



PREFACE

ne 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 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 sources 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 2023 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 2023.

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
CA 2013	The Companies Act, 2013
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
СоС	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
НС	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
NI Act	Negotiable Instruments Act, 1881
OC	Operational Creditor
PMLA	The Prevention of Money-Laundering Act, 2002
RBI	Reserve Bank of India
RP	Resolution Professional

Abbreviation	Full Form
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002
SC	Supreme Court of India
SEBI	Securities and Exchange Board of India
UNCITRAL Legislative Guide	UNCITRAL (United Nations Commission on International Trade Law) Legislative Guide on Insolvency Law
RERA	Real Estate Regulatory Authority

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
		Long ti	itle		Juagament
1.	Objectives	The Code is a beneficial legislation which	Swiss Ribbons Pvt. Ltd. & Anr.	SC	25.01.2019
	of Code	puts the CD back on its feet and is not a	Vs. Union of India & Ors. [WP		
		mere recovery legislation for creditors. The	(Civil) No. 99, 100, 115, 459,		
		interests of the CD have, therefore, been	598, 775, 822, 849, and 1221 of		
		bifurcated and separated from that of its	2018, SLP (Civil) No. 28623 of		
		promoters/those who are in management.	2018 and WP (Civil) 37 of 2019]		
		The defaulter's paradise is lost. In its place,			
		the economy's rightful position has been			
2.		regained. One of the important objectives of the	Innoventive Industries Ltd. Vs.	SC	24 00 2017
۷.		Code is to bring the insolvency law in India	ICICI Bank & Anr. [Civil Appeal	SC	31.08.2017
		under a single unified umbrella with the	No. 8337-8338 of 2017]		
		objective of speeding up the insolvency	110.0337 0330 0. 2017]		
		process.			
3.		CIRP is not a recovery proceeding to	Prowess International Pvt. Ltd.	NCLAT	18.08.2017
		recover the dues of the creditors. The Code	Vs. Parker Hannifin India Pvt.		
		is an Act relating to reorganisation and	Ltd. [CA (AT) (Ins.) No. 89 of		
		insolvency resolution of corporate persons,	2017]		
		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.			
4.		To get conversant to new law and to see	DF Deutsche Forfait AG & Anr.	NCLT,	10.04.2017
7.		fruits of it, it will take time, but just for the	Vs. Uttam Galva Steel Ltd. [C.P.	Mumbai	10.04.2017
		sake of this reason, we cannot wish away	No. 45/I &		
		the mandate of this nation which has come	BP/NCLT/MAH/2017]		
		through Parliament.			
5.		In view of Statement of Objects and	Tourism Finance Corporation of	NCLAT	19.12.2019
		Reasons of the Code read with section 53,	India Ltd. Vs. Rainbow Papers		
		the Government cannot claim first charge	Ltd. & Ors. [CA (AT) (Ins.) No.		
-		over the property of the CD.	354 of 2019 and other appeals]	NOT	04.05.2063
6.		What is sought to be achieved in the Code	V Hotels Ltd. Vs. Asset	NCLT,	01.05.2019
		is not shutting down of the CD, but reviving	Reconstruction Company	Mumbai	

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		it by ousting the defaulter promoters/directors who were in control and management of the CD.	(India) Ltd. [MA 693/2018 in CP No. 532/IBC/NCLT/MB/MAH/2018]		
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, Ahmedaba d	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 concern and make it a going concern, liquidation being the last resort.	K.N. Rajakumar Vs. V. Nagarajan & Ors. [Civil Appeal No. 2901 of 2021]	SC	15.09.2021
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	Ram Ratan Modi Vs. ICICI Bank [IA No. 1477/KB/2020 in CP (IB) No. 184/KB/2018]	NCLT, Kolkata	19.05.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		CD into CIRP, the statutory authorities			
		should withdraw their direction of			
		attachment of the assets of the CD.			
13.		The provisions of the Code are essentially	Invent Asset Securitisation and	SC	25.04.2022
		intended to bring the CD to its feet and are	Reconstruction Pvt. Ltd. Vs.		
		not of money recovery proceedings as	Girnar Fibres Ltd. [Civil Appeal		
		such.	No. 3033 of 2022]		
14.		The provisions of the Code and the rules	Asset Reconstruction Company	SC	01.08.2022
		and regulations framed thereunder be	(India) Ltd. Vs. Tulip Star Hotels		
		construed liberally, in a purposive manner	Ltd. & Ors. [Civil Appeal Nos.		
		to further the objects of enactment of the	84-85 of 2020]		
		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.			
	2	Application	I		
15.		Section 2(e), which was brought into force	State Bank of India Vs. V.	SC	14.08.2018
		on 23.11.2017 would, when it refers to the	Ramakrishnan & Anr. [Civil		
		application of the Code to a personal	Appeal No. 3595 of 2018 with		
		guarantor of a CD applies only for limited	4553 of 2018]		
		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.			
	3	Definitions			
16.		The CD cannot use the provisions of section	Apeejay Trust Vs. Aviva Life	NCLT, New	04.11.2019
		3, as a blanket cover to claim exclusion	Insurance Co. India Ltd. [(IB)-	Delhi	
		from proceedings under the Code on the	1885(ND)2019]		
	2/2)	ground that it is a financial service provider.			
	3(6)	Claim	I		
17.		'Claim' under section 3(6) means a right to	Innoventive Industries Ltd. Vs.	SC	31.08.2017
		payment, even if it is disputed.	ICICI Bank & Anr. [Civil Appeal		
40			Nos. 8337-8338 of 2017]		
18.		'Claim' gives rise to 'debt' only when it is	Swiss Ribbons Pvt. Ltd. & Anr.	SC	25.01.2019
		due and 'default' occurs only when debt	Vs. Union of India & Ors. [WP		
		becomes due and payable and is not paid	(Civil) Nos. 99, 100, 115, 459,		
		by the debtor.	598, 775, 822, 849, and 1221 of		

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Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
			2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]		
19.		The different claim(s) arising out of different agreements or work order, having different amount and different dates of	International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. and D. A.	NCLAT	01.08.2017
		default, cannot be clubbed together for alleged default of debt, as the cause of action is separate.	Toll Road Pvt. Ltd. [CA (AT) (Ins.) No. 72 and 77 of 2017]		
20.		The tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of the Code is to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time bound manner for maximisation of value of assets.	K. K. V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No. 9/9/HDB/2017]	NCLT, Hyderabad	21.02.2017
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
23.					
	3(7)	Corporate Person			
24.		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	Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals]	SC	27.11.2019

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
25.		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
26.		Under section 3(7) of the Code, Cooperative 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
27.		Stockbrokers and financial service providers, are excluded from the scope of 'corporate person' in terms of section 3(7) of the Code because they are financial service provider.	Nitin Pannalal Shah & Ors. Vs. Vipul H. Raja [CA (AT) (Ins.) No. 379 of 2021 & I.A No. 2204 of 2021]	NCLAT	11.09.2023
	3(8)	Corporate Debtor			
28.		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			
29.		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
30.		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, Ahmedaba d	18.02.2021
31.		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	SC	14.07.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
			Appeal No. 400 F01 of 2021		Judgement
			Appeal No. 498-501 of 2021 with other appeals]		
	3(11) and	Debt and Default	with other appears		
	3(12)	Dest and Belaute			
32.		When the definitions of 'operational debt',	Brand Realty Services Ltd. Vs.	NCLT, New	22.07.2020
		'debt' and 'default' are read together, it can	Sir John Bakeries India Pvt. Ltd.	Delhi	
		be said that the definition of 'debt' as	[(IB)1677(ND)/2019]		
		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.		-	
33.		It is latently and patently clear that once	Rita Kapur Vs. Invest Care Real	NCLAT	02.09.2020
		the 'debt' is converted into 'capital', it cannot be termed as 'financial debt'.	Estate LLP and Ors. [CA (AT) (Ins.) No. 111 of 2020]		
34.		The 'debt' is disputed so long as the 'debt'	Innoventive Industries Ltd. Vs.	SC	31.08.2017
34.		is 'due' i.e. payable unless interdicted by	ICICI Bank & Anr. [Civil Appeal	30	31.00.2017
		some law or has not yet become due in the	Nos. 8337-8338 of 2017]		
		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.			
35.		Existence of an undisputed 'debt' is <i>sine</i>	Transmission Corporation of	SC	23.10.2018
		qua non of initiating CIRP.	Andhra Pradesh Ltd. Vs.		
			Equipment Conductors and Cables Ltd. [Civil Appeal No.		
			9597 of 2018]		
36.		If in terms of any agreement, interest is	Krishna Enterprises Vs.	NCLAT	27.07.2018
		payable to the OC or the FC, then 'debt' will	Gammon India Ltd. [CA (AT)		
		include interest, otherwise, the principal	(Ins.) No. 144 of 2018 and other		
		amount is to be treated as 'debt' which is	appeals]		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		the liability in respect of the 'claim' which can be made from the CD.			Judgement
37.		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
38.		'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
39.		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
40.		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
41.		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
42.		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
43.		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

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
44.		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			
45.		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
46.		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
47.		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, Ahmedaba d	25.01.2021
	3(30)	Secured Creditor			
48.		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			
49.		The enhancement of threshold <i>vide</i> 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

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		TI N. 1.5. 1. 1. 1. 2.4.00.0000 ;			Judgement
50.		The Notification dated 24.03.2020 issued	Al Sadiq Sweets Vs. Krisenter	NCLT, Kochi	26.02.2021
		by the Ministry of Corporate Affairs,	Impex Pvt. Ltd.		
		whereby the minimum amount of default	[IBA/35/KOB/2020]		
		limit was specified as ₹ 1 crore, is			
		prospective in nature and not a retrospective one.			
51.		The law is very clear that it is enough if	Manipal Media Network Ltd.	NCLAT	21.06.2021
		under section 4 of the Code the unpaid	Vs. Vishwakshara Media Pvt.		
		debt is more than the threshold value of ₹	Ltd. [CA (AT) (Ins.) No. 369 of		
		1 lakh for acceptance of application under	2020]		
		section 9 of the Code.	20201		
52.		Where the default has occurred prior to the	BLS Ploymers Ltd. Vs. RMS	NCLT, New	27.07.2021
		issuance of Notification dated 24.03.2020	Power Solutions Pvt. Ltd. [CP	Delhi	
		and demand notice was also delivered prior	No. IB-340(ND)/2021]		
		to that notification but the application has			
		been filed after 24.03.2020, the			
		enhancement of the threshold limit from ₹			
F0		1 lakh to ₹1 crore rupees is not applicable.	CDDE Courth Asia Duiveta Ltd. Va	NOT N	40.04.2022
53.		The interest amount cannot be clubbed	CBRE South Asia Private Ltd. Vs.	NCLT, New	19.01.2022
		with the principal amount of debt to arrive at the minimum threshold of Rs.1 crore for	United Concepts and Solutions	Delhi	
		complying with the provisions of section 4	Pvt. Ltd. [(IB)-797(ND)2021]		
		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.			
54.		From the date of amendment, Part II of the	Tharakan Web Innovations Pvt.	HC, Kerala	01.02.2022
		Code can apply only to matters relating to	Ltd Vs. National Company Law		
		insolvency and liquidation of CD, where the	Tribunal & Anr. [W.P(C) 27636		
		minimum amount of default is ₹ 1 Crore.	of 2020]		
		The application of Part II itself is taken away	•		
		with effect from 24.03.2020 as far as			
		defaults less than ₹ 1 Crore are concerned			
		and hence, no application can be filed after			
		24.03.2020 regarding an amount where the			
		default is less than ₹ 1 Crore.			
	5(5A)	Corporate Guarantor			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
55.		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 same NCLT and not before the DRT.	State Bank of India Vs. D. S. Rajender Kumar [CA (AT) (Ins.) No. 87 to 91 of 2018]	NCLAT	18.04.2018
56.		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
57.		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
58.		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
59.		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
60.		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 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	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
		personal guarantors (PGs) to CDs, shall be entertained by any High Court.			
61.		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
62.		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
63.		A resolution applicant, who is guarantor in individual capacity, shall not be covered with any immunity given under the resolution plan.	Mathuraprasad c Pandey & Ors. Vs. Partiv Parikh, RP of M. V. Omni Projects (india) Ltd. & anr. [CA (AT) (Ins) No. 201/2021 with 266/2021	NCLAT	14.12.2022
	5(6)	Dispute			
64.		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
65.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
66.		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
67.		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
68.		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 specified in the definition under section 5(6).	Anuj Khanna Vs. Wishwa Naveen Traders & Anr. [CA (AT) (Ins.) No. 555 of 2020]	NCLAT	25.11.2020
69.		The dispute between the parties is not supposed to be decided, examined and adjudicated by AA in CIRP.	Krishna Hi-tech Infrastructure Pvt. Ltd. Vs. Bengal Shelter Housing Development Ltd. [CA (AT)(Ins.) No. 1375 of 2022 & I.A. No. 4297, 4296 of 2022]	NCLAT	06.12.2022
70.		The scheme of insolvency proceedings contemplate that the proceeding shall go on only when there is an admitted debt and default. NCLT is not the forum for deciding and adjudicating the contractual dispute between the parties.	Jain Irrigation Systems Ltd. Vs. Pragyawan Technologies Pvt. Ltd. [CA (AT) (Ins.) No. 311 of 2023]	NCLAT	21.03.2023
_	5(7)	Financial Creditor			
71.		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
72.		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	NCLT, Ahmedaba d	05.09.2017

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
			Alloys Pvt. Ltd. [CP (IB) No. 84/7/NCLT/AHM/2017]		J
73.		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
74.		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
75.		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 <i>Explanation</i> was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the <i>Explanation</i> is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.	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
76.		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
77.		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	Mohanlal Dhakad Vs. BNG Global India Ltd. [CA (AT) (Ins.) No. 684 of 2020]	NCLAT	22.02.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		section 5(7) read with section 5(8) of the Code.			
78.		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
79.		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
80.		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
81.		A landowner in a development agreement is not a financial creditor and cannot be included in the CoC.	Ashoka Hi-Tech Builders Pvt. Ltd. Vs. Sanjay Kundra & Anr. [CA (AT) (Ins.) No. 46 of 2023]	NCLAT	18.01.2023

