**11.12.2019**
507.		If it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a 'person' who is ineligible in terms of section 29A, it is always open to him to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.	**State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]**	**NCLAT**	**18.11.2019**
508.		Even during liquidation process, the liquidator is to ensure that CD remains a going concern. If no	**B.R. Traders Vs. Venkataramanarao Nagarajan &**	**NCLAT**	**13.11.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		arrangement or scheme framed under sections 230 to 232 of the Companies Act, 2013 becomes possible or the CD is not sold in its totality along with the employees and there is no option but to sell the assets of the CD and to distribute the same amongst the creditors in terms of section 53 read with section 52 of the Code, the liquidator may be asked to return the third party assets.	**Ors. [CA (AT) (Ins.) No. 189 of 2019 with other CAs]**		
509.		If the liquidator concludes that the claimants have security interest over the assets of the CD, he shall permit the creditors to utilise their rights under section 52 of the Code. Application seeking directions from AA against such creditors to compel them to relinquish security interest, is not supported by the Code.	**In the matter of Clutch Auto Ltd. [CA-1432(PB)/2019 & CA-1433(PB)/2019 in (IB)-15(PB)/2017]**	**NCLT, New Delhi**	**06.01.2020**
510.		Section 52(4) of the Code releases the secured creditor from the clutches of the Code and gives liberty to recover its security interest as per any other law which may be applicable. Once the secured creditor is out of liquidation under section 52(1)(b) of the Code, it is relieved from all the clutches of the Code or the liquidation process. To move under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or any other Act, to sell the assets to	**Anuj Bajpai Vs. State Bank of India [MA 1123/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017]**	**NCLT, Mumbai**	**08.04.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		any party, is all the prerogative of the secured creditor because his rights are given a specific protection under the Code. However, it has to be kept in mind that the intent of the Code cannot be hampered by allowing the promoters/directors a backdoor entry in the liquidation process.			
511.		Only the first charge holder/secured creditor with the first *pari-passu* charge can stay outside the liquidation process and realise his security interest in the manner provided under section 52(1)(b).	**Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018]**	**NCLT, Mumbai**	**10.05.2019**
512.		Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in terms of section 281 of the Income-tax Act, 1961.	**Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) & Ors. [Writ Petition No. 8560 of 2018]**	**HC, Hyderabad**	**26.07.2018**
513.		Under section 52(3)(a) of theCode before any security interest is sought to be realised by the secured creditor under this section, the Liquidator shall verify such security interest and permit the secured creditors to realise only such security interest, the existence of which may be proved either by the records of such security interest	**Volkswagen Finance Pvt. Ltd. Vs. Shree Balaji Printopack Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 02 of 2020]**	**NCLAT**	**19.10.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		maintained by an IU or by such other means as may be specified by IBBI.			
	53	**Distribution of assets**			
514.		Upon realisation of the liquidation estate of the CD, it has to be distributed in accordance with the waterfall mechanism under section 53 of the Code. The dues towards the Government, be it tax on income or sale of properties, would qualify as 'operational debt' and has to be dealt with accordingly. Further, the applicability of section 178 or 194IA of the Income-tax Act, 1961 will not have an overriding effect over section 53 of the Code, and the capital gains shall not be taken into consideration as the liquidation cost.	**Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA-666/2019 in (IB)-250(ND)/2017]**	**NCLT, New Delhi**	**22.10.2019**
515.		Section 45 and 46 of the Income-tax Act, 1961 will not have an overriding effect on the waterfall mechanism provided under section 53 of the Code, which is a complete Code in itself and thus capital gains shall not be taken into consideration as the liquidation cost.	**LML Ltd. Vs. Office of Commissioner of Income Tax, Mumbai [CA No. 389 of 2019 in CP(IB) No. 55/ALD/2017]**	**NCLT, Allahabad**	**31.08.2020**
516.		Section 53 of the Code will not be followed for distribution in the case as it would cause injustice to shareholders who have invested public money in Infrastructure Leasing & Financial Services Ltd. and its group companies and therefore the *pro-rata* distribution as proposed by the	**Union of India Vs. Infrastructure Leasing & Financial Services Ltd. & Ors. [CA (AT) No. 346 of 2018with I.A. Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182, 185 of 2020 with other appeals]**	**NCLAT**	**12.03.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Central Government was accepted.			
517.		There is an intelligible differentia between the financial debts and operational debts, which are unsecured, which has direct relation to the object sought to be achieved by the Code. It can be seen that unsecured debts are of various kinds and as long as there is some legitimate interests sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 of the Constitution does not get infracted. Accordingly, validity of section 53 was upheld.	**Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
518.		Section 53, including *Explanation* given therein cannot be relied upon while approving the resolution plan. However, that does not mean that a discriminatory plan can be placed and can get through on one or other ground, which is against the basic object of maximization of the assets of the CD on one hand and for balancing the stakeholders on the other.	**Binani Industries Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 82,123, 188,216 & 234 of 2018]**	**NCLAT**	**14.11.2018**
519.		Any shortfall in gratuity must be made over by the RP and payments of the dues has to be paid outside the waterfall mechanism. The RP was directed to release the dues of the ex-employees and deposit the	**Autonix Lighting Industries Pvt. Ltd. Vs. Moser Baer Electronics Ltd. [IA No. 412/2020 in CP No. (IB)-1265(ND)/2019]**	**NCLT, New Delhi**	**19.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		provident fund with EPFO and release gratuity forthwith.			
520.		Liquidation proceedings are time-bound to maximize the value and all the creditors are entitled to get their dues only in terms of section 53 of the Code and different creditors cannot be allowed to resort to different proceedings and enactments only because they are 'authorities' under earlier enactments considering the provision of section 238 of the Code.	**Pinakin Shah – Liquidator of Brew Berry Hospitalities Pvt. Ltd. Vs. The Assistant Commissioner of State Tax & Anr. [CA (AT) (Ins.) No. 32 of 2021]**	**NCLAT**	**25.02.2021**
521.		In the normal parlance "going concern" sale is transfer of assets along with the liabilities. However, as far as the 'going concern' sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the CD has to be settled in accordance with section 53 of the Code and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the creditors. Further, the decision to sell the CD as a going concern is taken by the liquidator himself or in consultation with the creditors / stakeholders and the proceeds from the sale of assets are going to be utilised for distribution to	**Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes and Tubes Pvt. Ltd. [IA No. 2264 of 2020 in CP (IB) No. 1239-MB-2018]**	**NCLT, Mumbai**	**09.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the creditors in the manner specified under section 53 of the Code. Hence all the Creditors of the CD get discharged and the assets are transferred free of any encumbrances. The legal entity of the CD, however survives.			
522.		A conjoint reading of sections 52 and 53 of the Code leaves no room for doubt that the legislature in its wisdom thought it proper to provide an option to the secured creditor armed with a security interest to choose out of the two options, namely, either enforce security interest against the asset out of liquidation estate which is the subject of security interest or relinquish the same and claim as secured creditor in the manner set out under section 53(1)(b)(ii) ranking equal to other secured creditors. First charge holder will have priority in realising its security interest if it elects to realise its security interest and does not relinquish the same. However, if it opts to relinquish its security interest, the distribution of assets would be governed by the section 53(1)(b)(ii) whereunder all secured creditors having relinquished security interest rank equally.	**Technology Development Board Vs. Anil Goel & Ors. [CA (AT) (Ins.) No. 731 of 2020]**	**NCLAT**	**05.04.2021**
523.		Since the CD in liquidation is not a going concern and assets which are to be distributed are in the	**Sri Supriyo Kumar Chaudhuri, Liquidator of JVL Agro Industries Ltd. Vs. State Bank of India, Sarg**	**NCLT, Allahabad**	**26.07.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		form of liquid assets and are non-saleable, the Code does not bar such distribution as such distribution will not hamper the liquidation process of the CD.	**& Ors. [IA No. 19/2021, IVN. P. 02/ALD/2020 In CP No. (IB) 223/ALD/2019]**		
524.		The pension fund, gratuity fund and provident fund can't be utilised, attached or distributed by the liquidator, to satisfy the claims. All sums due to any workman or employees from such funds, do not form part of the liquidation estate/liquidation assets of the CD.	**Sabu K.V & Anr. Vs. Shri. Ravindra Chaturvedi, Liquidator of Excel Glasses Ltd. [MA/221 & 222/KOB/2020]**	**NCLT, Kochi**	**18.11.2021**
525.		If it is found that in fact the IRP/RP managed the operations of the CD as a going concern during the CIRP and the concerned workmen/employees actually worked during the CIRP, their wages and salaries be considered and included in CIRP costs and during liquidation, they will have to be paid as per section 53(1)(a) of the Code in full.	**Sunil Kumar Jain and Ors. Vs. Sundaresh Bhatt and Ors. [Civil Appeal No. 5910 of 2019]**	**SC**	**19.04.2022**
526.		During liquidation, the question of discrimination arises only when some of the OCs are paid the dues by excluding some of the OCs.	**Genius Security and Allied Services Vs. Shivadutt Bannanje & Anr. [CA (AT) (CH) (Ins.) No. 110 & 225 of 2021]**	**NCLAT**	**07.04.2022**
527.		Section 48 of the Gujarat Value Added Tax, 2003 is not contrary to or inconsistent with section 53 or any other provisions of the Code. Under section 53(1)(b)(ii) of the Code, the debts owed to a secured creditor, which would	**State Tax Officer Vs. Rainbow Papers Ltd. [Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020]**	**SC**	**06.09.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		include the state under the Gujarat Value Added Tax, 2003, are to rank equally with other specified debts including debts on account of workman's dues for a period of 24 months preceding the liquidation commencement date.			