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
82.		The definition of 'creditor' includes a decree holder and application cannot be dismissed on the ground that no steps were taken for filing execution case in a civil court.	Darshan Gandhi Vs. USV Private Limited [CA (AT) (Ins.) No. 644 of 2019 & I.A. Nos. 2106, 4316, 2609 & 2614 of 2019]	NCLAT	16.11.2022
	5(8)	Financial Debt			
83.		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
84.		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
85.		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
86.		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
87.		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
88.		It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the CD as a stakeholder to improve	Shailesh Sangani Vs. Joel Cardoso & Anr. [CA (AT) (Ins.) No. 616 of 2018]	NCLAT	30.01.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
89.		In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.	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
90.		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
91.		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
92.		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
93.		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
94.		'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 Marketing Pvt. Ltd. Vs. RP of Mount Shivalik Industries Ltd. [CA (AT) (Ins.) No. 180 of 2021]	NCLAT	07.11.2021
95.		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
96.		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
97.		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
98.		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
99.		Interest <i>per se</i> 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

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
100.		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
101.		The nature of financial debt would not change in respect of application filed on account of breach of the consent terms in respect of the original financial debt.	Priyal Kantilal Patel Vs. IREP Credit Capital Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1423 of 2022]	NCLAT	01.02.2023
102.		The terms and conditions of the Compulsorily Convertible Debentures (CCD) and the intention of the parties nowhere specify that the instrument would take the character of a 'financial debt'. At the time of disbursal of the amount, it was to be treated as equity alone and not as debt. Merely because interest is payable on the CCDs, in the case of a default, it cannot be construed that the CCDs fall within the definition of 'financial debt' under section 5(8) of the Code.	IFCI Limited Vs. Sutanu Sinha and Anr. [CA (AT) (CH) (Ins.) No. 108 of 2023]	NCLAT	05.06.2023
	5(13)	Insolvency Resolution Process Cost			
103.		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
104.		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
105.		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. RP, Bhaskar Marine Services Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1053 of 2020]	NCLAT	10.12.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
	5(14)	Insolvency Resolution Process Period			
106.		It is always open to the NCLT/NCLAT to	Quinn Logistics India Pvt.	NCLAT	08.05.2018
		exclude certain period for the purpose of	Ltd. Vs. Mack Soft Tech Pvt. Ltd.		
		counting the total period of 270 days. The	& Ors. [CA (AT) (Ins.) No. 185 of		
		grounds include the following: (i) If the CIRP	2018]		
		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.			
407	5(20)	Operational Creditor			
107.		The OCs can be classified in three different	Standard Chartered Bank Vs.	NCLAT	04.07.2019
		classes for determining the manner in which the amount is to be distributed to	Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT)		
		them (as per section 5(21). However, they	(Ins.) No. 242 of 2019 and Other		
		are to be given the same treatment, if	appeals]		
		similarly situated.	appears		
108.		Custom Duty as a statutory due is only	IRK Raju Vs. Immaneni Eswara	NCLAT	30.01.2020
		operational in nature when it is paid to the	Rao & Ors. [CA (AT) (Ins.) No.		
		relevant authority, and not when it is	1058 of 2019]		
		repaid to a party that has paid such			
		statutory authority.			
109.		It is clear that an OC who has assigned or	Cooperative Rabobank U.A.	NCLAT	29.04.2019
		legally transferred any operational debt to	Singapore Branch Vs.		
		an FC, the assignee or transferee shall be	Shailendra Ajmera [CA (AT)		
		considered as an OC to the extent of such	(Ins.) No. 261 of 2018]		
		assignment or legal transfer.			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
110.		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
111.		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
112.		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
113.		There is no embargo for classification of the 'operational creditors' into separate classes for deciding the distribution of money to them.	Excel Engineering & Ors. Vs. Mr. Vivek Murlidhar Dabhade & Anr. [CA (AT) (Ins.) No. 85-86 of 2020]	NCLAT	16.11.2022
	5 (21)	Operational Debt			
114.		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
115.		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
116.		In case assets seized by the ED were purchased out of the proceeds of crime, the amount as 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.	JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA (AT) (Ins.) No. 957 and other appeals]	NCLAT	25.10.2019
117.		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	M. Ravindranath Reddy Vs. G. Kishan & Ors. [CA (AT) (Ins.) No. 331 of 2019]	NCLAT	17.01.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		provision of goods, services, employment or the Government dues.			
118.		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
119.		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
120.		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
121.		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 Government or any local authority.	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
122.		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, Ahmedaba d	31.07.2017
123.		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
124.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
125.		Dues of Central Government / Department	Union of India Vs. Vijaykumar	NCLAT	Judgement 13.04.2021
		of Telecommunications under the License	V. Iyer [CA (AT) (Ins.) No.		
		Agreement fall within the ambit of	733/2020 with other appeals]		
		'operational debt' under the Code.			
126.		A 'claim' based on an agreement where the petitioner has appointed the respondent as	South Delhi Municipal Corporation Vs. MEP	NCLT, Mumbai	08.10.2021
		a contractor to collect toll tax from	Infrastructure Developers Ltd.	Widilibai	
		commercial vehicles is not covered under	[IA 1670 of 2021 in CP(IB)		
		the definition of 'operational debt' under	246/MB/2021]		
		section 5(21) of the Code.			
127.		The sales tax demand paid by the OC cannot be claimed as reimbursement from	Transit Geo System Integrators Pvt. Ltd. Vs. Stahl Teeniks Pvt.	NCLT, New Delhi	20.10.2021
		a CD as an 'operational debt' as it is neither	Ltd. [(IB)-265/ND/2021]	Dellili	
		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.			
128.		Listing fees comes under the ambit of	BSE Ltd. Vs. KCCL Plastic Ltd.	NCLAT	17.12.2021
		regulatory dues and is not 'operational dues'. Thus it cannot be recovered as an	[CA (AT) (Ins.) No. 134 of 2021]		
		'operational debt'.			
		·			
129.		Section 5(21) defines 'operational debt' as	Consolidated Construction	SC	04.02.2022
		a "claim in respect of the provision of goods or services". The operative requirement is	Consortium Ltd. Vs. Hitro Energy Solutions Pvt. Ltd. [Civil		
		that the claim must bear some nexus with	Appeal No. 2839 of 2020]		
		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'.			

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
130.		The journal entries not supported by any	G.L. Engineering Industries Pvt.	NCLAT	02.03.2022
		other additional evidence cannot be 'solely'	Ltd Vs. Supreme Engineering		
		relied upon to prove that the amount	Ltd. [CA (AT) (Ins.) No. 431 of		
		claimed arises out of 'supply of goods and	2021]		
		services' to fall within the ambit of the			
121		definition of 'operational debt'.	Canada Chardhan Va Kalahi	NICLAT	40.00.2022
131.		Granting an exclusive right and license to the CD to use, manufacture, sell, distribute	Somesh Choudhary Vs. Knight Riders Sports Pvt. Ltd. & Ors.	NCLAT	18.08.2022
		and advertise the licensed products and to	[CA (AT) (Ins.) No. 501 of 2021]		
		use the trademark in association with the	[CA (A1) (IIIS.) No. 301 01 2021]		
		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.			
	5(24)	Related Party in relation to a corporate deb	tor		
132.		The interchange of the managerial	Bank of India Through Its	NCLT,	05.10.2021
		personnel between various legal entities	Authorised Representative	Ahmedaba	
		inter-se without any association with the	Chandra Pal Vs. Naren Sheth,	d	
		CD is not a valid basis to hold that such	RP for Jaybharat Textiles & Real		
		parties fall under the category of related	Estate Ltd. [IA 296 of 2020 in		
		party of the CD, though they may be	CP(IB) 266 of 2019]		
		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			
	F/24\	from CoC.			
122	5(21)	Operational Debt	Civinal Enterprises Vo. Brazza	NCLAT	24 00 2022
133.		'Operational Debt' is broad enough to include all forms of contract for supply of	Giriraj Enterprises Vs. Regen	NCLAT	31.08.2023
		goods and services between the	Powertech Pvt. Ltd. &Ors. [IA Nos. 667, 668 & 669-2021 in CA		
		goods and services between the	1403. 007, 000 & 003-2021 IN CA		
		operational Creditor and the Corporate	(AT) (CH) (Ins.) No. 323-2021]		

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SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Debtor, including ones where the Operational Creditor may have been the			
		receiver / purchaser of goods or services			
		from the Corporate Debtor.			
	7	Initiation of CIRP by FC			
134.		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	Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020]	NCLAT	18.08.2020
		construed as financial debt as defined under section 5(8) of the Code.			
135.		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
136.		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
137.		There being a continuous cause of action evident from the books of account of the CD wherein liability of loan payable to the FC is accepted, the application under section 7 cannot be held to be barred by limitation.	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
138.		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
139.		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
140.		The SC held that the RBI circular dated 12 th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is <i>ultra vires</i> 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
141.		The order of admission by NCLT, which was set-aside by the NCLAT, was restored stating that FC being a foreign company need not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.	Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794-21795 of 2017]	SC	03.08.2018
142.		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
143.		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

	Sl. No.	Section	Dictum	Citation	Forum	Date of
						Order/
ļ						Judgement
	144.		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
	145.		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 certainly required to extend hearing and reasonable opportunity to the company to explain as to why such an application should not be entertained.	Essar Steel India Ltd. Vs. Reserve Bank of India [Special Civil Application 12434 of 2017]	HC, Gujarat	17.07.2017
	146.		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
	147.		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
	148.		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'	AVON Capital Vs. Tattva & Mittal Lifespaces Pvt. Ltd. [CA (AT) (Ins.) No. 256 of 2017]	NCLAT	09.08.2018

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
		on the part of the CD, the application is to			
		be admitted.			
149.		Application under section 7 is not a	V. R. Hemantraj Vs. Stanbic	NCLAT	29.08.2018
		recovery proceeding or a proceeding for	Bank Ghana Ltd. & Anr. [CA (AT)		
		determination of claim on merit, which can be decided only by a court of competent	(Ins.) No. 213 of 2018]		
		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.			
150.		In the application filed for commencement	V. R. Hemantraj Vs. Stanbic	SC	12.10.2018
		of CIRP, the AA is not required to get into	Bank Ghana Ltd. & Anr. [Civil		
		the merits of a foreign decree, because the	Appeal No. 9980 of 2018]		
		AA under the Code does not have the powers of a Civil Court.			
151.		The AA being not a Court of law and as the	Naveen Luthra Vs. Bell Finvest	NCLAT	29.11.2018
131.		AA does not decide a money claim or suit,	(India) Ltd. & Anr. [CA (AT) (Ins.)	NCLAI	23.11.2018
		it cannot exercise any of the power vested	No. 336 of 2017 and other		
		under sections 3 or 4 of the Usurious Loans	appeals]		
		Act, 1918.			
152.		When the NCLT receives an application	Sree Metaliks Ltd. & Anr. Vs.	HC,	07.04.2017
		under section 7, it must afford a reasonable	Union of India & Anr. [W.P.	Calcutta	
		opportunity of hearing to the CD as section	7144 (W) of 2017]		
		424 of the Companies Act, 2013, mandates			
		it to ascertain the existence of default as claimed by the FC in the application.			
153.		Section 7 application filed under the Code	Forech India Ltd. Vs. Edelweiss	SC	22.01.2019
133.		is an independent proceeding and must run	Assets Reconstruction Co. Ltd.	30	
		its entire course, which has nothing to do	[Civil Appeal No. 818 of 2018]		
		with the pendency of winding up	•		
		proceedings before the HC.			
154.		Once the application under section 7 of the	Micro Dynamics Vs. Cosmos	NCLAT	12.10.2020
		Code, which was the basic edifice for order	Cooperative Bank Ltd. & Anr.		
		of admission, was dismissed and	[CA (AT) (Ins.) No. 875 of 2020]		
		proceedings emanating therefrom and			
		consequential thereto were closed, the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		incidental and ancillary applications will not survive for further consideration.			
155.		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
156.		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, 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.	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
		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.			
157.		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
158.		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
159.		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
160.		The burden of <i>prima facie</i> 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
161.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
162.		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
163.		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
164.		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
165.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
166.		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
167.		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
168.		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
169.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
170.		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
171.		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
172.		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]	нс	25.04.2022
173.		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

SI	l. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
1	174.		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
1	175.		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.	Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. [Civil Appeal No. 4633 of 2021]	sc	12.07.2022 &
			On review, the SC had observed that "observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case."	Axis Bank Ltd. Vs. Vidarbha Industries Power Ltd. [Review Petition (Civil) No. 1043 of 2022 in Civil Appeal No. 4633 of 2021]		22.09.2022
1	176.		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
1	177.		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
1	178.		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
1	179.		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
1	180.		i. Once AA is satisfied that the default has occurred, there is a hardly a discretion left	M. Suresh Kumar Reddy Vs. Canara Bank & Ors. [Civil Appeal No. 7121 of 2022]	SC	11.05.2023

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		with AA to refuse admission under section 7 of the Code. ii. Even non-payment of a part of debt becoming due and payable will amount to default on the part of CD. iii. SC referred the Vidarbha Industries case which has held that the AA cannot exercise discretionary power arbitrarily or capriciously unless the fact and circumstances warrant exercise of discretion in a particular manner. iv. It laid emphasis on observations in review petition in Vidarbha Industries case that the decision was in the setting of facts of the case and observations in the judgments are not to be read as provisions of statute. v. SC observed that the decision in the case of Vidarbha Industries cannot be read and understood as taking a view which is contrary to the view take in the cases of Innoventive Industries and E.S. Krishnamurthy.			
181.		"Financial debt" can be proved from other relevant documents, and it is not mandatory that written financial contract can be only basis for proving the financial debt.	Agarwal Polysacks Limited Vs. K.K. Agro Foods and Storage Limited [CA(AT)(Ins.) No. 1126 of 2022]	NCLAT	11.09.2023
	8	Insolvency Resolution by OC- Demand Notice			
182.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
183.		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
184.		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 far arms, apart from pending Suit or Arbitration.	Kuntal Construction Pvt. Ltd. Vs. Bharat Hotels Ltd. [CA (AT) (Ins.) No. 542 of 2020]	NCLAT	04.09.2020
185.		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
186.		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
187.		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
188.		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
189.		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
190.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
191.		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
192.		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
193.		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
194.		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 preexistence 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
195.		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
196.		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 <i>qua</i> 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

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
197.		As the arbitration was invoked after the	Naresh Sevantilal Shah Vs.	NCLAT	Judgement 19.01.2021
197.		service of the first demand notice, the AA	Malharshanti Enterprises &	NCLAT	19.01.2021
		rightly concluded that there was no pre-	Anr. [CA (AT) (Ins.) No. 415 of		
		existing dispute prior to the demand notice,	2020]		
		in terms of section 8 of the Code preventing	-		
		the initiation of CIRP.			
198.		In case of a CD who refuses to accept the	D. Srinivasa Rao Vs. Vaishnovi	NCLAT	05.01.2021
		delivery of notice under section 8 of the	Infratech Ltd. [CA (AT) (Ins.) No.		
		Code, it would not be justified to say that	880 of 2020]		
199.		the notice has not been served on the CD. Mere fact that reply to notice under section	Brand Realty Services Ltd. Vs.	NCLAT	10.03.2022
199.		8(1) having not been given within 10 days	Sir John Bakeries India Pvt. Ltd.	NCLAT	10.03.2022
		or no reply to demand notice having been	[CA (AT) (Ins.) No.958 of 2020]		
		filed by the CD, does not preclude the CD to			
		bring relevant materials before the AA to			
		establish that there is pre-existing dispute			
		which may lead to the rejection of section			
		9 application.			
200.		An operational creditor can issue a notice in	Consolidated Construction	SC	04.02.2022
		relation to an operational debt either	Consortium Ltd. Vs. Hitro		
		through a demand notice or an invoice. As	Energy Solutions Pvt. Ltd. [Civil		
		such, the presence of an invoice (for having supplied goods or services) is not a <i>sine qua</i>	Appeal No. 2839 of 2020]		
		non, since a demand notice can also be			
		issued on the basis of other documents			
		which prove the existence of the debt.			
201.		After the transfer of winding up	Rajeev Srivastava Vs. Ahluwalia	NCLAT	21.02.2023
		proceedings as per Companies (Transfer of	Contracts (India) Limited and		
		Pending Proceedings) Rules, 2016 read	Ors. [CA (AT) (Ins.) No. 976 of		
		with section 434 of the Companies Act,	2022]		
		2013, if the winding up petition has been filed on the ground that the company is			
		unable to pay its debt, notice under section			
		8 of the Code is not necessary.			
	9	Application for initiation of CIRP by OC			
202.		Except the CD, no other party has the right	Damont Developers Pvt. Ltd.	NCLAT	24.04.2019
		to intervene at the stage of admission of an	Vs. Bank of Baroda & Anr. [CA		
			(AT) (Ins.) No. 436-437 of 2019]		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		application under section 7 or 9 of the Code.			
203.		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
204.		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
205.		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 amount to the AA with the First Progress Report.	Shashikant Thakar Vs. Windsor Paper Pvt. Ltd. [CP(IB)No. 701/9/NCLT/AHM/2019]	NCLT, Ahmedaba d	04.09.2020
206.		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
207.		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
208.		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	NUI Pulp and Paper Industries Pvt. Ltd. Vs. Roxcel Trading GMBH [CA (AT) (Ins.) No. 664 of 2019]	NCLAT	17.07.2019

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		abuse the process or for meeting the ends of justice, it is always open to the AA to pass appropriate interim order.			
209.		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, 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.	Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1354 of 2019]	NCLAT	24.02.2020
210.		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
211.		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
212.		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	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
		show the breach of representation or			
		warranty. The CD would be well within its			
		right to show that '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.			
213.		In view of Rule 8 of AA Rules, it was open to	Mother Pride Dairy India Pvt.	NCLAT	13.07.2017
		the OC to withdraw the application under	Ltd. Vs. Portrait Advertising &		
		section 9 before its admission but once it	Marketing Pvt. Ltd. [CA (AT)		
		was admitted, it cannot be withdrawn even	(Ins.) No. 94 of 2017]		
		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.			
214.		The 'operational debt' under the Code is a	Vinod Awasthy Vs. AMR	NCLT, New	20.02.2017
		claim in respect of provision of goods or	Infrastructures Ltd. [C.P No.	Delhi	
		services, including dues on account of	(IB)-10 (PB)/2017]		
		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.			
215.		Since the OC has not submitted the	Transparent Technologies Pvt.	NCLAT	25.10.2017
		information as required for admission of	Ltd. Vs. Multi Trade [CA (AT)		
		application under section 9 before the AA,	(Ins.) No. 207 of 2017]		
		and in the absence of non-supply of			
		requisite information in terms of Rule 5 of			
		the AA Rules, the application cannot be			
		treated as an application under section 9			
		for initiation of CIRP against the CD.			
216.		A dispute could be proved by showing that	One Coat Plaster Vs. Ambience	NCLT, New	01.03.2017
		a suit has been filed or arbitration is	Pvt. Ltd. [CA No. (I.B.)	Delhi	
		pending.			
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SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
			07/PB/2017 and [CA (I.B.) No.		Judgement
			08/PB/2017]		
217.		The OC had no account in India and it was	Rio Glass Solar SA Vs. Shriram	NCLT,	10.08.2017
		not possible to produce a certificate from	EPC Ltd. [CP/537/(IB)/CB/2017]	Chennai	
		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.			
218.		Section 16G(1)(c) of the Tea Act, 1953,	A.J. Agrochem Vs. Duncans	NCLAT	20.06.2019
		relates to winding up, while section 9 of the	Industries Ltd. [CA (AT) (Ins.)		
		Code is for initiation of CIRP to ensure	No. 710 of 2018]		
		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.			
219.		As the amount is due from the partnership	Gammon India Ltd. Vs.	NCLAT	19.12.2018
213.		firm, application under section 9 is not	Neelkanth Mansions &	NCLA	13.12.2010
		maintainable against one of the members	Infrastructure Pvt. Ltd. [CA (AT)		
		of the partnership firm.	(Ins.) No. 698 of 2018]		
220.		Since money was paid as advance for	Roma Infrastructures India Pvt.	NCLAT	22.04.2019
		supply of goods but the goods were not	Ltd. Vs. A.S. Iron & Steel (I) Pvt.		
		supplied, the payment cannot be	Ltd. [CA (AT) (Ins.) No. 223 of		
		considered to be an 'operational debt' and hence, application under section 9 was not	2019]		
		maintainable.			
221.		'Proceedings' under section 138 of the	Shailendra Sharma Vs. Ercon	NCLAT	13.01.2021
		Negotiable Instruments Act, 1881 as well as	Composites & Ors. [CA (AT)		_
		Order 37 of the Code of Civil Procedure,	(Ins.) No. 159 of 2020]		
		1908, will not prohibit an application under			
		section 9 of the Code.			
222.		Dismissal of an application under section 9	Silvassa Cement Products Pvt.	NCLAT	22.01.2021
		of Code as being non-maintainable for a technical defect such as incomplete Form 5,	Ltd. Vs. Noor India Buildcon		
		is not warranted.	Pvt. Ltd. [CA (AT) (Ins.) No. 675 of 2020]		
		is not warranted.	J. 2020j		

	Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	223.		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
	224.		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
	225.		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 the Limitation Act, 1963.	State of West Bengal Vs. Keshav Park Private Ltd. & Anr. [CA Appeal (AT) (Ins.) No.330-331 of 2020]	NCLAT	08.12.2021
	226.		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
	227.		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
•	228.		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
	229.		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

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SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
230.		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
231.		Section 9 application is not a suit and the provisions of the section 69(2) of the Indian Partnership Act, 1932 are not attracted in respect of such application.	Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd. [CA (AT) (Ins.) No. 924 of 2022]	NCLAT	06.02.2023
	10	Initiation of CIRP by Corporate Applicant		-	
232.		Since the applicant was not a director and was disqualified under section 164 of the	Neesa Infrastructure Ltd. Vs.	NCLT, Ahmedaba	17.09.2020
		Companies Act, 2013, he had no authority to file the application.	State Bank of India & Ors. [C.P. (I.B.) 61/10/NCLT/AHM/2018]	d	
233.		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
234.		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
235.		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
236.		CIRP was ordered to speed up preferably	Amit Spinning Industries Ltd.	NCLT, New	01.08.2017
		within a period of 100 days as the	[IB-131 (PB)/2017]	Delhi	

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Corporate Applicant had already availed the moratorium as provided under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.			
237.		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
238.		Neither the Code nor regulations obligate the AA to issue prior notice to creditors; however, AA should hear the objectors at the time of admission stage before taking appropriate decision.	SMBC Aviation Capital Ltd. Vs. Interim Resolution Professional of Go Airlines (India) Ltd. [CA (AT) (Ins.) No. 593,603,604 & 615 of 2023]	NCLAT	22.05.2023
	10A	Suspension of initiation of CIRP			
239.		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
240.		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

SI. 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.			
241.		Although the default was committed prior to section 10A period, the liability continued during the section 10A period and interest accrued during such period will be considered while computing the threshold for initiating CIRP.	Beetel Teletech Ltd. Vs. Arcelia IT Services Pvt. Ltd. [CA(AT)(Ins.) No.1459 of 2022]	NCLAT	11.09.2023
	11	Persons not entitled to make application			
242.		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
243.		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
244.		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

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
245		Costion 11 is of limited application and only	Farack India 1td Va Edahusia	50	Judgement
245.		Section 11 is of limited application and only bars a CD from initiating an application	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd.	SC	22.01.2019
		under section 10 of the Code in respect of	[Civil Appeal No. 818 of 2018]		
		whom a liquidation order has been made.	[CIVII Appear No. 010 of 2010]		
		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.			
246.		The intention of the legislature was always	Manish Kumar Vs. Union of	SC	19.01.2021
		to target the CD only insofar as it purported	India & Anr. [Writ		
		to prohibit application by the CD against	Petition(C)No.26 of 2020 with		
		itself, to prevent abuse of the provisions of	other writ petitions]		
		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.			
	12	Time-limit for completion of insolvency reso	olution process		
247.		The matter was admitted on 16.08.2017	Velamur Varadan Anand Vs.	NCLAT	16.05.2018
		and on intimation, the RP took charge on	Union Bank of India & Anr. [CA		
		14.09.2017. Accordingly, NCLAT directed	(AT) (Ins.) No. 161 of 2018]		
		AA to exclude the 30 days for the purpose			
		of counting the period of CIRP.			
248.		The resolution plan, which had consumed	Committee of Creditors of	SC	24.09.2019
		the time available under section 12 of the	Amtek Auto Ltd. Vs. Dinkar T.		
		Code, has failed owing to nonfulfillment of	Venkatsubramanian & Ors.		
		the commitment by Liberty House. However, the SC noted that the Insolvency	[Civil Appeal No(s). 6707/2019 and another appeal]		
		and Bankruptcy Code (Amendment) Act,	and another appears		
		2019 (w.e.f. 16.08.2019) 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.			

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
249.		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
250.		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
251.		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
252.		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
253.		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
254.		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
255.		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	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]	SC	04.10.2018

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		for all authorities concerned to follow this model timeline as closely as possible.			Ü
256.		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 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.	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
257.		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. The time period can very well be extended	Maharashtra Seamless Ltd. Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 1039 of 2020]	NCLT,	07.12.2020
		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.	Transmissions Ltd. [IA No. 1053 of 2020 in CP(IB) No. 381 of 2018]	Mumbai	
259.		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	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

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		the CD which should only be initiated as a last resort. It approved the extension of the period by 90 days.			
260.		The extension of CIRP period beyond 330 days was allowed to prevent the CD from being pushed into liquidation and a viable resolution plan being approved by the CoC.	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
261.		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
262.		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
263.		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
264.		The transfer of plot cannot be affected without approval of the GNIDA. Resolution plan could not have contained clause for transfer of land without there being any approval of the GNIDA for such transfer as GNIDA is a necessary party to the	Greater Noida Industrial Development Authority (GNIDA) Vs. Roma Unicon Designex Consortium and Ors. [CA (AT) (Ins.) Nos. 180, 629 and 630 of 2022]	NCLAT	30.01.2023

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		processes. Further, the assets of the subsidiary company cannot be dealt with in the CIRP of holding company without the			
		permission of the lessor. Holding company and subsidiary company have separate			
		legal status and the assets of subsidiary cannot be taken into consideration in CIRP of holding company.			
	12A	Withdrawal of application admitted under s	section 7, 9 or 10		
265.		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
266.		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
267.		At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, 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.	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
268.		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
269.		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	Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019]	NCLAT	07.08.2019

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		the CoC which is supposed to consider such application in the light of section 12A.			· · · · · · · · · · · · · · · · · · ·
270.		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
271.		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
272.		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
273.		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
274.		Once the CIRP is triggered in relation to a CD, the same is an order in <i>rem</i> and not in <i>personam</i> 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
275.		Once an application for insolvency resolution is admitted on behalf of a creditor then the process would be one of	Bank of Baroda & Anr. Vs. MBL Infrastructures Ltd. & Ors. [Civil Appeal No. 8411 of 2019]	SC	18.01.2022

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		rem, and therefore, all creditors of the same class would have their respective rights at par with each other.			Judgement
276.		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 and de hors the provisions of the statute or the rules.	Vallal RCK Vs. Siva Industries and Holdings Ltd. & Ors. [Civil Appeal Nos. 1811-1812 of 2022]	SC	03.06.2022
277.		Regulation 30A of the CIRP Regulations must be read harmoniously with the provisions of the Code. There is no inconsistency between section 12A and regulation 30A to make regulation 30A unworkable.	Sintex Plastics Technology Ltd. v. Mahatva Plastic Products and Building Materials Pvt. Ltd [CA(AT) (Ins.) No. 729 & 730 of 2022 & 475 I.A. No. 1813 of 2021, 577, 674, 814 of 2021]	NCLAT	03.01.2023
278.		Regulation 30A of the CIRP Regulations allows withdrawal applications before the constitution of CoC and is not violative of section 12A.	Abhishek Singh Vs. Huhtamaki PPL Ltd. and Anr. [Civil Appeal No(s) of 2023 (Arising out of SLP (Civil) No. 6452 of 2021)]	sc	28.03.2023
279.		In case the consent terms itself contains the clause for revival, AA's order not providing the liberty specifically for revival will not hold any value. Rejection of revival is to deny the FC rightful remedy.	IDBI Trusteeship Service Ltd Vs. Nirmal Lifestyle Limited [CA (AT) (Ins.) No. 117 of 2023]	NCLAT	15.05.2023
200	14	Moratorium	C. J Bl V. A	NOT	22.00.2022
280.		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	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