	54.	**Dissolution of corporate debtor**			
528.		By conjoint reading of section 54, section 60 and regulation 45 of Liquidation Process Regulations, the ultimate objective of the Code is either to resolve the issue by way of resolution plan or to dissolve the corporate debtor, as expeditiously as possible.	**In the matter of SGP Software Solutions Pvt. Ltd. [I.A. No. 14/2021 and C.P. (IB) No. 137/BB/2018]**	**NCLT, Bengaluru**	**01.02.2021**
	54C	**Application to initiate pre-packaged insolvency resolution process**			
529.		While considering the application of pre-packaged insolvency under section 54C of the Code, AA can hear objectors/interveners before the admission of such application.	**In the matter of Krrish Realtech Pvt. Ltd. [CA (AT) (Ins.) Nos. 1008, 1009 & 1010 of 2021]**	**NCLAT**	**21.12.2021**
	55	**Fast track corporate insolvency resolution process**			
530.		The CD does not come within the category of CD in terms of clauses (a) or (b) or (c) of sub-section (2) of section 55 as its assets and income being not below a level, notified by the Central Government nor having class of creditors or amount of debt as notified by the Central Government. Therefore, section 55 cannot be invoked against the CD.	**Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr. [CA (AT) (Ins.) No. 560 of 2018]**	**NCLAT**	**03.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	59	**Voluntary liquidation of corporate persons**			
531.		Voluntary liquidation can only be done, as required under regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, if the debt of the CD has been discharged to the satisfaction of the creditors and no litigation is pending against CD. Since the CD did not satisfy the twin requirements in the matter, the voluntary liquidation of the CD was suspended.	**Central Inland Water Transport Corporation Ltd. [C.A. (IB) No. 791/KB/2018]**	**NCLT, Kolkata**	**28.09.2018**
	60	**Adjudicating Authority for corporate persons**			
532.		With regard to the issue as to whether AA has jurisdiction to determine the issue of disputed question of fact as to who holds the first charge, it was held that it is the exclusive prerogative of AA which is exclusively vested with the power to adjudicate the matters relating to and connected with insolvency and bankruptcy law particularly the process of liquidation and the related measures to be adopted in the said process of liquidation. It was observed that it is not just a substantive law but also a procedural law and therefore, the AA can decide on the issues of disputed question of fact when the documents unequivocally	**Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018]**	**NCLT, Mumbai**	**10.05.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		prove the point that is sought to be decided.			
533.		A plain reading of section 60(2) with sections 95 and 97(3) of the Code indicates that, even while an application for CIRP or liquidation is pending against CD, an application against the personal guarantor can be allowed to be filed. The law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of CIRP of the CD has come to an end.	**State Bank of India Vs. Anil Dhirajlal Ambani [IA No. 1009 of 2020 in CP (IB) 916 ((MB) of 2020 and Anr.]**	**NCLT, Mumbai**	**20.08.2020**
534.		Clause (c) sub-section (5) of section 60 of the Code vests the jurisdiction in AA to entertain and dispose of any question of priorities or any question of law or fact, arising out of or in relation to the insolvency resolution for liquidation proceedings. Therefore, the jurisdiction vested in AA while dealing with a resolution plan is of wide ambit and any question of law or fact in relation to the insolvency resolution has to be determined by the AA.	**GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]**	**HC, New Delhi**	**26.06.2020**
535.		The AA has no jurisdiction to enforce a foreign decree, however, there is no bar in taking cognizance of a foreign decree.	**Stanbic Bank Ghana Ltd. Vs. Rajkumar Impex Pvt. Ltd. [CP/670/IB/2017]**	**NCLT, Chennai**	**27.04.2018**
536.		Though the AA and the NCLAT have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to	**Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors. [Civil Appeal No. 9170, 9172 of 2019]**	**SC**	**03.12.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		adjudicate upon disputes such as those arising under the Mines & Minerals (Development and Regulation) Act, 1957, and the rules thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action.			
537.		If the AA is satisfied that there are circumstances suggesting that the business of a CD is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, and that the affairs of the CD ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, it may refer the matter to the Central Government for investigation into the affairs of the CD.	**M. Srinivas Vs. Ramanathan Bhuvaneshwari & Ors. [CA (AT) (Ins.) No. 498 of 2019]**	**NCLAT**	**24.07.2019**
538.		Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, it is for the disciplinary authority i.e. IBBI to close the proceedings or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of such power being vested with AA, the AA cannot	**IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]**	**NCLAT**	**11.07.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		quash the disciplinary proceedings initiated by IBBI.			
539.		Section 212 of the Companies Act, 2013 does not empower the NCLT or AA to refer the matter to the Central Government for investigation by Serious Fraud Investigation Office (SFIO) even if it notices the company defrauding creditors and others. However, in terms of section 213(b) of the said Act, it can direct the Central Government to investigate through inspectors and after investigation and if case is made out, it may decide the matter to be investigated by SFIO. It was held that the AA is not competent to straight away direct any investigation to be conducted by the SFIO.	**Union of India Vs. Maharashtra Tourism Development Corporation & Anr. [CA (AT) (Ins.) No. 964 and 965 of 2019]**	**NCLAT**	**02.12.2019**
540.		The Code does not confer any power and jurisdiction on the AA to compel specific performance of a resolution plan by an unwilling resolution applicant.	**Committee of Creditors of Metalyst Forging Ltd. Vs. Deccan Value Investors LP & Ors. [CA (AT) (Ins.) No. 1276 and 1281 of 2019]**	**NCLAT**	**07.02.2020**
541.		Section 60 of the Code in sub-section (1) thereof, refers to insolvency resolution and liquidation for both CDs and personal guarantors, the AA for which shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. The scheme of section 60(2) and (3) is clear that the moment there is a proceeding against the CD pending under the	**State Bank of India Vs. V. Ramakrishnan & Anr. [CA No. 3595 of 2018]**	**SC**	**14.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the CD, be transferred to the NCLT or, if initiated after such proceedings had been commenced against the CD, be filed only in the NCLT.			
542.		An order of moratorium will be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. However, this order of moratorium will not be applicable on filing of applications for triggering CIRP under sections 7 or 9 or 10 of the Code against the guarantor or the personal guarantor under section 60(2).	**State Bank of India Vs. D. S. Rajendra Kumar [CA (AT) (Ins.) Nos. 87 to 91 of 2018]**	**NCLAT**	**18.04.2018**
543.		The limited judicial review available to AA can in no circumstance trespass upon a business decision of the majority of the CoC . The residual jurisdiction of the AA under section 60(5)(c) cannot, in any manner, whittle down section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the AA outside section 30(2) of the Code, while adjudicating a resolution plan.	**Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [CI Civill Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s]**	**SC**	**15.11.2019**
544.		Without initiating any CIRP against the principal borrower, it	**Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation**	**NCLAT**	**08.01.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC *qua* corporate guarantor.	**Ltd. [CA (AT) (Ins.) No. 92, 93 & 148 of 2017]**		
545.		It was noted that the AA under the Code exercises only a summary jurisdiction and cannot be made to conduct the proceedings by way of a detailed trial to ascertain the amount of debt claimed is as claimed or not, as is done by a Civil Court taking a detailed examination of documents supported by oral examination of witnesses when the plaintiff approaches it by way of a suit.	**UT Worldwide (India) Pvt Ltd. Vs. Integrated Caps Pvt. Ltd. [IB-298/ND/2017]**	**NCLT, New Delhi**	**17.10.2017**
546.		The *non-obstante* clause in section 60(5) is designed for a different purpose i.e. to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a CD covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]**	**SC**	**04.10.2018**
547.		Section 60(5) of the Code does not provide for review jurisdiction to the NCLT.	**P. Purushothaman Vs. Union Bank of India & Anr. [MA/496/2019 in CP/280/IB/2018]**	**NCLT, Chennai**	**04.06.2019**
548.		The prayer to recall and cancel NCLTs own order of admission of CIRP would not come within the purview of section 60 of the Code. Moreover, the order of admission of CIRP is an	**Vistar Financiers Pvt. Ltd. Vs. Datre Corporation Ltd. [CA No. 209 of 2018 in CP (IB) No. 441/KB/2017]**	**NCLT, Kolkata**	**22.06.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		appealable order under section 32 of the Code.			
549.		The AA is empowered to direct the ex-directors not to leave the country without its prior permission.	**Amandeep Singh Bhatia & Ors. Vs. Vitol S.A. & Anr. [CA (AT) (Ins.) No. 502 of 2018]**	**NCLAT**	**30.08.2018**
550.		There is no bar in the Code against filing of two applications under section 7 simultaneously, against the principal borrower as well as the corporate guarantor or against both the guarantors. However, once for same set of claim, application under section 7 filed by the FC is admitted against one of the CDs (i.e. principal borrower or corporate guarantor), second application by the same FC for same set of claim and default cannot be admitted against the other CD (i.e. corporate guarantor or the principal borrower).	**Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. [CA (AT) (Ins.) 346 & 347 of 2018]**	**NCLAT**	**08.01.2019**
551.		The AA has no jurisdiction to pass any order with regard to any matter pending before the court of criminal jurisdiction.	**Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. &Anr. [CA (AT) (Ins.) 469 of 2019]**	**NCLAT**	**02.05.2019**
552.		NCLT is not a court subordinate to the HC and hence as prohibited by the provisions of section 41(b) of the Specific Relief Act, 1963, no injunction can be granted by the HC against a CD from institution of proceedings in NCLT.	**Jotun India Pvt. Ltd. Vs. PSL Ltd. [CP Nos. 434, 1048, 878 of 2015 & 256 and 392 of 2016]**	**HC, Bombay**	**05.01.2018**
553.		The question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar,	**Skillstech Services Pvt. Ltd. Vs. Registrar, National Company Law Tribunal, New Delhi & Anr.**	**HC, New Delhi**	**13.01.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		NCLT in its administrative capacity. The Registrar, NCLT is bound to place the matter before the appropriate bench of the NCLT, for the said question to be judicially determined.	**[W.P.(C) 474/2021 & CM Appl. 1227/2021]**		
554.		The recovery of rent from the tenant and the eviction of tenant from the property of the CD is in exclusive domain of the civil courts and cannot be dealt by the AA by invoking section 60(5) and the jurisdiction lies with the Civil Court/Rent Control Court only. On the guise that the Code is complete in itself, the AA can neither enlarge nor amplify its jurisdiction.	**Liquidator of Precision Fasteners Ltd. Vs. Siddhi Edibles Pvt. Ltd. [M.A. No. 1512/2018 and M.A. No. 47/2019 in CP (IB) No. 1339/NCLT/MB/2017]**	**NCLT, Mumbai**	**27.10.2020**
555.		When the application for approval of resolution plan is pending before the AA, at that time the AA cannot entertain an application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful resolution applicant. If a resolution plan is considered beyond the time limit then it will make a never ending process.	**Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coilsd. & Ors. [CA (AT) (Ins.) No. 518 of 2020]**	**NCLAT**	**11.01.2021**
556.		i. NCLT/NCLAT can exercise jurisdiction under section 60(5)(c) of the Code to stay termination of contracts solely on account of CIRP being initiated against the CD.	**Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019]**	**SC**	**08.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		ii. NCLT has the jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD; however, in doing so, the NCLT and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals. iii. RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes out of the insolvency, the RP must approach the competent authority. iv. NCLT cannot do what the Code consciously did not provide it the power to do. v. The jurisdiction of the NCLT cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the CD. vi. It cannot even be invoked in the event of a legitimate termination of a contract based on an *ipso facto* clause, if such termination will not have the effect of making certain the death of the CD. vii. NCLT to be cautious in setting aside valid contractual			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		terminations which would merely dilute the value of the CD, and not push it to its corporate death.			