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		directing a payment out of the account of the CD is clearly barred by the provisions of section 14(1)(a).			
281.		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
282.		'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
283.		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
284.		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
285.		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
286.		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
287.		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

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288.		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
289.		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
290.		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
291.		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
292.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
293.		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.	Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]	NCLAT	14.09.2017
294.		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
295.		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/20 17]	NCLT, Mumbai	03.07.2017
296.		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
297.		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
298.		The RP has the right to take control and custody of any asset, though the customs authority is in possession of the same during the period of moratorium.	Commissioner of Customs, (Preventive) West Bengal Vs. Ram Swarup Industries Ltd. & Ors. [CA (AT) (Ins.) No. 563 of 2018]	NCLAT	20.06.2019
299.		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	Vasudevan Vs. State of Karnataka & Ors. [MA/632/2018 in CP/39/2018]	NCLT, Chennai	03.05.2019

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		a going concern, which frustrates the object of CIRP.			
300.		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
301.		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
302.		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
303.		'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 for making profit, then the company must make payment to the services/goods utilised in manufacturing purpose.	ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 157 in CP 01/I&BP/2016]	NCLT, Mumbai	23.08.2017
304.		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

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					Order/
305.		'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	Judgement 13.03.2019
306.		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
307.		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
308.		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
309.		'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
310.		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
311.		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
312.		The Government of India issued show cause notice to the CD before issuance of the termination letter much prior to	Monnet Ispat & Energy Ltd. Vs. Government of India, Ministry	NCLAT	30.11.2018

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		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 Coal [CA (AT) (Ins.) No. 26 of 2018]		
313.		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
314.		After admission of application under section 7, once moratorium is declared, it is neither open to any person 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.	Indian Overseas Bank Vs. Dinkar T. Venkatsubramaniam [CA (AT) (Ins.) No. 267 of 2017]	NCLAT	15.11.2017
315.		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
316.		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
317.		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 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

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
318.		The bank guarantee can be invoked even during the period of moratorium in view of section 14(3)(b).	Bharat Aluminium Co. Ltd. Vs. J.P Engineers Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 759 of 2020]	NCLAT	26.02.2021
319.		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 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.	P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. [Civil Appeal No. 10355 of 2018 with other appeals]	SC	01.03.2021

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		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.			
320.		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 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.	Small Scale Industrial Manufactures Association (Regd.) Vs. Union of India and Ors. [Writ Petition (C) No. 476 of 2020]	SC	23.03.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
321.		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
322.		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
323.		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
324.		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
325.		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.	Offences Vs. Binay Kumar Singhania & Ors. [CA (AT) (Ins.) No. 935 of 2020]	NCLAT	04.05.2021
326.		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
327.		Attachment of assets of a company undergoing CIRP following section 79 of the GST Act 2017 constitute violation of the	Ashutosh Agarwala, Resolution Professional Vs. Joint Commissioner of State & Ors.	NCLT, Mumbai	01.12.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		'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.	[I.A. 2422/2020 in C.P(IB)- 2640(MB)/2019]		
328.		The prohibition in transferring the assets of the CD under section 14 is on the CD and the said prohibition <i>ipso-facto</i> does not prohibit RP or CoC, who were empowered by specific provision 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.	Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. & Ors. [CA (AT) (Ins.) No. 628 of 2020]	NCLAT	14.02.2022
329.		FC 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
330.		The banks guarantees are beyond the scope of moratorium and can be invoked during moratorium. Banks are bound to encash the unconditional bank guarantees without any demur as and when the same is demanded by the beneficiary.	IDBI Bank Ltd. Vs. Indian Oil Corporation Ltd. [CA (AT) (Ins.) No. 543 of 2021]	NCLAT	10.01.2023
331.		Section 14 seeks to preserve the 'going concern' status 'if' the CD is a running unit.	Sundaresh Bhat RP of JBF Petrochemical Limited Vs. Manglore Refinery and Petrochemicals Limited [CP(IB) No. 232 of 2018]	NCLT, Ahmedaba d	09.03.2023
332.		The security provided by the CD for a loan availed by another person will also be protected by moratorium u/s 14(1)(c).	Edelweiss Asset Reconstruction Company Ltd., Vs. Anuj Jain RP of Ballarpur Industries Ltd. &	NCLAT	04.07.2023

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
			Ors. [CA (AT) (Insolvency) No.517 & 518 of 2023]		Ü
333.		Guarantee can be invoked even during moratorium in view of the section 14 (3)(b) of the Code.	Vijay Kumar Garg Vs. Deputy Commissioner of Customs & Ors. [CA(AT)(CH)Ins No. 259 of 2023]	NCLAT	18.08.2023
	16	Appointment and tenure of IRP			
334.		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
335.		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
336.		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
337.		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 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.	Innovsource Pvt. Ltd. Vs Getit Grocery Pvt. Ltd. [IB- 295(PB)/2017]	NCLT, New Delhi	08.01.2018
338.		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			

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
339.		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
340.		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, Ahmedaba d	02.08.2017
341.		IRP has not vested with any specific power to sue any person on behalf of the CD. However, in case of such difficulty, it is always open to IRP to bring to the notice of the AA for appropriate order.	Steel Konnect (India) Pvt. Ltd. Vs. Hero Fincorp Ltd. [CA (AT) (Ins.) No. 51 of 2017]	NCLAT	29.08.2017
342.		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
343.		The phrase used in section 17(1)(d) of the Code that financial institution "shall act on the instructions 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. [CA (AT) (Ins.) No. 729 of 2020]	NCLAT	27.01.2022
	18	Duties of IRP			_

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
344.		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	Judgement 14.05.2019
345.		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
346.		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 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.	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
347.		'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
348.		RP does not have the jurisdiction to review or revise the admitted claims.	Punjab National Bank Vs. Mr. Ashish Chhawchharia and Ors. [CA (AT) (Ins.) No. 584 of 2021 & IA NO. 2720 of 2021	NCLAT	21.10.2022
349.		The claim of gratuity is payable only at a future date in the happening of any event like retirement, resignation, termination, death, etc., and therefore, it cannot be construed as a 'claim subsisting' so as to include the employee in the list of stakeholders and consequently seeking a place in the SCC.	Varrsana Employee Welfare Association Vs. Anil Goel Liquidator [CA (AT) (Ins.) No. 544 of 2021]	NCLAT	25.11.2022

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
350.		During CIRP, the creditor is obligated to necessarily lodge claims before RP. A successful resolution applicant cannot be faced with undecided claims. This would amount to "Hydra-head popping up".	DLF Ltd. Vs. IL&FS Engineering and Construction Company [2022/DHC/ 005697]	HC, New Delhi	21.12.2022
351.		RP has right to revise the amounts of the claim admitted as and when he comes across any additional information warranting such revision.	Intec Capital Ltd. Vs. Uday Kumar Bhaskar Bhat, IRP of Atharva Auto Logistics Pvt. Ltd. [CA (AT) (Ins) No.361 of 2023]	NCLAT	05.04.2023
252	19	Personnel to extend co-operation to IRP	Shailesh Chawla & Anr. Vs.	NCLAT	22.00.2020
352.		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.	Vinod Kumar Mahajan, RP & Ors. [CA (AT) (Ins.) No. 571 of 2020 and another appeal]		23.09.2020
353.		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
354.		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 should fully cooperate with the RP.	Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd. [C.P. (IB) No.363/KB/17)]	NCLT, Kolkata	22.12.2017
	20	Management of operations of corporate de			
355.		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	Tuf Metallurgical Pvt. Ltd. Vs. Impex Metal & Ferro Alloys Ltd. & Ors. [CA (AT) (Ins.) No. 190 of 2020]	NCLAT	03.02.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
	21	Committee of Creditors			
356.		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
357.		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 are not supposed to decide the manner of distribution. The <i>inter se</i> distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.	Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]	NCLAT	04.07.2019
358.		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
359.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
360.		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
361.		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
362.		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
363.		All decisions of COC shall be taken by a vote of not less than 51% of 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.	Asset Reconstruction Company (India) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola and Anr. [IA No. 344 of 2018 in CP (IB) No. 219/7/HDB/2018]	NCLT, Hyderabad	26.02.2019
364.		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
365.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
366.		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	Judgement 04.05.2018
367.		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
368.		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, Ahmedaba d	19.04.2018
369.		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
370.		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
371.		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	Anil N. Surwade & Ors. Vs. Prashant Jain, RP, Sejal Glass Ltd. [CA (AT) (Ins.) No. 1006 of 2020]	NCLAT	03.12.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		ascribed to them in the deliberation of the CoC.			
372.		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
373.		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
374.		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 object and purpose of the first proviso to section 21(2), to debar the former related party creditor.	Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors. [Civil Appeal No. 2842 of 2020 with 3063 of 2020]	SC	01.02.2021
375.		The AA reiterated that they have no power to interfere in the commercial wisdom of	Sunit Jagdishchandra Shah, RP for Sungracia Tiles Pvt. Ltd. Vs. Sungracia Tiles Pvt. Ltd. and	NCLT, Ahmedaba d	18.02.2021

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					Order/
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		the CoC, until and unless there is gross	Ors. [IA 678 of 2020 in C.P. (IB)		
		violation of principle of law.	No. 750/NCLT/AHM/2019]		
376.		By exercising the commercial wisdom, the	STCI Finance Limited through	NCLT,	31.05.2021
		CoC cannot avoid compliance with the	Subhash Modi, RP [(IA) No.264	Mumbai	
		provisions of the Code and Regulations.	of 2021 in CP No. (IB)		
			4147/MB/2019]		
377.		'Commercial wisdom' of the CoC has been	Ngaitlang Dhar Vs. Panna	SC	17.12.2021
		given paramount status without any	Pragati Infrastructure Pvt. Ltd.		
		judicial intervention, for ensuring	& Ors. [Civil Appeal Nos. 3665-		
		completion of the processes within the	3666, 3742-3743 of 2020]		
		timelines prescribed by the Code.			
378.		A removed director from the board of	Dheeraj Wadhawan Vs. The	NCLAT	27.01.2022
		directors cannot interfere in the company's	Administrator, Dewan Housing		
		affairs per contra a suspended director	Finance Corporation Ltd. [CA		
		always remains on the erstwhile Board of	(AT) (Ins.) No. 785 of 2020 &		
		the Company and assist the IRP/RP as per	647 of 2021]		
		requirement.			
379.		NCLAT observed that superseded directors	Dheeraj Wadhawan Vs. The	NCLAT	27.01.2022
		are those directors who have been	Administrator, Dewan Housing		
		removed or deemed to have demitted	Finance Corporation Limited		
		office and who were not holding the	[CA (AT) (Ins.) No. 785 of 2020		
		position of director on the CIRP	& 647 of 2021]		
		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 claim			
		their entitlement to participate in the CoC			
		of the CD. A removed director from the			
		board of directors cannot interfere 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.			

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
380.		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
381.		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 <i>sine qua non</i> 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
382.		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
383.		It is open to CoC to deliberate the plan in accordance with law which directions cannot be faulted with; more so when the resolution applicant himself consented before the AA.	Noble Marine Metals Co WLL Vs. Kotak Mahindra Bank Ltd. & Ors. [CA (AT) (Ins.) No. 653 of 2022]	NCLAT	09.02.2023
384.		After approval of a resolution plan by CoC, it is binding on itself and the CoC cannot be allowed to go back from its decision and pass any other resolution. This should be accepted to give finality on different steps and for timely conclusion of the resolution process.	Hem Singh Bharana Vs. Pawan Doot Estate Pvt. Ltd. & Ors [CA (AT) (Ins.) No. 1481 of 2022]	NCLAT	05.01.2023
385.		The obligation of the AA to direct for liquidation shall rise only when decision of the CoC is in accordance with the Code.	Hero Fincorp Ltd. Vs. Hema Automotive Pvt. Ltd. [CA (AT) (Ins.) No. 1540 of 2022]	NCLAT	06.01.2023
386.		So long as the provisions of the Code and the regulations have been met, it is for the CoC to negotiate and accept the resolution	Paramvir Singh Tiwana & Ors. Vs. Puma Realtors Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 554 of 2021]	NCLAT	22.12.2022

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		plan, which may involve differential payments to different classes of creditors.			
	22	Appointment of RP			
387.		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, Ahmedaba d	28.07.2020
388.		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
389.		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
390.		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. 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	Invent Assets Securitisation & Reconstruction Pvt. Ltd & Anr. Vs. Rajmal Labhchand Mogra & Ors. [CA (AT) (Ins.) No. 709 of 2019]	NCLAT	26.11.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		of the AA in a case where decision has been taken to replace the IRP.			Judgement
	24	Meeting of committee of creditors			
391.		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
392.	25	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. Duties of RP	Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Ins.) No. 501 of 2018]	NCLAT	12.12.2018
393.	25	The goods lying in the form of	KEC International Ltd. Vs.	NCLT,	04.09.2020
		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.	Bhuvan Madan & Anr. [IA No.139 of 2019 in CP (IB) No. 137/7/NCLT/AHM/2018]	Ahmedaba d	
394.		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	Kotak Investment Advisors Ltd. Vs. Krishna Chamadia & Ors. [CA (AT) (Ins.) No. 344-345 of 2020]	NCLAT	05.08.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		be treated as an exercise of commercial wisdom.			
395.		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
396.		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
397.		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
398.		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.	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
399.		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
400.		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
401.		RP has no jurisdiction to determine a claim. He can only collate it, based on evidence	S. Rajendran Vs. Jonathan Mouralidarane [CA (AT) (Ins.) No. 1018 of 2019]	NCLAT	01.10.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and the record of the CD, or as filed by the FC.			
402.		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
403.		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, Ahmedaba d	04.05.2018
404.		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, Ahmedaba d	19.04.2018
405.		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
406.		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	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

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		but directed that no arrest shall be made until the disposal of the application.			
407.		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 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.	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No(s). 3395/2020]	SC	02.03.2021
408.		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
409.		Regulation 36(2) of CIRP Regulations provides the mandatory condition for publication 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
	26	Application for avoidance of transaction			

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
410.	27	As per section 26 of the Code, avoidance applications do not affect the proceeding of the CIRP and can continue post completion of CIRP. SRA should be permitted to pursue the avoidance applications, which were filed by the erstwhile administrator and were pending before the AA.	Kapil Wadhawan Vs. Piramal Capital & Housing Finance Ltd. & Ors.[CA (AT) (Ins.) No. 437 of 2023]	NCLAT	15.05.2023
411.	27	Replacement of RP by CoC CoC is not required to record any reason or	Punjab National Bank Vs. Kiran	NCLAT	06.08.2019
		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.	Shah [CA (AT) (Ins.) No. 749 of 2019]	NCLAT	
412.		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
413.		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
414.		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
415.		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 under section 107 of the CGST/SGST Act, 2017, read with rule 108 of the GST Rules 2017.	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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
416.		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	Judgement 02.09.2022
	29A	Persons not eligible to be resolution applica	nt		
417.		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
418.		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
419.		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
420.		Promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for taking back the immovable and movable properties or actionable claims of the CD.	Jindal Steel and Power Ltd. Vs. Arun Kumar Jagatramka & Anr. [CA (AT) No. 221 of 2018]	NCLAT	24.10.2019
421.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
422.		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
423.		Section 29A is a <i>de facto</i> as opposed to a <i>de jure</i> 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
424.		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
425.		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
426.		Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in	Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. &	SC	15.03.2021

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		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 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 III (by virtue of the provisions of section 29A) permeates the liquidation process under Chapter III (by virtue of the provisions of	Anr. [Civil Appeal No. 9664 of 2019 with other apeeals]		Judgement
427.		section 35(1)(f)). 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
428.		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	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

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		'control' juxtaposed with the term			Judgement
		'management' means de-facto control of			
		actual management or policy decisions that			
		may be or are in reality taken.			
429.		Section 29A(a) of the Code, which refers to	Srei Multiple Asset Investment	NCLAT	18.01.2022
		'an undischarged insolvent' is applicable to	Trust Vs. IDBI Bank Ltd. & Ors.		
		individuals and partnership firms.	[CA (AT) (Ins.) No. 593 of 2020]		
		Seeding 200/s) and the seeding before			
		Section 29A(c) would not be applicable to			
		resolution applicants who acquire a CD			
		pursuant to a prior resolution plan			
	30	approved under the Code. Submission of Resolution Plan			
430.	30	The AA, in law cannot enter into the arena	CoC of Educomp Solutions Ltd.	NCLAT	29.07.2020
430.		of majority decision of the CoC other than	Vs. Ebix Singapore Pte. Ltd. &	NCLAT	29.07.2020
		the grounds mentioned in section 32(a) to	Anr. [CA (AT) (Ins.) No. 203 of		
		(e) of the Code. After due deliberations,	2020]		
		when the RP had accepted the conditions	2020]		
		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.			
431.		The successful resolution applicant (SRA)	Shree Sidhivinayak Cotspin Pvt.	NCLAT	20.08.2020
		cannot suddenly be faced with undecided	Ltd. & Anr. Vs. RP of Marurti		
		claims after the resolution plan submitted	Cotex Ltd. & Anr. [CA (AT) (Ins.)		
		by him has been accepted and that all	No. 694 of 2020]		
		claims must be submitted to and decided			
		by 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.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
432.		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
433.		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
434.		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
435.		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
436.		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
437.		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	Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]	NCLAT	24.04.2019

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		can be held to be in violation of section 30(2)(a) of the Code.			Judgement
438.		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
439.		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
440.		The RP ought 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, Ahmedaba d	19.04.2018
441.		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
442.		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
443.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
444.		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
445.		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
446.		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
447.		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 before the 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
448.		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
449.		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	Next Orbit Ventures Fund Vs. Print House (India) Pvt Ltd & Ors. [CA (AT) (Ins.) No. 417 of 2020]	NCLAT	13.04.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		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.			
450.		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
451.		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
452.		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
453.		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
454.		The resolution plan even prior to the approval of the AA is binding <i>inter se</i> the CoC and the SRA. The resolution plan	Ebix Singapore Pvt. Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.	SC	13.09.2021

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		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	[Civil Appeal No. 3224 of 2020 with other appeals]		
455.		not a typical contract. After adoption of swiss challenge method to find out the best plan, a resolution applicant cannot be allowed to submit a revised plan.	Jindal Stainless Ltd. Vs. Mr. Shailendra Ajmera [CA (AT) (Ins.) No. 1058 of 2022]	NCLAT	18.01.2023
456.		Even after completion of challenge mechanism under regulation 39(1A) (b), the CoC retain its jurisdiction to negotiate with one or other resolution applicants, or to annul the resolution process and embark on to re-issue RFRP. Regulation 39(1A) cannot be read as a fetter on the powers of the CoC to discuss and deliberate and take further steps of negotiations with the RAs, which resolutions are received after completion of challenge mechanism.	Vistra ITCL (India) Ltd. Vs. Torrent Investments Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 132, 133 & 134 of 2023]	NCLAT	02.03.2023
457.		Once a resolution plan is approved and submitted to AA subsequently, CoC cannot turn around and pray to the AA to send the plan back for consideration. The CoC being satisfied that financial offer given by the RA is satisfactory, exercises its commercial wisdom, then even CoC cannot be allowed to change its view, since it is bound by its own decision taken in approving the resolution plan.	Express Resorts and Hotels Ltd. Vs. Amit Jain, RP, Neesa Leisure Ltd. [CA (AT) (Ins.) No. 1158 of 2022]	NCLAT	09.02.2023
458.		The right to exclusive use of the trademarks belonging to the CD is always available to the SRA, but not the ownership rights. Declaration of the ownership rights of the CD over trademarks, subsequent to	SREI Multiple Asset Investment Trust Vision India Fund Vs. Deccan Chronicle Marketeers and Others [Civil Appeal No.	SC	17.03.2023

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		approval of resolution plan, amounts to a	1706 of 2023 with other		Judgement
		modification/alteration of the approved resolution plan approved by CoC, which is impermissible in law.	appeals]		
459.		Where the MSME certificate was obtained after commencement of the CIRP, such an application cannot be considered to tide over ineligibility to submit resolution plan.	Hari Babu Thota, Resolution Professional of Shree Aashraya Infra-Con Ltd. [CA (AT) (CH) (Ins.) No. 110 of 2023]	NCLAT	25.05.2023
460.		The change of nature of business can be permitted, as CoC in its commercial wisdom has accepted the plan, after examining various factors namely i.e. CD not carrying on business activity for a long time, licence got lapsed and not renewed, etc.	Jaydip Ghosh & Ors. Vs. Niraj Agarwal & Ors. [CA (AT) (Ins.) No. 839 & 861/2022]	NCLAT	24.07.2023
461.		The promoter of CD//MSME will also have to compete with other resolution applicants to gain control of CD.	R. Raghavendran Vs. C. Raja John & Ors. [Civil Appeal No.2552/2022]	SC	13.09.2023
463	31	Approval of Resolution Plan	Chair Doubt India But 14d 1/a	NCIT	24 00 2020
462.		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
463.		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 all possibilities of insolvency	Kundan Care Products Ltd. Vs. Amit Gupta and Ors. [CA (AT) (Ins.) No. 653 of 2020]	NCLAT	30.09.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		resolution and protection of a CD, more so, when it is a going concern.			
464.		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
465.		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
466.		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
467.		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 scrutiny of resolution plan 'as approved' by the requisite percent of voting share of FCs.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]	SC	05.02.2019
468.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
469.		A resolution by CoC with less than 75% voting share in CoC is <i>non est</i> 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
470.		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
471.		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
472.		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.	Facor Alloys Ltd. and Anr. Vs. Bhuvan Madan & Ors. [CA (AT) (Ins.) No. 340 of 2020]	NCLAT	25.11.2020

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		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.			
473.		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
474.		Though it is in the realm of the CoC to approve or reject a plan and of the liquidator to 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.	Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors. [IB-31(PB)/2018]	NCLT, New Delhi	15.12.2020
475.		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
476.		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	Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr. [Civil Appeal Nos. 2943- 2944 of 2020]	SC	10.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting 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.			Judgement
477.		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. 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	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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		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 resubmission after satisfying the parameters delineated by Code and exposited by the SC.			Judgement
		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 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.			
478.		A SRA cannot be permitted to withdraw the approved resolution plan, coupled with the fact in the instant case being the sole RA in	Seroco Lighting Industries Pvt. Ltd. Vs. Ravi Kapoor, RP for	NCLAT	10.12.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.	Arya Filaments Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1054 of 2020]		
479.		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 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.	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
480.		The sanction of a resolution plan and finality imparted to it by section 31 does not <i>per se</i> 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
481.		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
482.		Sufficiency or insufficiency of the amount in a resolution plan is a matter of commercial	Deputy Commissioner, CGST Kalol, Gujrat Vs. Gopala	NCLAT	16.07.2021

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		decision of the CoC and it would not be appropriate on the part of NCLAT to interfere with the same.	Polyplast Ltd. [CA (AT) (Ins.) No. 477 of 2021]		- Augement
483.		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 decision then everything cannot be exempted at a later stage.	BRS Ventures Investment Ltd. Vs. Registrar of Companies, Guwahati [CA (AT) (Ins.) No. 1028 & 1042 of 2020]	NCLAT	09.08.2021
484.		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
485.		'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
486.		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
487.		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
488.		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	Murli Industries Ltd. Vs. Assistant Commissioner of Income Tax & Ors. [Writ petition no. 2948 and 2965 of 2021]	HC, Bombay	23.12.2021

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SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		diligently raise their claims. Having failed to do so, the claim stands extinguished.			
489.		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
490.		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
491.		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
492.		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
493.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
494.		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
495.		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
496.		A resolution plan approved by CoC, which is comprised of related parties of the CD, is void ab initio as it violates section 21(2) read with section 30(2)(e) of the Code.	Punjabi Accessoriez Private Limited Vs. Kredo Beauty Pvt. Ltd. [IA. No. 611/ND/2021 in CP No. (IB)- 1164 (ND)/2019]	NCLT	17.03.2023
497.		An unsuccessful RA has no <i>locus standi</i> to assail a resolution plan or its implementation, since it is not a 'stakeholder' under section 31(1).	M.K. Rajagopalan Vs. S. Rajendran and Anr. [IA No. 215 of 2023 in CA (AT) (CH) (Ins.) No. 58 of 2023]	NCLAT	17.03.2023
498.		The OC (electricity department) cannot demand payment of arrears payable by the CD, from the SRA for restoration/grant of electricity connection. In case SRA is asked to pay the arrears payable by the CD for the grant of an electricity connection in its name 'clean slate principle' would stand negated.	Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. Vs. Jagannath Sponge Private Limited [Civil Appeal No. 5556/2023]	SC	11.09.2023

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
499.		The pre-condition mentioned under section 31(4) of the Code is mandatory. However, the time to obtain the approval from CCI is directory, which can be obtained after the approval of COC but before AA's approval on the resolution plan.	Soneko Marketing Pvt. Ltd. & Ors. Vs. Girish Sriram Juneja & Ors. [CA (AT) (Ins.) No. 807, 607, 724 & 735 of 2023 & I.A. No. 2721 of 2023]	NCLAT	18.09.2023
	32A	Liability for prior offences, etc.			
500.		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
501.		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
502.		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
503.		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 investigation 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
504.		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 Vs. Union of India & Anr. [Writ Petition (C) No. 26 of 2020 with other writ petitions]	SC	19.01.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
505.		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]	нс	16.11.2021
506.		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
507.		Section 32A creates a specific bar with respect to proceedings that may be initiated under the PMLA. Moreover, Section 32A cannot possibly be read as being applicable prior to a Resolution Plan being approved or a liquidation measure being enforced. The objective and intention of the Code is providing a free hand to the creditors if the properties of the Corporate Debtor are attached then it will jeopardize the Liquidation Process.	M/s Packwell (India) Ltd. Vs. M/s Emgee Cables and Communication Ltd. [IA No. 15/JPR/2022 in CP No. (IB)-601/ND/2018]	NCLT, Jaipur	05.12.2022
508.		After approval of resolution plan by AA, in the light of section 32A, the criminal proceedings under section 138 of the NI Act will stand terminated only in relation to the CD.	Ajay Kumar Radheshyam Goenka. Vs. Tourism Finance Corporation of India Ltd. [Criminal Appeal No. 172 of 2023]	SC	15.03.2023
	33	Initiation of Liquidation			
509.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
510.		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
511.		The decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the <i>Explanation</i> 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 the SC in case of <i>K. Sashidhar vs. Indian Overseas Bank</i> .	Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 194 of 2020]	NCLAT	10.08.2020
512.		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
513.		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
514.		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
515.		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
516.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
517.		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 with provisions for initiation of actions against wrong doers/illegal transactions, etc.	Ratna Singh and Anr. Vs. Theme Export Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 917 of 2020]	NCLAT	18.11.2020
518.		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, Ahmedaba d	26.11.2020
519.		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
520.		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
521.		CoC must first explore the possibility of resolution of the CD instead of deciding its liquidation summarily.	Dharm Vir Gupta Vs. SARE Realty Projects Pvt. Ltd.	NCLT	16.03.2023