557.		AA is sufficiently empowered under section 60(5)(c) of the Code to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs, even in a situation where the CIRP is eventually set aside by the AA or by the Appellate Authority, as the case may be.	**Alok Kaushik Vs. Bhuvaneshwari Ramanathan and Ors. [Civil Appeal No. 4065 of 2020]**	**SC**	**15.03.2021**
558.		If the facts and circumstances of a case justify that no purpose would be served to keep the CD under regular CIRP proceedings, and thereafter under liquidation proceedings, under the provisions of the Code, the AA, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.	**Mandar Wagh, IRP of Synew Steel Pvt. Ltd. [C.P. (IB)No. 96/BB/2020 and I.A. No. 435/2020]**	**NCLT, Bengaluru**	**16.11.2020**
559.		Both NCLT and NCLAT work under the Code where there is no equity jurisdiction, and they are bound by the provisions of the Code while adjudicating the matters under the Code.	**Ranjeet Singh vs. M/s Karan Motors Private Limited [CA (AT) (Ins.) No. 719/2020]**	**NCLAT**	**13.08.2021**
560.		The residuary jurisdiction of the NCLT under section 60(5)(c) cannot be invoked if the termination of a contract is based on grounds unrelated to the insolvency of the CD.	**Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd. [Civil Appeal No. 3045 of 2020]**	**SC**	**23.11.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
561.		Section 60(2) does not in any way prohibit filing of proceedings under section 95 of the Code even if no proceeding is pending before NCLT.	**State Bank of India Vs. Mahendra Kumar Jajodia, Personal Guarantor to Corporate Debtor [CA (AT) (Ins.) No. 60 & 61 of 2022]**	**NCLAT**	**27.01.2022**
562.		Filing of application under section 60(5) of the Code is not an 'all pervasive' one, thereby conferring jurisdiction to an AA to determine 'any question/issue of priorities', question of law or facts pertaining to the CD when in reality in 'Law', the AA is not empowered to deal with the matters falling under the purview of another authority under PMLA.	**Kiran Shah, RP of KSL and Industries Ltd. Vs. Enforcement Directorate [CA (AT) (Ins.) No. 817/2021]**	**NCLAT**	**03.01.2022**
563.		AA while exercising jurisdiction under the Code is empowered to issue non-bailable warrant against any person or party for enforcing the attendance of a person. In addition to enforcement of non-bailable warrants, it shall be also open for the AA to recommend for initiation of prosecution against the suspended directors of the CD in event of commission of an offence under the Code.	**Vikram Puri (Suspended Directors) & Anr. Vs. Universal Buildwell Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1018 of 2021]**	**NCLAT**	**28.02.2022**
564.		Section 60(6) of the Code does contemplate exclusion of the entire period during which the moratorium was in force in respect of CD in regard to a	**New Delhi Municipal Council Vs. Minosha India Ltd. [Civil Appeal No. 3470 of 2022]**	**SC**	**27.04.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		proceeding as contemplated therein at the hands of the CD.			
565.		The 'personal guarantors' as used under section 60(1) are personal guarantors irrespective of the fact as to whether they are Indian citizen or foreign nationals. The statutory scheme of the Code does not contain any indication that the personal guarantor of a CD can escape from its liability under the personal guarantee deed merely on the ground that he is now started residing in another country and acquired citizenship of another country and is no more an Indian citizen.	**Sudip Bijoy Dutta Vs. State Bank of India [CA (AT) (Ins.) No. 807 of 2021]**	**NCLAT**	**29.07.2022**
	61	**Appeals and Appellate Authority**			
566.		There is a sea of difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' by a tribunal. The erroneous or failure to exercise jurisdiction by a tribunal is a ground which can effectively be taken before the Appellate Authority.	**SEL Manufacturing Company Ltd. & Anr. Vs. Union of India & Ors. [CWP No. 9131 of 2018]**	**HC, Punjab and Haryana**	**01.05.2018**
567.		As per sub-section (3) of section 61 of the Code, an appeal is required to be filed within 30 days and the NCLAT has been empowered to condone delay not exceeding 15 days, if satisfied on the ground mentioned in the petition for condonation of delay. It was held that NCLAT has no	**Custodial Services (India) Pvt. Ltd. Vs. Metafilms (India) Ltd. [CA (AT) (Ins.) No. 183 of 2017]**	**NCLAT**	**16.11.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		jurisdiction to condone the delay beyond 45 days.			
568.		An unsuccessful resolution applicant has no locus to question any action of any of the stakeholders *qua* implementation of the approved resolution plan nor can it claim any prejudice on the pretext that any of the actions post approval of the resolution plan of successful resolution applicant in regard to its implementation has affected its prospects of being a successful resolution applicant.	**Hindustan Oil Exploration Company Vs. Erstwhile Committee of Creditors JEKPL Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 969 of 2020]**	**NCLAT**	**17.11.2020**
569.		There is a need to introduce provisions in the legal framework to vest power of superintendence and control qua NCLTs in the NCLAT.	**Surinder Kaur & Ors. Vs. International Recreation and Amusement Ltd. through RP [CA (AT) (Ins.) No. 208 of 2021]**	**NCLAT**	**18.03.2021**
570.		The NCLAT does not have an inherent power to review its own orders and that the 'power of review' has to be granted by statute and it is not an inherent power, and therefore cannot be exercised unless conferred specifically or by necessary implications.	**Adish Jain Vs. Sumit Bansal & Anr. [Review Application No. 13 of 2020 in CA (AT) (Ins.) No. 379 of 2020]**	**NCLAT**	**03.02.2021**
571.		The NCLAT dropped the contempt proceedings admitted against the IRP, on an application filed by CoC as the latter was in the process of approaching IBBI for taking action against the IRP.	**Committee of Creditors of Leel Electricals Ltd. Vs. Arvind Mittal, IRP of Leel Electricals Ltd. [Contempt Case (AT) No. 01 of 2021 in CA (AT) (Ins.) No. 1100 of 2020]**	**NCLAT**	**29.01.2021**
572.		Considering section 61(2) which provide that delay beyond 15 days in preferring the appeal is	**National Spot Exchange Ltd. Vs. Mr. Anil Kohli, RP for Dunar**	**SC**	**14.09.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.	**Foods Ltd. [Civil Appeal No. 6187 of 2019]**		
573.		A writ petition under Article 226 of the Constitution against an order of NCLT under the Code, is not maintaille.	**Ideal Surgical Vs. National Company Law Tribunal and Ors. [WP(C) No 8257 of 2021]**	**HC**	**02.07.2021**
	62	**Appeal to Supreme Court**			
574.		Section 62 of the Code provides a period of 45 days from the date of the receipt of an order of the NCLAT for filing an appeal. It empowers the SC to condone a delay of a further period up to 15 days for sufficient cause. Since the delay of 51 days is beyond the period of delay which can be condoned, the SC dismissed the appeal on the ground that it is barred by limitation.	**Gammon India Ltd. Vs. Neelkanth Mansions and Infrastructure Pvt. Ltd. [Civil Appeal No. D No 13202 of 2019]**	**SC**	**20.11.2020**
575.		The SC declined to entertain a writ petition under Article 32 of the Constitution filed by a singular homebuyer, stating that it would be inappropriate to do so as there are specific statutory provisions holding the field, including the Consumer Protection Act 1986 and its successor legislation; the Real Estate (Regulation and Development) Act 2016; and the Code. Remedy under Article 32 cannot be used as a ruse to flood the SC with petitions that must be filed	**Upendra Choudhury Vs. Bulandshahar Development Authority & Ors. [Writ Petition (Civil) No. 150 of 2021]**	**SC**	**11.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		before the competent authorities set up pursuant to the appropriate statutory framework.			
	63	**Civil Court not to have jurisdiction**			
576.		Sections 63 and 231 of the Code create a bar on the jurisdiction of the Civil Court in respect of any matter in which the AA and NCLAT has jurisdiction under the Code and the AA under the Code is competent to pass any order.	**GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]**	**HC, New Delhi**	**26.06.2020**
577.		If the questions raised in the suits arise out of or in relation to insolvency resolution, the NCLT will have jurisdiction to entertain the same. The jurisdiction of the HC will also be barred by section 231 of the Code.	**Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No. 16061/2018 and 16065/2018]**	**HC, New Delhi**	**22.02.2019**
	64	**Expeditious disposal of applications**			
578.		Section 64 makes it clear that the timelines are to be adhered to by the NCLT and NCLAT as they are of great importance, and reasons must be recorded by either the NCLT or NCLAT, if the matter is not disposed of within the time limit specified.	**Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]**	**SC**	**04.10.2018**
579.		The strict adherence of the timelines is of essence to both the triggering process and the insolvency resolution process.	**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017]**	**SC**	**21.09.2017**
	65	**Fraudulent or malicious initiation of proceedings**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
580.		Though section 65 provides for penal action against initiating CIRP with a fraudulent or malicious intent, the same cannot be construed to mean that if an application is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution.	**Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd. [CA (AT) (Ins.) No. 99 of 2020]**	**NCLAT**	**16.07.2020**
581.		There is nothing on record to suggest that the corporate applicant has suppressed any fact or has not come with the clean hands. The AA has also not held that the application has been filed by the corporate applicant 'fraudulently' or 'with malicious intent' for any purpose other than for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In absence of any such reasons recorded by the AA, the impugned order of AA was not be upheld. Further, as the AA before imposing penalty under section 65 has not given nor served any notice to the corporate applicant recording its *prima facie* view and intent to punish the corporate applicant, therefore, the impugned order of AA cannot be	**Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. [CA (AT) (Ins.) No. 81 of 2017]**	**NCLAT**	**01.12.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		upheld as being passed in violation of rules of natural justice.			
582.		i. In case an allottee does not want to go ahead with its obligation to take possession of the flat, but wants to get back the monies already paid, by way of coercive measure, the use of section 65 is justified, as one allottee is misusing his position to stall the entire project. But it does not mean that an application satisfying the requirements of section 7 or 9 could be dismissed arbitrarily under the guise of section 65. ii. The Code provides stringent action under section 65 against the person who initiates proceeding fraudulently or with malicious intent, for the purpose other than the resolution of insolvency or liquidation.	**Amit Katyal Vs. Meera Ahuja & Ors. [CA (AT) (Ins.) No. 1380 of 2019]**	**NCLAT**	**09.11.2020**
583.		Against the rejection of a claim of RP, there is no provision to file an appeal. However, the claimant is entitled to make grievances regarding any claim made against the CD by virtue of section 60(5)(b) of the Code.	**Rajat Metaal Polychem Pvt. Ltd. Vs. Resolution Professional [CA (AT) (Ins.) No. 979 of 2021]**	**NCLAT**	**02.12.2021**
584.		The CIRP was initiated fraudulently and with malicious intent, for a purpose other than	**Bank of India Vs. Iris Electro Optics Pvt. Ltd. & Ors. [C.P (IB) No. 181/7/HDB/2019]**	**NCLT, Hyderabad**	**14.02.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the resolution of the insolvency of the CD. Accordingly, the AA imposed the maximum penalty under section 65 of the Code.			
	66	**Fraudulent trading or wrongful trading**			
585.		The AA had allowed the application under sections 66, 43 and 45 of the Code and ordered that the mortgaged properties be vested with the CD. On appeal, the NCLAT noted that the mortgages were made in favour of the banks and financial institutions by the CD in the ordinary course of business. Further, in absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA.	**Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 and Ors.]**	**NCLAT**	**01.08.2019**
586.		Proceeding on fraudulent transactions under section 66 of the Code can be initiated even in the absence of any transaction audit. If the IRP/RP has prima facie suspicion of any fraudulent transactions, he can have a recourse to approach the AA for necessary action.	**Mr. Nitin Bharal & Ors. Vs. Stockflow Express Pvt. Ltd. [CA (AT) (Ins.) No. 454 of 2022]**	**NCLAT**	**04.05.2022**
587.		The moratorium under section 14 is no bar for initiation of proceedings and passing of Order under section 66 of the Code.	**Rakesh Kumar Jain RP HBN Homes Colonizers Pvt. Ltd. Vs. Jagdish Singh Nain & Ors. RP of HBN Foods Ltd. [CA (AT) (Ins.) No. 425 of 2022]**	**NCLAT**	**04.08.2022**
	70	**Punishment for misconduct in course of CIRP**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
588.		Despite directions of handing over the CD to the RP, the business head and statutory auditor did not extend any co-operation for handing over possession of the CD to the RP. Hence, a penalty of Rs. 10 lakh each was imposed under section 70 of the Code.	**Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018]**	**NCLT, Mumbai**	**28.03.2019**
	95	**Application by creditor to initiate insolvency resolution process**			
589.		Once the application is filed as per section 95 and 96 of the Code, the AA has to act on it, and following principles of natural justice, give limited notice to the personal guarantor to appear referring to the interim moratorium that has commenced as per terms of section 96. Then the next stage is of appointing RP as per section 97. Third stage will be RP acting in terms of section 99 and submitting a report. At the fourth stage comes in adjudication of the application under section 100 which ought to be decided by giving hearing to parties keeping in view the application, evidence collected and report under section 99 of the Code.	**Ravi Ajit Kulkarni Vs. State Bank of India [CA (AT) (Ins.) No. 316 and 317 of 2021]**	**NCLAT**	**12.08.2021**
590.		An application for insolvency for resolution against the personal guarantor is not maintainable unless that CIRP/liquidation is ongoing against the CD. Filing of applications seeking resolution of personal guarantors without the	**Insta Capital Pvt. Ltd. Vs. Ketan Vinod Kumar Shah [CP (IB) 1365/MB-IV/2020]**	**NCLT, Mumbai**	**10.08.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		CD undergoing CIRP, would tantamount to vesting of jurisdiction on two course i.e. one being NCLT, and another being the DRT.			
591.		CIRP can be initiated against the personal guarantors of a NBFC/'financial service provider' irrespective of CIRP against the NBFC, provided that the concerned NBFC falls within the category of those 'financial service provider' having asset size of Rs. 500 crores or more (i.e. as per MCA Notification dated 18.11.2019).	**Shapoorji Pallonji Finance Pvt. Ltd. Vs. Rekha Singh [IA No.229/JPR/2021 in CP No. (IB) 25/95/JPR/2021]**	**NCLT, Jaipur Bench**	**22.02.2022**
592.		There is no provision in the Code which envisages that the legal heirs steps into the shoes of the deceased personal guarantor. Steps can be taken to recover the guaranteed amount from the assets/estates of the deceased personal guarantor rather than the personal assets of the legal heirs of the personal guarantor. The definition of 'personal guarantor' talks about estate/assets of the personal guarantor only.	**Bank of Baroda Vs. Divya Jalan [CP(IB)No.363/KB/2021]**	**NCLT, Kolkata**	**11.02.2022**
593.		As per sections 95(1), 99 and 100 of the Code, the role of RP is limited to make appropriate recommendation to the AA and the final decision of the admission or rejection of the application under section 95, solely lies with AA.	**Sri. Babu A. Dhammanagi & Anr. Vs. Union of India & Ors. [W.P. No. 21626 of 2021]**	**HC**	**05.04.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	96	**Interim - moratorium**			
594.		To stay wilful defaulter proceedings, criminal proceeding or quasi criminal proceeding under any moratorium under section 96 would defeat the object and purpose of the Part III of the Code. The principles applied in corporate insolvency cannot be applied to personal insolvency. Recovery proceedings or proceedings under section 96 of the Codewould not absolve the borrower who has been found to be wilful defaulter.	**Adarsh Jhunjhunjwala Vs. State Bank of India & Anr. [WPO 1548 of 2021]**	**HC**	**24.12.2021**
	97	**Appointment of resolution professional**			
595.		The scheme of insolvency resolution process in Chapter III of the Code does not warrant and provide issuance of notice at the stage of appointing RP under section 97 of the Code for the purpose of examining an application preferred under Section 95 and it does not amount to violation of principles of natural justice.	**Siemens Financial Services Pvt. Ltd. Vs. Vinod Sehwag [(IA 1774/ND/2021 in CP No. (IB) 116(ND)2021]**	**NCLT, Delhi**	**09.06.2021**
596.		The use of the word 'shall' in section 97(1) shall be construed as directory and not mandatory. AA can exercise its judicial discretion in appointing a RP without confirmation from IBBI, based on the facts and circumstances of the case.	**L. Ramalakshmamma Vs. State Bank of India [CA (AT) (CH) (Ins.) No. 220, 221 of 2021]**	**NCLAT**	**22.11.2021**
	196	**Powers and functions of Board**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
597.		IBBI cannot under section 196, directly or indirectly regulate the manner of exercise of commercial wisdom by FCs during the voting on resolution plan.	**K. Sashidhar Vs. indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 with other CAs]**	**SC**	**05.02.2019**
	220	**Appointment of disciplinary committee**			
598.		If there is any complaint against the IP, then IBBI is competent to constitute a disciplinary committee and have the same investigated from an investigating authority as per the provision of section 220 of the Code. If, after investigation IBBI finds that a criminal case has been made out against the IP, then IBBI has to file a complaint in respect of the offences committed by him.	**Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/2017)]**	**NCLT, New Delhi**	**22.09.2017**
599.		Since the remuneration quoted by the IRP being quite exorbitant, the matter was referred to IBBI for taking appropriate action/remedial measure against the proposed IRP, including disciplinary action, if any, as deemed fit.	**Shrikrishna Rail Engineers Pvt. Ltd. Vs. Madhucon Projects Ltd. [CP(IB) SR No. 4322/9/HDB/2017]**	**NCLT, Hyderabad**	**22.11.2017**
600.		An appeal can only be entertained against an order passed by the AA. However, no appeal is maintainable against the order passed by the IBBI including its disciplinary committee.	**Bhavna Sanjay Ruia Vs. IBBI [CA (AT) (Ins.) No. 341 of 2019]**	**NCLAT**	**08.04.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
601.		Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, IBBI has to close the proceeding or pass appropriate orders in accordance with law. The AA cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the AA.	**IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]**	**NCLAT**	**11.07.2019**
602.		When allegations of *mala fides* or corruption or professional misconduct or any other sort are alleged against a RP, the same are to be adjudicated by the IBBI and basing on the orders passed by the IBBI, appropriate action would be taken by the AA.	**Central Bank of India Vs. KSM Spinning Mills Limited [IA Nos. 249/2020 and ther IAs in CP (IB) No. 250/Chd/Pb/2018]**	**NCLT, Chandigarh**	**27.07.2021**
603.		IBBI is the only authority to look into and inquire into any allegation against the liquidator when he acts during the discharge of his duty as the liquidator.	**Bank of Baroda Vs. Varia Engineering work Ltd [IA/4679(AHM)2021 in CP(IB)/149 (AHM)2017**	**NCLT, Ahmedabad**	**19.07.2021**
	227	**Power of Central Government to notify financial sector providers, etc.**			
604.		The RBI filed an application under section 227 and 239 of the Code read with rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for insolvency resolution of Dewan Housing Finance Corporation Ltd. (DHFL), which was admitted by NCLT, Administrator was appointed and	**Vinay Kumar Mittal & Ors. Vs. Dewan Housing Finance Corporation Ltd. & Ors. [Civil Appeal No. 654 to 660 of 2020]**	**SC**	**31.01.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		moratorium imposed. The HC restrained DHFL from making any further payments to any unsecured creditors and secured creditors except in cases where payments are to be made on a *pro-rata* basis to all secured creditors out of its current and future receivables. The fixed deposit holders aggrieved by the orders of the HC restraining from making any payments towards their fixed deposits, challenged the order of the HC before SC. The SC held that since the depositors are being represented by the authorised representative before the CoC, they are free to raise all points and contentions before the CoC, the Administrator, and if necessary, before the AA.			