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
			[Company Petition No. (IB)-		
			684(ND)/2020]		
	34	Appointment of Liquidator and fee to be pa			
522.		AA was well within its jurisdiction to engage	Sandeep Kumar Gupta Vs.	NCLAT	28.02.2018
		another person as RP or Liquidator as the	Stewarts & Lloyds of India Ltd.		
		performance of the previous RP was unsatisfactory.	& Anr. [CA (AT) (Ins.) No. 263 of 2017 and another appeal]		
523.		Interest of FCs as well as other creditors will	Vijay Kumar Singh Vs. Anil	NCLAT	09.11.2020
323.		remain even during liquidation	Kumar & Ors. [CA (AT) (Ins.) No.	NCLAT	09.11.2020
		proceedings.	391 of 2020]		
		processings.	5525.2525		
		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.			
	35	Powers and Duties of Liquidator			
524.		The liquidator is duty bound to exercise his	Nicco Corporation Ltd. in	NCLT,	24.11.2017
		powers under the Code and does not	Liquidation [C.A. (IB) No.	Kolkata	
		require the prior permission of AA for every	487/KB/2017 connected to C.P.		
		action to be performed under the Code.	No. 03/2017]		
525.		Liquidator has a duty under section 35(1)(k)	Reliance India Power Fund Vs.	NCLAT	24.02.2020
		of the Code but the FC has no right to force	Raj Kumar Ralhan [CA (AT)		
		the liquidator to take part in the arbitration	(Ins.) No. 318 of 2020		
		proceedings. The duty of the liquidator			
		would include a conscious decision not to take part in the proceedings.			
526.		Liquidator is only an additional person and	Rasiklal S. Mardia Vs. Amar Dye	NCLAT	08.04.2019
J20.		not exclusive person who can move an	Chem Ltd. & Ors. [CA (AT) No.	HCLAI	00.07.2013
		application under section 391 of the	337 of 2018]		
		Companies Act, 1956, when the company is			
		in liquidation.			
527.		The liquidator is duty bound to make every	B.R. Traders Vs.	NCLAT	13.11.2019
		endeavour to protect and preserve the	Venkataramanarao Nagarajan		
		value of the property of the CD and manage	& Ors. [CA (AT) (Ins.) No. 189 of		
		the operations as a going concern.	2019 and other appeals]		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
528.		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
529.		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
530.		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
531.	36	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. Liquidation estate	Aditya Kumar Tibrewal Vs. Om Prakash Pandey & Ors. [CA (AT) (Ins.) No. 583 of 2021]	NCLAT	06.04.2022
532.	30	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

:	SI. No.	Section	Dictum	Citation	Forum	Date of Order/
						Judgement
	533.		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
	534.		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. 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.	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
	535.		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
	536.		Section 36(4) of the Code has given outright protection to workmen's dues under provident fund, gratuity fund and pension	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
		fund which are not to be treated as liquidation estate assets and the liquidator shall have no claim over such funds which are specifically kept out of liquidation estate assets and as per section 36(4) of the Code, they are not used for recovery in the liquidation.			
537.		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
538.		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
539.		Section 18 of the Code clarifies that provident fund, gratuity and pension fund are assets on which employees have rights and cannot be considered as assets of CD. It must be paid in full.	Jet Aircraft Maintenance Engineers Welfare Association Vs. Ashish chhawchharia [CA (AT) (Ins) 752 of 2021]	NCLAT	21.10.2022

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
540.		If the authorities were given a free hand to pass orders of attachment of properties which were acquired by a successful bidder in a liquidation process, on a presumption that such acquisition was as a result of a criminal activity, it could be contrary to the interest of value maximization of the CDs assets by substantially reducing the chances of finding a willing resolution applicant or a bidder in liquidation.	Welspun Steel Resources Private Limited Vs. Union of India [R/Special Civil Application No. 19387 of 2022]	HC, Gujarat	17.02.2023
541.		The amount lying to the gratuity on employees/workmen cannot be made available to the creditors and is not liable to attachment under any decree or order of any court as per section 10 of the EPF & MP Act, 1952. The amount lying as gratuity and EPF are not part of liquidation estate.	C.G. Vijyalakshmi Vs. Shri Kumar Rajan, Resolution Professional and Ors. [Comp. App. (AT) (CH) (Ins.) No. 29/2021 & other IAs]	NCLAT	08.02.2023
	37	Powers of Liquidator to access information			
542.		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 MA 1082/2019, MA 2314/2019 CP (IB)-1882 (MB)/ 2018]	NCLT, Mumbai	17.07.2019
	42	Appeal against the decision of Liquidator			
543.		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 trans	actions	

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
544.		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 <i>vis-à-vis</i> 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
545.		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
546.		To invoke section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from 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.	S. V. Ramkumar Vs. Orchid Health Care Pvt. Ltd. & Ors. [MA/86/2018 in CP/540/IB/CB/2017]	NCLT, Chennai	04.07.2019
547.		(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.	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/
		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 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 subset 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)			Order/ Judgement
		beneficiary involved in the transaction			

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Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		stands in the capacity of			Judgement
		creditor/surety/guarantor;			
		(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.			
		gravimente unarysis or 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 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.			
		Tradadicite separately and distinctively.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
548.		Unlike other types of transactions provided under the Code, there is no specified look back period for fraudulent trading under section 66. RP is allowed to retrieve without any limitation of time and correct all the wrongdoings for any relevant point of time.	Thomas George Vs. K. Easwara Pillai & Ors. [CA (AT) (CH) (Ins.) No. 293 of 2021]	NCLAT, Chennai	05.12.2022
549.		(a)Avoidance applications and CIRP are distinct and independent proceedings, and the RP does not become functus officio on the conclusion of the CIRP, (b) The avoidance applications can go beyond the conclusion of CIRP; and (c) The proceeds of avoidance applications are not for the RA but for the benefit of creditors. The Division Bench has set aside Single Judge order dated 26.11.2020.	Tata Steel BSL Ltd. Vs. Venus Recruiter Private Ltd. & Ors. [LPA 37/2021 and C.M. Nos. 2664/2021, 2665/2021 & 2666/2021]	HC, New Delhi	31.01.2023
550.		Allegations of preferential transaction as also fraudulent trading/wrongful trading carried on by the CD during the insolvency resolution can be inquired into by the AA.	Mohan Lal Jain, in the capacity of Liquidator of Kaliber Associates Pvt. Ltd. Vs. Lalit Modi & Ors. [CA (AT) (Ins.) No. 944 of 2020]	NCLAT	16.12.2020
551.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
552.		Intent and motive behind the transaction is not required to be looked into by the AA to term a transaction as preferential transaction. It was observed that taking financial assistance from related and non-related parties cannot be held to be in the ordinary course of business of the CD. Further, repayment by CD in a mortgage transaction in favour of related party falls within the scope of preferential transaction. Thus, CD arranging sums from relatives and other parties cannot be held to be part of an ordinary course of business or part of financial affairs.	GVR Consulting Services Pvt. Ltd. & Anrs. Vs. Pooja Bahry & Ors. [CA (AT) (Ins.) No. 405 with 369 and 412 of 2022]	NCLAT	24.04.2023
553.		Security interest created on mortgaged property in favour of related party is clearly disadvantageous to creditors of CD which is in violation of section 43(2) of the Code.	Arun Chadha Liquidator of Pawan Buildwell Pvt. Ltd. Vs. Ramesh Kumar Suneja [CA (AT)(Ins)No.747 & 748 of 2021]	NCLAT	09.05.2023
	45, 46	Avoidance of undervalued transactions, Rel	evant period for avoidable transac	tions	
554.		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
555.		The outcome of the avoidance transaction cannot 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

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SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
556.		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			
557.		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). 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	JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 593 of 2019] State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]	NCLAT	18.11.2019
		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.			
559.		Even during liquidation process, the liquidator is to ensure that CD remains a going concern. If no 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	B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 with other CAs]	NCLAT	13.11.2019

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		52 (1) 0 1 1 1 1 1			Judgement
		section 52 of the Code, the liquidator may			
		be asked to return the third party assets.			
560.		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
561.		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 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.	Anuj Bajpai Vs. State Bank of India [MA 1123/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017]	NCLT, Mumbai	08.04.2019
562.		Only the first charge holder/secured	Finquest Financial Solutions	NCLT,	10.05.2019
		creditor with the first pari-passu charge can	Pvt. Ltd. Vs. Ravi Shankar	Mumbai	
		stay outside the liquidation process and realise his security interest in the manner	Devarakonda [M.A 1392/2019 in CP No.		
		provided under section 52(1)(b).	382/IB/MB/MAH/2018]		
563.		Income-tax Department does not enjoy the	Leo Edibles & Fats Ltd. Vs. The	HC,	26.07.2018
		status of a secured	Tax Recovery Officer (Central)	Hyderabad	
		creditor, on par with a secured creditor	& Ors. [Writ Petition No. 8560		
		covered by a mortgage or other security	of 2018]		

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
564.		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 maintained by an IU or by such other means as may be specified by IBBI.	Volkswagen Finance Pvt. Ltd. Vs. Shree Balaji Printopack Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 02 of 2020]	NCLAT	19.10.2020
	53	Distribution of assets			
565.		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
566.		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

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/
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567.		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 <i>prorata</i> distribution as proposed by the Central Government was accepted.	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
568.		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
569.		Section 53, including <i>Explanation</i> 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
570.		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 provident fund with EPFO and release gratuity forthwith.	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
571.		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
572.		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 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.	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
573.		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	Technology Development Board Vs. Anil Goel & Ors. [CA (AT) (Ins.) No. 731 of 2020]	NCLAT	05.04.2021

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		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.			Judgement
574.		Since the CD in liquidation is not a going concern and assets which are to be distributed are in the 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.	Sri Supriyo Kumar Chaudhuri, Liquidator of JVL Agro Industries Ltd. Vs. State Bank of India, Sarg & Ors. [IA No. 19/2021, IVN. P. 02/ALD/2020 In CP No. (IB) 223/ALD/2019]	NCLT, Allahabad	26.07.2021
575.		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
576.		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

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
577.		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
578.		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 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.	State Tax Officer Vs. Rainbow Papers Ltd. [Civil Appeal No. 1661 of 2020 with Civil Appeal No. 2568 of 2020]	SC	06.09.2022
579.		The workmen's salary for the period of twenty-four months preceding the liquidation commencement date shall rank equally to dues of the secured creditor. The interests of workmen are protected whether secured creditor has relinquished his security interest or not. Section 327(7) of the Companies Act, 2013, sections 326 and 327 of the CA, 2013 shall not be applicable in the liquidation of a company under the Code.	Moser Baer Karmachari Union through President Mahesh Chand Sharma Vs. Union of India [WP (C) No.421 of 2019 and Ors. WPs]	SC	02.05.2023
580.		The dues payable to statutory corporations which do not fall within the description "amounts due to the central or state government" such as amounts payable to corporations created by statutes but whose dues do not constitute government dues payable or those payable into the respective Consolidated Funds stand on a different footing. Such corporations may be unsecured or secured creditors (FCs or OCs) depending on the nature of the transactions entered into by them with the corporate debtor. On the other hand, dues	Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd. & Ors [Civil Appeal No. 7976 of 2019]	SC	17.07.2023

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		payable or requiring to be credited to the treasury, such as tax, tariffs, etc. which broadly fall within the ambit of Article 265 of the Constitution are 'government dues' and therefore covered by section 53(1)(f) [section 53(1)(e)] of the Code. PVVNL undoubtedly has government participation. However, that does not render it a Government or a part of the State Government. Its functions can be replicated by other entities, both private and public. The supply of electricity, the generation, transmission, and distribution of electricity has been liberalized in terms of the Electricity Act, 2003 barring certain segments. Private entities are entitled to hold licenses and private participation as distribution licensees is fairly widespread and accordingly, dues or amounts payable			Judgement
	54.	to PVVNL do not fall within section 53(1)(f). Dissolution of corporate debtor			
	54.	Dissolution of corporate debtor			
581.		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 insolve	ncy resolution process		
582.		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 p	rocess		

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583.		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
	59	Voluntary liquidation of corporate persons			
584.		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 persor	ns		
585.		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	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

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		unequivocally prove the point that is sought to be decided.			
586.		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
587.		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
588.		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
589.		Though the AA and the NCLAT have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to 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 quasijudicial authorities, which can be corrected only by way of judicial review of administrative action.	Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors. [Civil Appeal No. 9170, 9172 of 2019]	SC	03.12.2019

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590.		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	Judgement 24.07.2019
591.		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 quash the disciplinary proceedings initiated by IBBI.	IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]	NCLAT	11.07.2019
592.		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

S	Sl. No.	Section	Dictum	Citation	Forum	Date of
						Order/ Judgement
	593.		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
	594.		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 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.	State Bank of India Vs. V. Ramakrishnan & Anr. [CA No. 3595 of 2018]	SC	14.08.2018
	595.		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
	596.		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	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

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		30(2) of the Code, while adjudicating a resolution plan.			
597.		Without initiating any CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC <i>qua</i> corporate guarantor.	Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. [CA (AT) (Ins.) No. 92, 93 & 148 of 2017]	NCLAT	08.01.2019
598.		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
599.		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
600.		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
601.		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 appealable order under section 32 of the Code.	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

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602.		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
603.		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 claims, 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
604.		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
605.		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
606.		The question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar, 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.	Skillstech Services Pvt. Ltd. Vs. Registrar, National Company Law Tribunal, New Delhi & Anr. [W.P.(C) 474/2021 & CM Appl. 1227/2021]	HC, New Delhi	13.01.2021

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607.		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
608.		NCLT being creature of the Code, cannot assume itself the power of declaring provisions of the Code or the regulations framed thereunder as illegal or ultra vires.	IBBI Vs. State Bank of India & Ors. [W.P. (c) 10189/2018 & CM Appl. 39715/2018]	НС	28.11.2022
609.		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
610.		 i. under section 60(5)(c) , AA has jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD; however, in doing so, the AA and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals. ii. AA 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 	Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019]	SC	08.03.2021

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		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 <i>ipso facto</i> clause, if such termination will not have the effect of making certain the death of the CD. vii. AA to be cautious in setting aside valid contractual terminations which would merely dilute the value of the CD, and not push it to its corporate death.			
611.		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.	Alok Kaushik Vs. Bhuvaneshwari Ramanathan and Ors. [Civil Appeal No. 4065 of 2020]	SC	15.03.2021
612.		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
613.		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

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614.		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
615.		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
616.		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
617.		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
618.		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 proceeding as contemplated therein at the hands of the CD.	New Delhi Municipal Council Vs. Minosha India Ltd. [Civil Appeal No. 3470 of 2022]	SC	27.04.2022
619.		The 'personal guarantors' as used under section 60(1) are personal guarantors	Sudip Bijoy Dutta Vs. State Bank of India [CA (AT) (Ins.) No. 807 of 2021]	NCLAT	29.07.2022