	231	**Bar of jurisdiction**			
605.		The jurisdiction of the HC will also be barred by section 231 of the Code which provides that no Civil Court shall have jurisdiction in respect of any matter in which the AA is empowered, by or under, the Code to pass any order.	**Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No.16061/2018 and 16065/2018]**	**HC, New Delhi**	**22.02.2019**
	233	**Protection of action taken in good faith**			
606.		The liquidator is protected against any coercive action, provided his act during CIRP is *bona fide.*	**Bank of Baroda Vs. Varia Engineering work Ltd [IA/4679(AHM)2021 in CP(IB)/149 (AHM)2017**	**NCLT, Ahmedabad**	**19.07.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
607.		Actions taken in good faith by a public servant always enjoy protection under the law, and the Code is no different, providing for the same under section 233.	**Basavaraj Koujalagi & 82 Ors. Vs. Sumit Binani, Liquidator of Gujarat NRE Coke Ltd. [IA No. 865/KB/2020 in CP (IB) No. 182/KB/2017]**	**NCLT, Kolkata**	**03.05.2021**
	236	**Trial of offences by Special Court**			
608.		Before referring any matter to IBBI or the Central Government, the AA is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and, if satisfied, may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under section 236 of the Code for alleged offence under section 74(3) or any other provision under Chapter VII of Part II of the Code and for punishment under section 447 of the Companies Act, 2013.	**Committee of Creditors of Amtek Auto Ltd. through Corporation Bank Vs. Dinkar T. Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 219, 442 & 443 of 2019]**	**NCLAT**	**16.08.2019**
609.		There is complete bar of trial of offences in the absence of filing of a complaint by IBBI as is evident from a perusal of sub-sections (1) and (2) of section 236 the Code. Therefore, a complaint by a former director with the police would not be maintainable and competent as the complaint is not lodged by IBBI.	**Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/ 2017)]**	**NCLT, New Delhi**	**22.09.2017**
	238	**Provisions of this Code to override other laws**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
610.		An acknowledgement of debt interrupts the running of prescription and that it does not create a new right but only extends the period of limitation.	**Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank and Anr. [CA (AT) (Ins.) No. 236 of 2020]**	**NCLAT**	**14.09.2020**
611.		The accounting conventions cannot supersede any express provisions laid down in the Specific law on the subject.	**Vijay Kumar V Iyer Vs. Bharti Airtel Ltd. and Ors. [CA (AT) (Ins.) No. 530 & 700 of 2019]**	**NCLAT**	**13.07.2020**
612.		When it comes to any clash between the Maharashtra Housing and Area Development Act, 1976 and the Code, on the plain terms of section 238, the Code must prevail.	**Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority and Anr. [Civil Appeal No. 12248 of 2018]**	**SC**	**19.02.2020**
613.		Section 238 of the Code prevails over section 421 of the Code of Criminal Procedure, 1973.	**Ajay Kumar Bishnoi Vs. Tap Engineering [Crl OP(MD) No. 34996 and Ors. of 2019]**	**HC, Madras**	**09.01.2020**
614.		The Code will override the provisions of Maharashtra State Electricity Regulatory Commission Transmission Open Access Regulations, 2005 in terms of section 238 of the Code.	**Maharashtra State Electricity Transmission Co. Ltd. Vs. Sri City Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1401 of 2019]**	**NCLAT**	**03.02.2020**
615.		Section 61(2) of the Code will prevail over section 5 of the Limitation Act, 1963 by virtue of section 238 of the Code.	**Radhika Mehra Vs. Vaayu Infrastructure LLP & Ors. [CA (AT) (Ins.) No. 121 of 2020]**	**NCLAT**	**30.01.2020**
616.		Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 will not extend the period of limitation since those proceedings are independent and as per section 238, the Code will have overriding effect on other laws.	**Bimalkumar Manubhai Savalia Vs. Bank of India and Anr. [CA (AT) (Ins.) No. 1166 of 2019]**	**NCLAT**	**05.03.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
617.		The objective of PMLA, being distinct from the purposes of the Recovery of Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and the Code, the latter three legislations do not prevail over the former. They must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other.	**The Deputy Director, Enforcement Directorate Vs. Axis Bank & Ors. [CRL.A.143/2018 & Crl.M.A. 2262/2018]**	**HC, New Delhi**	**02.04.2019**
618.		CIRP cannot be equated with winding up proceedings and hence no prior consent of the Central Government under the Tea Act, 1953 would be required for initiation of the proceedings under section 7 or 9 of the Code as it overrides the said statute.	**Duncans Industries Ltd. Vs. A. J. Agrochem [Civil Appeal No. 5120 of 2019]**	**SC**	**04.10.2019**
619.		Even by a process of harmonious construction, Real Estate (Regulation and Development) Act, 2016and the Code must be held to co-exist, and, in the event of a conflict, the Code shall prevail.	**Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 43 of 2019 and other petitions]**	**SC**	**09.08.2019**
620.		The Maharashtra Relief Undertakings (Special Provisions Act), 1958 cannot stand in the way of the CIRP under the Code.	**Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [CA No. 8337-8338 of 2017]**	**SC**	**31.08.2017**
621.		Given section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other	**Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483/2018]**	**SC**	**10.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		enactment, including the Income-tax Act, 1961.			
622.		Section 238 provides overriding effect of Code over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the Code.	**Edelweiss Asset Reconstruction Company Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) 169 to 173 of 2017]**	**NCLAT**	**14.12.2018**
623.		The *non-obstante* clause contained in section 238 of the Code will not override the Advocates Act, 1961 as there is no inconsistency between section 9 read with the AA Rules and Forms, and the Advocates Act, 1961.	**Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 with other appeals]**	**SC**	**15.12.2017**
624.		Inter-se agreement between the FCs cannot override the express provisions of the Code nor can take away the right of any creditor to file application under section 7 of the Code.	**Indian Overseas Bank Vs. Pearl Vision Pvt. Ltd. [CP No (IB)-419(PB)/2018]**	**NCLT, New Delhi**	**12.10.2018**
625.		The overriding effect of section 238 of the Code will not have any bearing over the asset of the workmen lying in the possession of the CD because that asset will not be considered as part of the liquidation estate, moreover, to apply section 238 over any other law for the time being in force, the other law must be inconsistent with the provisions of the Code.	**Precision Fasteners Ltd. Vs. Employees Provident Fund Organization [MA 576 and 752/2018 in C.P.(IB) 1339(MB)/2017]**	**NCLT, Mumbai**	**12.09.2018**
626.		Section 238 of the Code will apply in case there is an inconsistency between the Code and the Arbitration and Conciliation Act, 1996.	**K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 & 21825 of 2017]**	**SC**	**14.08.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
627.		The company petition pending before the HC cannot be proceeded with further, in view of section 238 of the Code. The writ petitions that are pending before the HC have also to be disposed of in light of the fact that proceedings under the Code must run their entire course.	**Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & Electricals Ltd. & Ors. [Civil Appeal No. 12023 of 2018 arising out of SLP (Civil) No. 18598 of 2018]**	**SC**	**12.12.2018**
628.		The statutory right of an FC satisfying the requirements of section 7 of the Code to trigger CIRP cannot be made subservient to adjudication of an application under sections 241 and 242 of the Companies Act, 2013. The Code is supreme so far as triggering of CIRP and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.	**Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 428 of 2018]**	**NCLAT**	**14.08.2018**
629.		FC can proceed simultaneously under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 as well as under the Code but section 238 of the Code will prevail over any other law for the time being in force.	**Punjab National Bank Vs. Vindhya Cereals Pvt. Ltd. [CA (AT) (Ins.) No. 854 of 2019]**	**NCLAT**	**26.02.2020**
630.		In regard to recovery of the Government dues (including Income Tax) from a company in liquidation under the Code, if there is inconsistel between section 194 IA of the Income-tax Act, 1961 and section 53(1)(e) of the Code, section 53(1)(e) of the Code shall have overriding effect	**Om Prakash Agrawal, Liquidator - S. Kumars Nationwide Ltd. Vs. Chief Commissioner of Income Tax (TDS) & Anr. [CA (AT) (Ins.) No. 624 of 2020]**	**NCLAT**	**08.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		on the provisions of the section 194 IA of the Income-tax Act,– 1961 by virtue of section 238 of the Code.			
631.		The SC while dealing with an appeal involving the issue of filing of an insolvency application under the provisions of the Code when a winding up petition has already been admitted against the same company, held, that a petition either under section 7 or 9 of the Code is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. It observed that a discretionary jurisdiction under the fifth proviso to section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of the AA under the Code once the parameters under the Code are fulfilled.	**A Navinchandra Steels Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Ors. [Civil Appeal Nos. 4230-4234 of 2020]**	**SC**	**01.03.2021**
632.		There is no conflict between PMLA and the Code, and even if a property has been attached in the PMLA which is belonging to the CD, if CIRP is initiated, the property should become available to fulfil objects of the Code till a resolution takes place or sale of liquidation asset occurs in terms of section 32A.	**The Directorate of Enforcement Vs. Manoj Kumar Agarwal & Ors. [CA (AT) (Ins.) No. 575 and 576 / 2019]**	**NCLAT**	**09.04.2021**
633.		There is no conflict in section 17B of the Employees Provident Fund and Miscellaneous Provisions Act,1952 and the Code, owing to	**Sikander Singh Jamuwal Vs. Vinay Talwar and Ors. [CAompany Appeal (AT) (Ins.) No.438 of 2019]**	**NCLAT**	**11.03.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		which section 238 of the Code would not come into force. Hence, payment or non- payment of provident fund dues is not a matter of commercial wisdom, and necessary compliance is a must. The resolution applicant is liable to pay the contribution and other sums due from the employer under any provisioner of the said Act for the period up to the date of such transfer.			
	238A	**Limitation**			
634.		Upon perusal of the documents on record it was observed that there was acknowledgement of debt in the balance sheet of the CD and that it was well-settled through various judgments of the SC that an acknowledgement in the balance sheet of the company satisfies the requirements of section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement.	**Syndicate Bank Vs. Bothra Metals and Alloys Ltd. [CP (IB) No. 2579/MB.IV/ 2019]**	**NCLT, Mumbai**	**06.07.2020**
635.		The provisions of the Limitation Act, 1963 *vide* section 238A of the Code will be applicable to all non-performing asset cases provided they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963 and that the extension of the period of limitation can only be done by way of application of section 5 of the Limitation Act, 1963, if any	**Jagdish Prasad Sarada Vs. Allahabad Bank [CA (AT) (Ins.) No. 183 of 2020]**	**NCLAT**	**28.08.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		case for condonation of delay is made out.			
636.		The application under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963 and any application filed by the FC for initiation of the CIRP beyond three years from the date of the CDs account being classified as non-performing asset, would be barred by limitation.	**Invent Assets Securitization and Reconstruction Pvt. Ltd. Vs. Xylon Electrotechnic Pvt. Ltd. [CA (AT) (Ins.) No. 677 of 2020]**	**NCLAT**	**11.08.2020**
637.		As acknowledgement of liability was made after a lapse of about five years, a fresh period of limitation will not accrue since the period of limitation was three years. Since the acknowledgement was made much later than the prescribed period of limitation, the petitioner cannot claim the benefit of section 18 of the Limitation Act, 1963, which provides a fresh period of limitation from the time when the acknowledgement was so made.	**Jayprakash Vyas Vs. Prabhat Steel Traders Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 1238 of 2019]**	**NCLAT**	**24.07.2020**
638.		Any application filed beyond 3 years from the date of default is barred by limitation. CIRP of the CD was set aside on the ground that the application filed under secion 7 of the Code is barred by limitation, with the following observations:	**Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. [Civil Appeal No. 6347 of 2019]**	**SC**	**14.08.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		(a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation; (b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD; (c) intention of the Code is not to give a new lease of life to debts which are time-barred; (d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act 1963, and is, therefore, 3 years from the date when right to apply accrues; (e) trigger for initiation of CIRP by a FC is default on the part of the CD, that is to say, the right to apply under the Code accrues on the date when default occurs; (f) default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable; (g) if default had occurred over 3 years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		facts, the delay in filing may be condoned; and (h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act, 1963 does not apply to the application under consideration.			
639.		Since the CD had acknowledged the debt in 2015 in a letter sent to the OC, the application is well within the limitation period of 3 years.	**Bango Industries Vs. U T Ltd. [CP (IB) No. 08/KB/2018]**	**NCLT, Kolkata**	**19.04.2018**
640.		An application which is filed under section 7 of the Code will fall within Article 137 instead of Article 62 of the Limitation Act, 1963.	**Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019]**	**SC**	**18.09.2019**
641.		The period of lockdown ordered by the Central/State Governments including the period as may be extended either in whole or part of the country, where the registered office of the CD may be located, shall be excluded for the purpose of counting of the period for CIRP under section 12 of the Code in all cases where CIRP is pending before any AA or in appeal before NCLAT.	**Suo Moto [CA (AT) (Ins.) No. 01 of 2020]**	**NCLAT**	**30.03.2020**
642.		From the minutes of meeting of the Board of Directors, it can be clearly stated that there was an acknowledgement of debt by the CD as on the relevant date and the application for initiating CIRP was not time barred.	**Rupesh Kumar Gupta Vs. Punjab National Bank & Anr. [CA (AT) (Ins.) No. 1119 of 2019]**	**NCLAT**	**28.02.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
643.		A judgement or a decree for recovery of money by the Civil Court/Debt Recovery Tribunal cannot shift forward the date of default for the purposes of limitation. It was also held that action taken by the FC under section 13(2) or (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is not a civil proceeding or appeal or revision, and thus the period cannot be excluded for counting the limitation period.	**Ishrat Ali Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1121 of 2019]**	**NCLAT**	**12.03.2020**
644.		The relevant date is the date of default and article 137 of the Limitation Act, 1963 is applicable, for application under section 7 or 9 of the Code. It was also clarified that though a 'decree-holder' is covered in the definition of 'creditor' under section 3(10) of the Code, he cannot initiate CIRP under section 7 and 9 as FC and OC do not include a 'decree-holder'.	**Digamber Bhondwe Vs. JM Financial Asset Reconstruction Company Ltd. [CA (AT) (Ins.) No. 1379 of 2019]**	**NCLAT**	**05.03.2020**
645.		The application was filed after 3 years of the cut-off period of default and there was nothing on record to suggest that there was acknowledgement of the debt within 3 years in terms of section 18 of the Limitation Act, 1963. Thus, the application was barred by limitation.	**Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 177 of 2019 & I.A. Nos. 3392 & 3542 of 2019]**	**NCLAT**	**07.02.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
646.		The date of coming into force of the Code does not and cannot form a trigger point of limitation for applications filed under the Code.	**Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. [Civil Appeal No. 7673 of 2019]**	**SC**	**30.09.2019**
647.		If there is a delay of more than 3 years from the date of cause of action and no laches on the part of applicant, the applicant can explain the delay. When there is a continuing cause of action, the question of rejecting any application on the ground of delay, does not arise.	**Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. [CA (AT) (Ins.) No. 47 of 2017 and other appeals]**	**NCLAT**	**07.11.2017**
648.		The right to apply under the Code accrues only on the date the Code came into effect, that is, on or after 1st December, 2016 and before this date.	**Black Pearls Hotels Pvt. Ltd. Vs. Planet M Retail Ltd. [CA (AT) (Ins.) No. 91 of 2017]**	**NCLAT**	**17.10.2017**
649.		If the default has occurred over 3 years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, 1963, save and except in those cases where, in the facts of the case, section 5 of the said Limitation Act, 1963 may be applied to condone the delay in filing such application. Section 238A of the Code, being clarificatory of the law and being procedural in nature is retrospective in effect.	**B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017]**	**SC**	**11.10.2018**
650.		The HC set aside the order of admission on the ground that the AA had no jurisdiction to admit an application under section 7 of the Code, beyond the prescribed period of three years as provided	**Gouri Shankar Chatterjee Vs. State Bank of India [C.O. 1257 of 2020]**	**HC, Calcutta**	**15.10.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		in Article 137 of the Limitation Act, 1963.			
651.		The date of default would not be extended on account of acknowledgement made in the OTS proposal (One Time Settlement) of the CD.	**State Bank of India Vs. Krishidhan Seeds Pvt. Ltd. [CA (AT) (Ins.) No. 972 of 2020]**	**NCLAT**	**17.11.2020**
652.		The limitation under section 7 of the Code, would run from the date of declaration of the non-performing asset (NPA). The passing of decree or issue of recovery certificate, will not give a fresh right to trigger Code.	**A. Balakrishnan Vs. Kotak Mahindra Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1406 of 2019]**	**NCLAT**	**24.11.2020**
653.		The date of default is extendable within the ambit of section 18 of Limitation Act, 1963 based on an acknowledgement in writing made by the CD before the expiry of period of limitation.	**Bishal Jaiswal Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Reference made by Three Member Bench in CA (AT) (Ins.) No. 385 of 2020]**	**NCLAT**	**22.12.2020**
654.		The writers of law were conscious that there could be situation where time-barred debts are claimed before the IRP or the RP. The employee submitting claim during the liquidation stage for salary of 2012, without showing as to how it is within limitation, is liable to be rejected.	**Vinod Singh Negi Vs. Kiran Shah, Liquidator of ORG Informatics Ltd. [CA (AT) (Ins.) No. 1101 of 2020]**	**NCLAT**	**19.01.2021**
655.		Section 238A of the Code makes the provisions of the Limitation Act, 1963 as far as may be, applicable to proceedings under the Code. All provisions of the Limitation Act, 1963 are applicable to proceedings in the NCLT/NCLAT to the extent feasible.	**Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Anr. [Civil Appeal No. 9198 of 2019]**	**SC**	**22.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Legislature has in its wisdom chosen not to make the provisions of the Limitation Act verbatim applicable to proceedings in NCLT/NCLAT, but consciously used the words 'as far as may be'. The words 'as far as may be' are not meant to be otiose. Those words are to be understood in the sense in which they best harmonise with the subject matter of the legislation and the object which the Legislature has in view. The Courts would not give an interpretation to those words which would frustrate the purposes of making the Limitation Act, 1963 applicable to proceedings in the NCLT/NCLAT 'as far as may be'. Section 14 of the Limitation Act, 1963 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction.			
656.		The SC took *suo motu* cognizance of the situation arising out of COVID-19 and resultant difficulties that may be faced by litigants as to period of limitation prescribed under general law of limitation or under Special Laws (both Central and/or State). In exercise of its powers under	**In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020]**	**SC**	**23.03.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Articles 141 and 142 of the Constitution, it ordered extension of period of limitation for all proceedings, from 15.03.2020, until further orders, and declared that the order is binding on all courts/tribunals and authorities.			
657.		SC ruled that its earlier order that provided for extension of limitation period w.e.f. 15.03.2020, has served its pose and that it should come to an end. The court issued the lowing directions:- i. In calculating the limitation period in any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 is to be excluded, and any balance of the limitation period as on 15.03.2020 will start w.e.f. 15.03.2021. ii. If the limitation period would have expired during the 1 year extension period, a limitation period of 90 days will be available from 15.03.2021. If the balance of the limitation period remaining on 15.03.2021 is more than 90 days, then the longer period will apply. iii. The 1 year extension period is also to be excluded when calculating the prescribed	**In Re: Cognizance for extension of limitation [Suo Motu Writ Petition (Civil) No. 3 of 2020]**	**SC**	**08.03.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		periods under sections 23(4) and 29A of the Arbitration and Conciliation Act 1996, section 12A of the Commercial Courts Act 2015 and provisos (b) and (c) of section 138 the Negotiable Instruments Act 1881 and any other law which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.			
658.		In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 02.10.2021 shall stand excluded.	**In Re: Cognizance for Extension of Limitation [MA No. 665 of 2021 in SMW (C) No. 3 of 2020]**	**SC**	**23.09.2021**
659.		Acknowledgement of debt in the balance sheet extends the period of limitation under section 18 of the Limitation Act, 1963. However, it would depend on the facts of each case as to whether an entry made in a balance sheet qua any creditor is unequivocal or has been entered into with caveats, which would establish whether an acknowledgement of liability has, in fact, been made. The majority decision of the full bench of the NCLAT in V. Padmakumar Vs. Stressed Assets Stabilisation Fund, was set aside.	**Asset Reconstruction Company (India) Ltd. Vs. Bishal Jaiswal & Anr. [Civil Appeal No. 323 of 2021 with other appeals]**	**SC**	**15.04.2021**
660.		An application under section 7 of the Code would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of	**Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. [Civil Appeal No. 1650 of 2020]**	**SC**	**04.08.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		declaration of the loan account of the CD as NPA, if there were an acknowledgement of the debt by the CD before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years.			