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		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.			
620.		An element of public interest is involved in the Benami Transactions (Prohibition) Act, 1988 (Benami Act) and issues/disputes pertaining to an attachment effected under the said Benami Act, cannot be adjudicated by AA under the Code. The Benami Act and the Code, operate in their own fields.	P. Eswaramoorthy of Senthil Papers and Boards Pvt. Ltd. Vs. The Deputy Commissioner of Income Tax (Benami Prohibition) and Ors. [CA (AT) (CH) (Ins.) No. 188 of 2022]	NCLAT	13.03.2023
621.		The residuary jurisdiction of AA under section 60(5)(c) is limited and cannot be invoked to interpret terms of a third-party contract.	Sundaresh Bhat Vs. Mangalore Refinery and Petrochemicals Ltd. [CP(IB) No. 232 of 2018]	NCLT, Ahmedaba d	09.03.2023
622.		The object of section 60(2) is to group together, (a) CIRP or liquidation proceedings of a CD, and (b) insolvency resolution/ liquidation/ bankruptcy proceedings of the corporate guarantor or personal guarantor of the same CD before a single forum. This is to ensure that the CIRP of the CD and the insolvency resolution of the individual guarantors of the very same CD do not proceed on different tracks, before different forum, leading to conflict of interest, situations, or decisions.	Alliance Broadband Services Pvt. Ltd. Vs. Manthan Broadband Services Pvt. Ltd. [IA No. GA/3/2022 in CS/54/2019].	HC, Calcutta	03.01.2023
623.		The words 'a' and 'such' used in section 60(2) clearly indicate that the said provision would be applicable only when a CIRP or liquidation proceeding of a CD was pending	Mrs. Monica Jajoo Vs. PHL Fininvest Private Limited &	NCLAT	21.07.2023

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
		before same bench of AA. The objective	Ors. [CA (AT) (Ins.) No. 1344 &		Judgement
		was that when a CIRP or liquidation	1345 of 2022]		
		proceeding of a CD was pending before 'a'	•		
		bench of NCLT, the application relating to			
		insolvency process of a CD/ PG should be			
C24		filed before the same bench of NCLT.	Union Bonk of India Va	66	24 07 2022
624.		The power of review is not conferred on the Tribunal; whereas the power to recall its	Union Bank of India Vs. Financial Creditors of Amtek	SC	31.07.2023
		judgment is inherent in it on sufficient	Auto Ltd. & Ors. [Civil Appeal		
		grounds.	No. 4620/2023]		
			1020, 2020,		
625.		The AA has the jurisdiction to recall its	Rakesh Kumar Gupta & Ors.	NCLAT	28.08.2023
		own order which has been obtained by	Vs. Straight Edge Contracts Pvt.		
		playing fraud upon it.	Ltd. through its RP & Ors. [CA		
			(AT) (Ins.) No. 651, 370, 444,		
			602, 651 & 1397 of 2022]		
	61	Appeals and Appellate Authority			
626.		As per sub-section (3) of section 61 of the	Custodial Services (India) Pvt.	NCLAT	16.11.2017
		Code, an appeal is required to be filed	Ltd. Vs. Metafilms (India) Ltd.		
		within 30 days and the NCLAT has been	[CA (AT) (Ins.) No. 183 of 2017]		
		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 jurisdiction to condone the			
		delay beyond 45 days.			
627.		An unsuccessful resolution applicant has no	Hindustan Oil Exploration	NCLAT	17.11.2020
		locus to question any action of any of the stakeholders <i>qua</i> implementation of the	Company Vs. Erstwhile Committee of Creditors JEKPL		
		approved resolution plan nor can it claim	Pvt. Ltd. & Ors. [CA (AT) (Ins.)		
		any prejudice on the pretext that any of the	No. 969 of 2020]		
		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.			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/
628.		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	Judgement 18.03.2021
629.		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
630.		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
631.		Considering section 61(2) which provide that delay beyond 15 days in preferring the appeal is uncondonable, the same cannot be condoned even in exercise of powers under Article 142 of the Constitution.	National Spot Exchange Ltd. Vs. Mr. Anil Kohli, RP for Dunar Foods Ltd. [Civil Appeal No. 6187 of 2019]	SC	14.09.2021
632.		A writ petition under Article 226 of the Constitution against an order of NCLT under the Code, is not maintainable.	Ideal Surgical Vs. National Company Law Tribunal and Ors. [WP(C) No 8257 of 2021]	НС	02.07.2021
633.		The Petitioner / Appellant being an unsuccessful RA has no <i>locus</i> to assail an approved resolution plan or its implementation, coupled with a candid fact that he is not a stakeholder, as per section 31(1) in relation to the CD.	M.K. Rajagopalan Vs. S. Rajendran, RP Vasan Health Care Pvt. Ltd. IA No. 215 of 2023 in [CA (AT) (CH) (Ins.) No. 58 of 2023]	NCLAT	17.03.2023
634.		There is no scope for condonation of delay beyond the period of 15 days much less 45 days, as there is no window available for NCLAT to exercise its jurisdiction for condonation of delay.	Diwakar Sharma Vs. Anand Sonbhadra RP of Subhkamna Buildtech Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 1446 of 2022 & I.A. No. 4551 of 2022]	NCLAT	28.03.2023

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
635.		For the purpose of computing limitation for filing of appeal under section 61(2) of the Code, the date on which the order was pronounced must be excluded. Rule 3 of the NCLAT Rules, 2016 is in line with section 12(1) of the Limitation Act, 1963 which stipulates that in computing the period of limitation the day from which such period is to be reckoned, shall be excluded.	Sanket Kumar Agarwal & Anr. Vs. APG Logistics Pvt. Ltd. [Civil Appeal No. 748 of 2023]	SC	01.05.2023
	62	Appeal to Supreme Court			
636.		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
637.	63	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 before the competent authorities set up pursuant to the appropriate statutory framework. Civil Court not to have jurisdiction	Upendra Choudhury Vs. Bulandshahar Development Authority & Ors. [Writ Petition (Civil) No. 150 of 2021]	SC	11.02.2021
620	05	Sections 63 and 231 of the Code create a	GE Power India Ltd. Vs. NHPC	HC, New	26.06.2020
638.		bar on the jurisdiction of the Civil Court in respect of any matter in which the AA and	Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]	Delhi	26.06.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		NCLAT has jurisdiction under the Code and the AA under the Code is competent to pass any order.			
639.		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			
640.		Section 64 makes it clear that the timelines are to be adhered to by the AA and NCLAT as they are of great importance, and reasons must be recorded by either the AA 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
641.		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 procee	dings		
642.		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
643.		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	Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017

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 upheld as being passed in violation of rules of natural justice.	SI. No.	Section	Dictum	Citation	Forum	Date of Order/
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.	644.		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 <i>prima facie</i> view and intent to punish the corporate applicant, therefore, the impugned order of AA cannot be upheld as being passed in violation of rules of natural justice. 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	Ors. [CA (AT) (Ins.) No. 1380 of	NCLAT	Judgement 09.11.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
645.		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
646.		The CIRP was initiated fraudulently and with malicious intent, for a purpose other than the resolution of the insolvency of the CD. Accordingly, the AA imposed the maximum penalty under section 65 of the Code.	Bank of India Vs. Iris Electro Optics Pvt. Ltd. & Ors. [C.P (IB) No. 181/7/HDB/2019]	NCLT, Hyderabad	14.02.2022
647.		The date of initiation of CIRP is the date on which the FC, OC or Corporate Applicant makes an application with the AA for the initiation of the process and the ICD is the date of the admission of the application. It is hereby held that in case where application is filed under section 65, it would be maintainable after the application is filed either under section 7, 9 or 10.	Ashmeet Singh Bhatia. Vs. Sundrm Consultants Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 557 of 2021]	NCLAT	13.03.2023
	66	Fraudulent trading or wrongful trading			
648.		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	Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 and Ors.]	NCLAT	01.08.2019

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		creditors of the CD or for any fraudulent purpose, it set aside the order of the AA.			
649.		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
650.		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
651.		Section 66 empowers the AA to give directions for making contribution to the assets of the CD. This also includes directors of the CD, and their personal liability towards contribution, provided such directors did not exercise due diligence or failed to take reasonable steps to minimize potential losses to the creditors when there was no possibility of avoiding the commencement of CIRP.	Shibu Job Cheeran and Ors. Vs Ashok Velamur Seshadri, [CA (AT) (CH) (Ins.) No. 350 of 2021 and IA No.727/2021]	NCLAT	01.03.2023
652.		Section 66(1) contemplates an application only by the RP; and the said provision restricts the power of NCLT subject to the satisfaction that any business of the CD has been carried on with intent to defraud creditors or the CD or for any fraudulent purpose and to pass an order, is only against such person who are responsible for the conduct of such fraudulent business of the CD and to make them personally liable to make such contributions to the assets of the CD.	Sudipa Nath Vs. Union of India and Ors. [WP (C) (PIL) 04 of 2023]	HC, Tripura	18.01.2023

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
653.		Merely, because the transactions have been made within the group, they will not fall within the meaning of fraudulent trading. The intent to defraud requires that there must be high standard of proof to prove a fraudulent trading. Dishonesty is an essential ingredient of fraudulent trading.	Renuka Devi Rangaswamy, IRP of M/s. Regen Infrastructure and Services Pvt. Ltd. Vs. Mr. Madhusudan Khemka [CA(AT) (CH) (Ins.) No. 356 of 2022]	NCLAT	05.06.2023
654.		The remedy against third party is not available under section 66 of Code; however, it is for the RP or the SRA to take civil remedies against third party for recovery of dues payable to CD and the civil remedies which are independent of the said provision.	Gluckrich Capital Pvt. Ltd Vs. The State of West Bengal & Ors. [Misc. Application No. 1302 of 2023 (IA No. 102537 of 2023)]	sc	19.05.2023
	70	Punishment for misconduct in course of CIR	P		
655.		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	y resolution process		
656.		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	Ravi Ajit Kulkarni Vs. State Bank of India [CA (AT) (Ins.) No. 316 and 317 of 2021]	NCLAT	12.08.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the application, evidence collected and report under section 99 of the Code.			
657.		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 CD undergoing CIRP, would tantamount to vesting of jurisdiction on two course i.e. one being NCLT, and another being the DRT.	Insta Capital Pvt. Ltd. Vs. Ketan Vinod Kumar Shah [CP (IB) 1365/MB-IV/2020]	NCLT, Mumbai	10.08.2021
658.		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
659.		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
660.		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]	нс	05.04.2022

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Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
	00	Interior respectations			Judgement
	96	Interim - moratorium			
661.		To stay wilful defaulter proceedings,	Adarsh Jhunjhunjwala Vs. State	НС	24.12.2021
		criminal proceeding or quasi criminal proceeding under any moratorium under	Bank of India & Anr. [WPO 1548 of 2021]		
		section 96 would defeat the object and	01 2021]		
		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.			
662.		Interim moratorium applies "in respect of any	Kirankumar Moolchand jain Vs.	НС	18.10.2022
002.		debt" and not for "recovery of debt". Arbitral	TransUnion CIBIL Ltd. &Ors. [Arb.		
		tribunal cannot be constituted while interim	O.P. (Com. Div) No. 86 of 2022]		
		moratorium is in existence.			
663.		Interim moratorium would apply in respect of	Axis Trustee Services Ltd. Vs. Brij	HC	04.11.2022
		the guarantor only and not in respect of any	Bhushan Singhal & Anr. [CS		
		co-guarantors.	(Comm) 8/2021 and other applications]		
664.		Interim moratorium shall be for such	Ashok Mahindru & Anr. Vs. vivek	NCLAT	29.11.2022
		proceedings which relate to a liability or obligation due i.e. due on date when interim	Parti [CA (AT) (Ins.) No. 1324 of 2022]		
		moratorium has been declared. Section 96	2022]		
		(1)(b) cannot be read to mean that any future			
		liability or obligation is contemplated to be			
	07	stayed.			
CCT	97	Appointment of resolution professional	Ciamana Financial Camaiana D.	NCIT	00.00.2024
665.		The scheme of insolvency resolution process in Chapter III of the Code does not	Siemens Financial Services Pvt. Ltd. Vs. Vinod Sehwag [(IA	NCLT	09.06.2021
		warrant and provide issuance of notice at	1774/ND/2021 in CP No. (IB)		
		the stage of appointing RP under section 97	116(ND)2021]		
		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.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
666.		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			
667.		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			
668.		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
669.		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
670.		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

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SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
671.		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
672.		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
673.		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, Ahmedaba d	19.07.2021
	227	Power of Central Government to notify fina			
674.		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 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.	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
			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			
	675.		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
Ī		233	Protection of action taken in good faith			
	676.		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, Ahmedaba d	19.07.2021
	677.		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
	678.		Section 233 of the Code grants immunity to the RP for actions taken in good faith	Tuf Metallurgical Pvt. Ltd. Vs. Albus India Ltd. [IA/1703/2023 in IB-1089/PB/2018]	NCLT, New Delhi	14.06.2023

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/
	236	Trial of ofference by Special Count			Judgement
670	236	Trial of offences by Special Court	Committee of Cuaditors of	NCLAT	16.00.2010
679.		Before referring any matter to IBBI or the Central Government, the AA is required to	Committee of Creditors of	NCLAT	16.08.2019
		· · · · · · · · · · · · · · · · · · ·	Amtek Auto Ltd. through		
		provide reasonable opportunity of hearing	Corporation Bank Vs. Dinkar T.		
		to the parties concerned/alleged offenders	Venkatasubramanian & Ors.		
		of provisions of Chapter VII of Part II and, if	[CA (AT) (Ins.) No. 219, 442 &		
		satisfied, may request the Central	443 of 2019]		
		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			
		·			
680.		section 447 of the Companies Act, 2013. There is complete bar of trial of offences in	Alabamiet Asset Basemetwestian	NCLT,	22.00.2017
680.		the absence of filing of a complaint by IBBI	Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan	New Delhi	22.09.2017
		as is evident from a perusal of sub-sections	Pvt. Ltd. [CP/CA. No.	New Dellii	
		(1) and (2) of section 236 the Code.	(IB)23(PB)/ 2017)]		
		Therefore, a complaint by a former director	(15)23(PB)/ 2017)]		
		with the police would not be maintainable			
		and competent as the complaint is not			
		lodged by IBBI.			
	238	Provisions of this Code to override other lay	ALC:		
681.	236	An acknowledgement of debt interrupts	Yogeshkumar Jashwantlal	NCLAT	14.09.2020
001.		the running of prescription and that it does	Thakkar Vs. Indian Overseas	INCLAT	14.09.2020
		not create a new right but only extends the	Bank and Anr. [CA (AT) (Ins.)		
		period of limitation.	No. 236 of 2020]		
682.		The accounting conventions cannot	Vijay Kumar V Iyer Vs. Bharti	NCLAT	13.07.2020
002.		supersede any express provisions laid down	Airtel Ltd. and Ors. [CA (AT)	IVELAT	13.07.2020
		in the Specific law on the subject.	(Ins.) No. 530 & 700 of 2019]		
683.		When it comes to any clash between the	Rajendra K. Bhutta Vs.	SC	19.02.2020
003.		Maharashtra Housing and Area	Maharashtra Housing and Area	30	15.02.2020
		Development Act, 1976 and the Code, on	Development Authority and		
		the plain terms of section 238, the Code	Anr. [Civil Appeal No. 12248 of		
		must prevail.	2018]		
		1 6			