661.		An offer of one-time settlement can be relied on for the purpose of considering acknowledgement under section 18 of the Limitation Act, 1963.	**Ishita Halder Vs. Siba Kumar Mohapatra & Anr. [CA (AT) (Ins.) No. 282 of 2021]**	**NCLAT**	**18.08.2021**
662.		A decree passed by the DRT or any suit, cannot shift the date of default. The decree passed by the DRT only suggests that debt has become due and payable.	**G Eswara Rao Vs. Stressed Assets Stabilisation Fund & Anr. [CA (AT) (Ins.) No. 1097 of 2019]**	**NCLAT**	**07.02.2020**
663.		Mere issuance of a letter by the CD calling the representative of the OC with all the papers to settle the dispute, cannot be considered as an 'acknowledgement of debt' in terms of section 18 of the Limitation Act.	**State of West Bengal Vs. Keshav Park Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 330-331 of 2020]**	**NCLAT**	**08.12.2021**
664.		For the purpose of limitation, the relevant date is the date on which the right to sue accrues which is the date when a default occurs.	**Tech Sharp Engineers Pvt. Ltd. Vs. Sanghvi Movers Ltd. [Civil Appeal No. 296 of 2020]**	**SC**	**19.09.2022**
	240	**Power to make regulations**			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
665.		Section 240 is the general regulation making power of the IBBI and section 240(1) does not impose any restraints on the powers of the IBBI, except that regulations should be consistent with the Code and the rules thereunder and should be for the purposes of carrying out the provisions of the Code.	**CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]**	**HC, Madras**	**28.07.2020**
666.I		The exemption granted under section 240A of the Code is only in respect of clause (c) and (h) of section 29A of the Code and in the instant case, the Appellant was declared ineligible under clause (b) of section 29A *i.e.*, declared as a willful defaulter for which no exemption has been given to MSME. The NCLAT further held that since the date of registration of the CD as MSME was after the order of admission, the application for registration of MSME was without authorization, and hence was invalid.	**Harkirat Singh Bedi Vs. The Oriental Bank of Commerce & Ors. [CA (AT) (Ins.) No. 40 of 2020]**	**NCLAT**	**12.01.2021**
	252	**Amendments of Act 1 of 2004 (The Sick Industrial Companies (Special Provisions) Repeal Act, 2003)**			
667.		It was held that the power to reject the reference, on the ground that the company is not an industrial unit, does not lie with the Registrar or the Secretary of the Board for Industrial and Financial Reconstruction. Therefore, the reference was deemed to be pending before BIFR on	**Bank of New York Mellon London Branch Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017]**	**SC**	**21.02.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		01.11.2016 (date of commencement of the Code) and the company can seek its remedies under the provisions of section 252 of the Code.			
	255	**Amendments of Act 18 of 2013 (The Companies Act, 2013)**			
668.		In a case where a winding up proceeding has been initiated against a CD by the High Court or Tribunal or liquidation order has been passed in respect of the CD, no application under section 10 can be filed by the corporate applicant in view of the ineligibility under section 11(d) of the Code.	**Unigreen Global Pvt. Ltd. Vs. Punjab National Bank [CA (AT) (Ins.) No. 81 of 2017]**	**NCLAT**	**01.12.2017**
		Rules / Regulations under the Code			
669.	**Rule 6 of AA Rules**	The trade union collectively represents its members who are workers, to whom dues may be owed by the employer, which are debts owed for services rendered by each individual workman. If each workman files a separate cause of action, the fact that a joint petition could be filed under rule 6 of AA Rules would be ignored.	**JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]**	**SC**	**30.04.2019**
670.	**Rule 8 of AA Rules**	In the appeal before SC, a question as to whether, in view of rule 8 of the AA Rules, the NCLAT could utilise the inherent power under rule 11 of the National Company Law Appellate Tribunal Rules, 2016, to allow compromise before it by the parties after admission of the matter. The SC upheld the views of NCLAT that	**Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance and Investment Managers LLP [Civil Appeal no. 9279 of 2017]**	**SC**	**24.07.2017**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		after admission, inherent power could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms.			
671.	**Regulation 33 of Liquidation Process Regulations**	The proper interpretation on clauses (a) and(b) of the regulation 33 of Liquidation Process Regulations would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise, the purpose of Regulation would be defeated if time is required to be spent in filing an application and taking permission, because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value, if not sold immediately.	**Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017]**	**NCLT, New Delhi**	**16.07.2019**
672.	**Regulation 33 of Liquidation Process Regulations**	The HC directed IBBI to consider the petition as a representation on the issue of adoption of Swiss Challenge method as a form of an auction under the Liquidation Process Regulations.	**MRG Estates LLP Vs. Akash Shinghal, Liquidator, Amira Pure Foods Pvt. Ltd. & Ors. [W.P.(C) 10023/2020]**	**HC, New Delhi**	**15.12.2020**
673.	**Regulation 31A(3) of Liquidation Process Regulations**	Regulation 31A(3) of Liquidation Process Regulations is silent on both 'the criteria as well as the process of nomination' of a representative but has bestowed a duty on the liquidator to facilitate the stakeholders of	**Advance Cargo Movers (India) Pvt. Ltd. Vs. SBS Transpole Logistics Pvt. Ltd. [I.A. 2084/ND/2021 in CP(IB)-1373(ND)/2019]**	**NCLT, New Delhi**	**20.07.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		each class to nominate their representatives for inclusion in the Stakeholders Consultation Committee.			
674.	**Regulation 6 of CIRP Regulations**	It is the responsibility of the creditor to file claim within the time after the issue of public notice inviting claims by the RP.	**Dy. Commissioner of Customs DEEC (Monitoring Cell) Vs. Jyoti Structures Ltd. & Ors. [IA 1218/MB/2020 in CP(IB) 1137/MB/2017]**	**NCLT, Mumbai**	**05.10.2020**
675.	**Regulation 30A(1) of CIRP Regulations**	Regulation 30A(1) of the CIRP Regulations is not mandatory but directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under regulation 36A of the said Regulations.	**Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]**	**SC**	**25.01.2019**
676.	**Regulation 39D of CIRP Regulations**	The fact that CoC has taken a decision regarding the liquidation costs, expenses, and the remuneration payable to the liquidator with the requisite percentage, brings it within the ambit of regulation 39D of the CIRP Regulations. It is not permissible to resort to any other provision if action of CoC falls within the purview of regulation 39D.	**Narinder Bhushan Aggarwal Vs. Little Bee International Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 980 of 2020]**	**NCLAT**	**18.11.2020**
677.	**Regulation 36A of CIRP Regulations**	Section 25(2)(h) inserted on 23.11.2017 by way of amendment does not contemplate floating of any Expression of Interest. IBBI taking up'n itself the task of framing regulat'on 36A of CIRP Re'u'ations, using the	**State Bank of India Vs. Su Kam Power Systems Ltd. [(IB)-540(PB)/2017]**	**NCLT, New Delhi**	**05.09.2018**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		expression 'invitation of expression of interest' along with Form 'G' amounts to assumption of power and beyond the competence of IBBI. The source of power to frame regulations under the Code is drawn from section 240 of the Code. [***Note: This order has since been stayed by the Delhi High Court vide order dated 05.10.2018 in the matter of IBBI Vs. State Bank of India & Ors. (LPA 566/2018)***]			
678.	**Regulation 7(2)(ca) of IP Regulations**	The Code contains adequate safeguards to ensure that the Parliament effectively supervises all rules and regulations with the power to modify or even annul the same and that regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of *quid pro quo*.	**CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]**	**HC, Madras**	**28.07.2020**
679.	**Regulation 7A of IP Regulations and Regulation 12A of the IBBI (Model ByeLaws and Governing Board of Insolvency**	The delegation of power is not in derogation of the principles laid down by earlier jurisprudence. Further the existence of more than one authority with regulatory or disciplinary control over a professional is *per se* not a ground to hold that the impugned regulations are unconstitutional The criteria mentioned under regulation 12A	**CA V. Venkata Sivakumar Vs. IBBI & Ors. [WP No. 13229 of 2020]**	**HC, Madras**	**03.11.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	Professional Agencies) Regulations, 2016	are clearly not unreasonable or arbitrary but appear to be germane for deciding the eligibility of an IP for such AFA, as these measures are intended to regulate the profession and not to deprive a person of the right to practice the profession.			
680.	**47A (Liquidation Process) Regulations, 2016**	Model Timeline is only directory in nature. It cannot be considered a deadline. It is provided under the regulation as a guiding factor to complete the liquidation process in a time-bound manner. In exceptional circumstances, such a time limit can be extended.	**Standard Surfa Chem India Pvt. Ltd. Vs. Kishore Gopal Somani, the Liquidator of Advanced Surfactants India Ltd. [CA (AT) (Ins.) No. 684 of 2021]**	**NCLAT**	**14.02.2022**
681.	**Regulation 31 of the CIRP Regulation, 2016**	Insolvency process costs include amount due to a person who is prejudicially affected on account of the moratorium imposed under section 14(1)(d). Due to moratorium period, the lessor could not recover the possession of property from the CD. Thus, the right of lessor is affected on account of moratorium. Therefore, the lessor is entitled to recover the rent, and which shall be included in IRPC.	**Prerna Singh Vs. Committee of Creditors, Xalta Food and Beverages Pvt. Ltd. [Contempt Case (AT) No.03 of 2020 in CA(AT)(Insolvency)No.104 of 2019]**	**NCLAT**	**17.12.2021**
682.	**Clause 12 of Schedule 1 of the Liquidation Process Regulations, 2016**	90 days period provided for making the deposit is the maximum period under which the auction purchaser had to make the deposit. Sale shall be cancelled if the payment is not received within 90 days.	**Potens Transmissions & Power Pvt. Ltd Vs. Gian Chand Narang [CA (AT) (Ins.) No. 532 of 2022]**	**NCLAT**	**12.05.2022**
MISCELLANEOUS					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
Fee of IRP/IPE					
683.		For performance of duty of 27 days as IRP, a fee of Rs. 5 lakh is excessive. An IPE is not eligible or entitled to receive any fees or any cut or commission from the fees of the IRP.	**Bhasin Infotech and Infrastructure Pvt. Ltd. Vs. Gurpreet Singh [CA (AT) (Ins.) No. 491 of 2018]**	**NCLAT**	**13.12.2018**
Suspended management's locus standi					
684.		The suspended management has no *locus standi* to move an application to start business operations, when the CD is under the control of the liquidator. There is no statutory provision which allows the CD to run the company till it is sold as a going concern.	**Himanshu Prafulchandra Varia Vs. Sunil Kumar Agarwal & Ors. [IA 347 of 2020 in IA 362 of 2019 in CP(IB)No. 149/NCLT/AHM/ 2017]**	**NCLT, Ahmedabad**	**22.07.2020**
Exemption of lockdown period					
685.		The period of CIRP during promulgation of lockdown will be exempted pursuant to the notification of the Central Government read with new amendment which took place in the CIRP Regulations of the IBBI.	**Finquest Financial Solutons Pvt. Ltd. Vs. Ballarpur Industries Ltd. [IA No. 1175 of 2020 in CP(IB) No. 2915/2019]**	**NCLT, Mumbai**	**15.09.2020**
686.		Having considered nationwide lockdown in the wake of Covid-19 from March 23, 2020 to May 29, 2020 and extension of lockdown in Maharashtra till August 31, 2020, directed that the period of lockdown from March 25, 2020 till August 31, 2020 shall be excluded while computing the period of CIRP.	**In the matter of Sudip Bhattacharya, RP of Reliance Naval and Engineering Ltd. [CA (AT) (Ins.) No. 858 of 2020]**	**NCLAT**	**08.10.2020**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
Right of defaulted promoters of MSMEs					
687.		Since CD is an MSME, even if the promoters/directors have been declared as wilful defaulters, they can apply under the provisions of section 230 of the Companies Act, 2013 as they are exempted from section 29A of the Code.	**Marutham Steel Rolling Mills Pvt. Ltd. [MA/1219/2019 in IBA/264/2019]**	**NCLT, Chennai**	**03.07.2020**
Bar of filing suits inapplicable under Code					
688.		The bar in filing of suit in terms of section 69(2) of the Indian Partnership Act, 1932 will not apply on applications filed under the Code as they are not 'suits' but are only 'proceedings'.	**Shree Dev Chemicals Corporation Vs. Gammon India Ltd. [CP(IB)No 3637/MB.IV/2018]**	**NCLT, Mumbai**	**16.07.2020**
Conflict of interest					
689.		The RP may not be currently in employment of the FC or drawing salary under it but the fact remains that on account of services rendered in past, an element of loyalty is there which cannot be ignored. Accordingly, there is a possibility that the RP would not be fair in his working.	**Kanakabha Ray Vs. Narayan Chandra Saha & Ors. [CA (AT) (Ins.) No. 687 of 2020]**	**NCLAT**	**18.08.2020**
Power of AA to review					
690.		The power to review is not an inherent power under rule 11 of the NCLT Rules, 2016, and hence, a review jurisdiction cannot be pressed into service as an appellate jurisdiction.	**Deepakk Kumar Vs. Phoenix ARC Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 848 of 2019]**	**NCLAT**	**17.09.2020**
Power of AA to issue non bailable warrant					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
691.		AA while exercising jurisdiction under the code is empowered to issue non-bailable warrant against any person or party. in addition to enforcement of non-bailable warrants, it shall be also open for the AA to recommend for initiation of prosecution against the suspended directors of the CD in event of commission of an offence within meaning of Code.	**Vikram Puri (Suspended Directors) & Anr. Vs Universal Buildwell Private Limited & Anr. [CA (AT) (Insolvency) No. 1018 of 2021]**	**NCLAT**	**28.02.2022**
692.		The power of review has not been expressly conferred on NCLAT and the power under Rule 11 of NCLAT Rules, 2016 can only be exercised for correction of mistakes. The power of review is not an inherent power which cannot be exercised unless conferred specifically or by necessary implication.	**Anubhav Anilkumar Agarwal Vs. Bank of India & Anr. [Review Application (AT) No. 15 of 2020 in CA (AT) (Ins.) No. 1504 of 2019]**	**NCLAT**	**07.12.2020**
		Fixation of fee of RP			
693.		Fixation of fee of the RP is not a business decision depending upon the commercial wisdom of the CoC.	**Devarajan Raman Vs. Bank of India Ltd. [CA (AT) (Ins.) No. 646 of 2020]**	**NCLAT**	**30.07.2020**
694.		IBBI is fully clothed with jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed .	**Sumit Bansal, Insolvency Professional Vs. Committee of Creditors of JP Engineers Pvt. Ltd & Ors. [CAomp. App. (AT)(Ins.) No.160 of 2022]**	**NCLAT**	**18.02.2022**
695.		AA noted that in many cases, the creditors sitting on the CoC and stakeholders consultation committee do not loosen their	**Sarvesh Kashyap Vs Bank of India [IA No.05/ALD/2021 in CP(IB)No.344/ALD/2018]**	**NCLT, Allahabad**	**22.02.2022**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		purse strings easily to meet even the bare minimum CIRP costs. In the vast majority of the cases, the insolvency professional and the professional team assembled by him for various activities have to wait for months on end to get reimbursements or their fee, even after the CoC had already approved incurring the expense in question.			
Power of HC in writ jurisdiction					
696.		There is no absolute bar on the HC to entertain an application under Article 227 of the Constitution, when a challenge is made to an order, which is otherwise amenable to be challenged by way of an appeal before the appellate forum if there is a patent error or miscarriage of justice apparent from the record.	**Atin Arora Vs. Oriental Bank of Commerce [C.O. No. 3894 of 2019 with CAN 12340 of 2019]**	**HC, Calcutta**	**13.08.2020**
Notes on Clauses and construction of provisions					
697.		There is no doubt whatsoever that Notes on Clauses are an important aid to the construction of sections of the Code as they show what the drafting committee had in mind when such provisions were drafted.	**Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018 with WP (C) No.1266 of 2018]**	**SC**	**31.01.2019**
FC's obligation to meet cost of processes					
698.		For effective continuation of CIRP, the FC constituting the CoC has to contribute to the expenses, fee and other cost of the process, otherwise the whole	**Reliance Commercial Finance Ltd. Vs. Noble Resourcing Business and Solution Pvt. Ltd. [(IB)-494(PB)/2017]**	**NCLT, New Delhi**	**12.04.2019**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		process would come to a halt and cause unnecessary delay.			
Power of IBBI to Levy Fees					
699.		The powers of IBBI to frame regulations with regard to the fee payable by IPs and IPEs cannot be questioned if the power is used for carrying out the purposes of the Code.	**CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]**	**HC, Madras**	**28.07.2020**
Ex-employee of FC becoming IRP					
700.		Substitution of RP on the apprehension of bias was challenged before the SC on the premise that the proposed IRP was an *ex*-employee of the FC in service for over 39 years and was drawing pension from the FC. It was observed that the approach adopted by the NCLAT was incorrect that merely an RP who was in the service of the FC and was getting pension, was disentitled to be the IRP. However, while directing the AA to appoint a new RP, it further observed that the change of the RP shall not reflect adversely upon the integrity of the concerned RP who was replaced. It was also clarified that as the impugned order does not reflect a correct approach, the same shall not be treated as a precedent.	**State Bank of India Vs. Metenere Ltd. [Civil Appeal No. 2570 of 2020]**	**SC**	**19.08.2020**
Dispensation of justice by NCLAT					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
701.		The NCLAT closed its functioning as one of its employees was suffering from Covid-19. On appeal, the SC observed that the doors of justice cannot be closed and that NCLAT should find out a way for online hearing in such a situation. While dismissing the appeal, it requested the NCLAT to start hearing the matter on interim stay, immediately on reopening.	**Marathe Hospitality Vs. Mahesh Surekha & Ors. [SLP (C) No(s). 8139 of 2020]**	**SC**	**10.07.2020**
Common RP					
702.		The AA will admit applications under section 7 filed against five CDs and appoint a common RP and the project will be completed in one go by initiating a consolidated resolution plan for total development.	**Edelweiss Asset Reconstruction Company Ltd. Vs. Sachet Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 377-385 of 2019]**	**NCLAT**	**20.09.2019**
Consolidation of assets and liabilities					
703.		The AA ordered that the assets and liabilities of the Videocon group companies should be substantively consolidated due to common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined accounts, interloping of debts, singleness of economics of units, common FCs and common group of CDs.	**State Bank of India & Anr. Vs. Videocon Industries Ltd. & Ors. [MA 1306/2018 in CP Nos. 02-2018 and other applications]**	**NCLT, Mumbai**	**08.08.2019**
704.		The concept of group insolvency is unknown to the Code. If the AA directs CoCs and RPs of different	**Punjab National Bank Vs. KSK Mahanadi Power Company Ltd.**	**NCLT, Hyderabad**	**12.02.2021**

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		CDs to resolve insolvencies of different CDs together, there will be a chaotic situation relating to consolidation of assets and liabilities of all the CDs. The inherent jurisdiction of the AA under Rule 11 of the NCLT Rules cannot be used to create such a situation.	**& Ors. [IA No. 32/2020 in CP(IB) No. 492/07/HDB/2019]**		
Penalty for failure to provide information of assets					
705.		The AA imposed cost of Rs. 10 lakh on the appellants because they failed to provide any information pertaining to assets, finance and operations of the CD and did not extend their cooperation to RP for taking control and custody despite directions under section 19.	**Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018]**	**NCLT, Mumbai**	**28.03.2019**
Penalty for initiating CIRP of functional company					
706.		Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. It imposed a cost of Rs. 5 lakh on the OC and Rs. 2.5 lakh on the son of the director of the OC.	**Vinod Mittal Vs. Rays Power Experts &Anr. [CA (AT) (Ins.) No. 851 of 2019]**	**NCLAT**	**18.11.2019**
Penalty for abuse of power by RP					
707.		The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy. The RP was directed to pay the amount claimed by him along with a cost of one lakh rupees to the applicant.	**BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP (IB) 4301/ 2018]**	**NCLT, Mumbai**	**16.10.2019**
Penalty for non-implementation of approved plan					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
708.		AA imposed a cost of Rs. 10 lakh because the appellant did not implement the resolution plan which was approved by the CoC and the AA.	**Ingen Capital Group LLC Vs. Ramkumar S.V. Anr. [CA (AT) (Ins.) No. 795 of 2018]**	**NCLAT**	**30.04.2019**
Penalty for non-cooperation with RP					
709.		The AA slapped a cost of Rs. 5 lakh on the delinquent officer of the Directorate of Economic Offences, for not cooperating with RP as directed by the HC. The NCLAT noted that though the conduct of officer for not extending cooperation may be violative of the directions of the HC, however, the same cannot be linked with the order of liquidation. Therefore, the NCLAT observed that while passing order of liquidation, the AA exceeded its jurisdiction in slapping the appellant with liability of costs.	**Directorate of Economic Offences Vs. Binay Kumar Singhania and Ors. [CA (AT) (Ins.) No.1361-1362 of 2019]**	**NCLAT**	**05.02.2020**

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