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
684.		Section 238 of the Code prevails over	Ajay Kumar Bishnoi Vs. Tap	HC, Madras	09.01.2020
		section 421 of the Code of Criminal	Engineering [Crl OP(MD) No.		
60.		Procedure, 1973.	34996 and Ors. of 2019]		
685.		The Code will override the provisions of	Maharashtra State Electricity	NCLAT	03.02.2020
		Maharashtra State Electricity Regulatory	Transmission Co. Ltd. Vs. Sri		
		Commission Transmission Open Access Regulations, 2005 in terms of section 238 of	City Pvt. Ltd. & Ors. [CA (AT)		
		the Code.	(Ins.) No. 1401 of 2019]		
686.		Section 61(2) of the Code will prevail over	Radhika Mehra Vs. Vaayu	NCLAT	30.01.2020
555.		section 5 of the Limitation Act, 1963 by	Infrastructure LLP & Ors. [CA		50.01.2020
		virtue of section 238 of the Code.	(AT) (Ins.) No. 121 of 2020]		
687.		Proceedings under Securitization and	Bimalkumar Manubhai Savalia	NCLAT	05.03.2020
		Reconstruction of Financial Assets and	Vs. Bank of India and Anr. [CA		
		Enforcement of Securities Interest Act,	(AT) (Ins.) No. 1166 of 2019]		
		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.			
688.		The objective of PMLA, being distinct from	The Deputy Director,	HC, New	02.04.2019
		the purposes of the Recovery of Debts and	Enforcement Directorate Vs.	Delhi	
		Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and	Axis Bank & Ors. [CRL.A.143/2018 & Crl.M.A.		
		Enforcement of Securities Interest Act,	2262/2018]		
		2002 and the Code, the latter three	2202/2018]		
		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.			
689.		CIRP cannot be equated with winding up	Duncans Industries Ltd. Vs. A. J.	SC	04.10.2019
		proceedings and hence no prior consent of	Agrochem [Civil Appeal No.		
		the Central Government under the Tea Act,	5120 of 2019]		
		1953 would be required for initiation of the			
		proceedings under section 7 or 9 of the			
		Code as it overrides the said statute.			
690.		Even by a process of harmonious	Pioneer Urban Land and	SC	09.08.2019
		construction, Real Estate (Regulation and	Infrastructure Ltd. & Anr. Vs.		
		Development) Act, 2016and the Code must	Union of India & Ors. [WP (Civil)		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		be held to co-exist, and, in the event of a conflict, the Code shall prevail.	No. 43 of 2019 and other petitions]		
691.		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
692.		Given section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act, 1961.	Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483/2018]	sc	10.08.2018
693.		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
694.		The <i>non-obstante</i> 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
695.		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
696.		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
697.		Section 238 of the Code will apply in case there is an inconsistency between the Code	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 & 21825 of 2017]	SC	14.08.2018

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and the Arbitration and Conciliation Act, 1996.			
698.		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
699.		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
700.		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
701.		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 on the provisions of the section 194 IA of the Income-tax Act,—1961 by virtue of section 238 of the Code.	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

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Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
					Judgement
702.		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
703.		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
704.		There is no conflict in section 17B of the Employees Provident Fund and Miscellaneous Provisions Act,1952 and the Code, owing to 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.	Sikander Singh Jamuwal Vs. Vinay Talwar and Ors. [Company Appeal (AT) (Ins.) No.438 of 2019]	NCLAT	11.03.2022

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/
705.		No prior parmission from DDI is required for	Puissant Towers India Pvt. Ltd.	NCLAT	Judgement 12.06.2023
705.		No prior permission from RBI is required for ARCs to participate as a resolution	Vs. Neueon Towers Ltd., [CA	NCLAT	12.06.2023
		applicant under the Code, provided any of	(AT) (CH) (Ins.) No. 181 of 2022]		
		the activities undertaken by the ARC are	(***) (***) (***) (***)		
		not prohibited under SARFAESI Act. As per			
		section 238, Code will prevail over any of			
		the provisions of the SARFAESI Act, 2002, if			
		it is inconsistent with any of the provisions			
		of the Code.			
706.		Once a property is part of liquidation estate	Adinath Jewellery Exports Vs.	NCLAT	24.04.2023
		of CD, the provisions of Code are applicable regarding the assets which were in the	Mr. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd.		
		ownership of the CD and section 238 of the	[CA (AT) (Ins.) No. 748 of 2022]		
		Code shall have overriding effect on the	[64 (41) (113.) 116. 740 61 2022]		
		applicability of Maharashtra Rent Control			
		Act, 1999 which was inconsistent with the			
		Code.			
707.		Section 238 of the Code overrides the	Paschimanchal Vidyut Vitran	SC	17.07.2023
		provisions of the Electricity Act, 2003	Nigam Ltd. Vs. Raman Ispat Pvt.		
		despite the latter containing two specific	Ltd. & Ors [Civil Appeal No.		
		provisions which open with non-obstante	7976 of 2019]		
	238A	clauses (i.e. section 173 and 174).			
708.	230A	An acknowledgement of debt in the	Syndicate Bank Vs. Bothra	NCLT,	06.07.2020
700.		balance sheet of the company satisfies the	Metals and Alloys Ltd. [CP (IB)	Mumbai	00.07.2020
		requirements of section 18 of the	No. 2579/MB.IV/ 2019]		
		Limitation Act, 1963, leading to a fresh			
		period of limitation commencing from each			
		such acknowledgement.			
709.		The provisions of the Limitation Act, 1963	Jagdish Prasad Sarada Vs.	NCLAT	28.08.2020
		vide section 238A of the Code will be	Allahabad Bank [CA (AT) (Ins.)		
		applicable to all non-performing asset cases provided they meet the criteria of	No. 183 of 2020]		
		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			

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Limitation Act, 1963, if any case for condonation of delay is made out.			
710.		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
711.		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
712.		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 section 7 of the Code is barred by limitation, with the following observations: (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;	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/
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		(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;			
		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 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			
713.		under consideration. Since the CD had acknowledged the debt in	Bango Industries Vs. U T Ltd.	NCLT,	19.04.2018
, 20.		2015 in a letter sent to the OC, the	[CP (IB) No. 08/KB/2018]	Kolkata	
		application is well within the limitation	•		
		period of 3 years.			
714.		An application which is filed under section 7 of the Code will fall within Article 137	Gaurav Hargovindbhai Dave Vs.	SC	18.09.2019
		instead of Article 62 of the Limitation Act,	Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal		
		1963.	No. 4952 of 2019]		
715.		The period of lockdown ordered by the	Suo Moto [CA (AT) (Ins.) No. 01	NCLAT	30.03.2020
		Central/State Governments including the	of 2020]		
		period as may be extended either in whole			
		or part of the country, where the registered			

Date of

Dictum

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
716.		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
717.		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
718.		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
719.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
720.		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
721.		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
722.		The right to apply under the Code accrues only on the date the Code came into effect, that is, on or after 1stDecember, 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
723.		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
724.		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 in Article 137 of the Limitation Act, 1963.	Gouri Shankar Chatterjee Vs. State Bank of India [C.O. 1257 of 2020]	HC, Calcutta	15.10.2020
725.		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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
726.		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
727.		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
728.		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
729.		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. 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,	Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and Anr. [Civil Appeal No. 9198 of 2019]	SC	22.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
730.		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 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.	In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020]	SC	23.03.2020
731.		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	In Re: Cognizance for extension of limitation [Suo Motu Writ Petition (Civil) No. 3 of 2020]	SC	08.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		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 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.			Judgement
732.		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
733.		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 <i>V. Padmakumar Vs. Stressed Assets Stabilisation Fund</i> , 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
734.		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 declaration of the loan account of the CD as NPA, if there were an acknowledgement of	Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. [Civil Appeal No. 1650 of 2020]	SC	04.08.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
735.		An offer of one-time settlement can be relied on for the purpose of considering acknowledgement under section 18 of the Limitation Act.	Ishita Halder Vs. Siba Kumar Mohapatra & Anr. [CA (AT) (Ins.) No. 282 of 2021]	NCLAT	18.08.2021
736.		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
737.		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
738.		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
739.		Section 12 of the Limitation Act cannot be invoked as section 238 of the Code has an overriding effect. Further, the procedural formalities (including the time limit) given under the Code must be followed in true 'letter and spirit', as speed is essence of the Code.	Platinum Rent a Car (India) Pvt. Ltd. v M/s. Quest Offices Limited [CA(AT) (CH) (Ins) No.448/2022]	NCLAT	12.01.2023
740.		Section 5 of the Limitation Act, 1963 showing 'sufficient cause' is the only criterion for condoning delay and that 'sufficient cause' is the cause for which a party could not be blamed.	Sabarmati Gas Ltd. Vs. Shah Alloys Ltd. [Civil Appeal No. 1669 of 2020]	SC	04.01.2023

SI. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
	240	Power to make regulations			Judgement
741.	240	Power to make regulations 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	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
742.1		provisions of the Code. 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
743.		SC upheld the regulation making powers of the Board and observed that the Board is conferred with powers to frame regulations for various purposes under the Code. The regulations may be subordinate in character but would still carry a statutory flavor and would be binding on the NCLT.	Abhishek Singh Vs. Huhtamaki PPL Ltd. and Anr. [Civil Appeal No(s) of 2023 (Arising out of SLP (Civil) No. 6452 of 2021)]	SC	28.03.2023
	252	Amendments of Act 1 of 2004 (The Sick Indu	1		
744.		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 01.11.2016 (date of commencement of the Code) and the	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
		company can seek its remedies under the provisions of section 252 of the Code.			
	255	Amendments of Act 18 of 2013 (The Compa	nies Act, 2013)		
745.		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			
746.	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
747.	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 after admission, inherent power could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms.	Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance and Investment Managers LLP [Civil Appeal no. 9279 of 2017]	SC	24.07.2017
748.	Regulatio n 33 of Liquidati on Process Regulatio ns	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	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

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.			
749.	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
750 .	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 each class to nominate their representatives for inclusion in the Stakeholders Consultation Committee.	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
751.	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
752.	Regulatio n 30A(1) of CIRP Regulatio ns	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
753.	Regulation 39D of CIRP Regulations	The fact that CoC has taken a decision regarding the liquidation costs, expenses, and the remuneration payable to the	Narinder Bhushan Aggarwal Vs. Little Bee International Pvt. Ltd.	NCLAT	18.11.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		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.	& Anr. [CA (AT) (Ins.) No. 980 of 2020]		
754.	Regulation 36A of CIRP Regulations	In terms of section 60(5), the categories of cases which can be adjudicated by the AA have been clearly enumerated, and the jurisdiction to deal with the validity of the regulations framed under the Code is not conferred upon the AA. The AA being a creature of the Code, cannot assume to itself the power of declaring any provisions of the Code or the regulations framed there under as illegal or <i>ultra vires</i> .	Insolvency and Bankruptcy Board of India Vs. State Bank of India & Ors. [W.P. (C) 10189/2018 & CM APPL. 39715/2018]	HC, New Delhi	28.11.2022
755.	Regulatio n 7(2)(ca) of IP Regulatio ns	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 <i>quid pro quo</i> .	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
756.	Regulatio n 7A of IP Regulatio ns and Regulatio n 12A of the IBBI (Model ByeLaws and Governin g Board of Insolvenc	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 <i>per se</i> not a ground to hold that the impugned regulations are unconstitutional The criteria mentioned under regulation 12A 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.	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
	Professio nal Agencies) Regulatio ns, 2016				
757.	47A (Liquidati on Process) Regulatio ns,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
758.	Regulatio n 31 of the CIRP Regulatio n, 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
759.	Regulatio n 39(1A) of CIRP Regulatio ns, 2016	CoC within its wisdom is empowered to negotiate with the resolution applicants including a challenge process after receipt of the plan and till the plan is put to vote.	Consortium of Prudent ARC Ltd. Vs. Ravi Shankar Devarakonda, RP of Meenakshi Energy Ltd & Ors.[CA (AT) (CH) (Ins.) No. 37 of 2023]	NCLAT	27.06.2023
760.	Clause 11A of Schedule 1 of the Liquidati on Process Regulatio ns, 2016	Para 1(11A) in Schedule 1 to the Liquidation Process Regulations (w.e.f. 30.09.2021) does not imply that an auction sale or the highest bid prior to 30.09.2021 could be cancelled by the liquidator without furnishing any reason.	Eva Agro Feeds Private Limited Vs. Punjab National Bank & Anr. [Civil Appeal No(S). 7906/2021]	SC	06.09.2023

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
761.	Clause 12 of Schedule 1 of the Liquidati on Process Regulatio ns, 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
		MISCELLAN	NEOUS		
		Fee of IRI	P/IPE		
762.		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 managem	ent's locus standi		
763.		The suspended management has no <i>locus standi</i> 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, Ahmedaba d	22.07.2020
		Exemption of lock	kdown period		
764.		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
765.		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	In the matter of Sudip Bhattacharya, RP of Reliance Naval and Engineering Ltd. [CA (AT) (Ins.) No. 858 of 2020]	NCLAT	08.10.2020

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					Order/		
					Judgement		
		excluded while computing the period of CIRP.					
	Right of defaulted promoters of MSMEs						
766.		Since CD is an MSME, even if the	Marutham Steel Rolling Mills	NCLT,	03.07.2020		
		promoters/directors have been declared as	Pvt. Ltd. [MA/1219/2019 in	Chennai			
		wilful defaulters, they can apply under the	IBA/264/2019]				
		provisions of section 230 of the Companies					
		Act, 2013 as they are exempted from					
		section 29A of the Code.					
		Bar of filing suits inapp					
767.		The bar in filing of suit in terms of section	Shree Dev Chemicals	NCLT,	16.07.2020		
		69(2) of the Indian Partnership Act, 1932	Corporation Vs. Gammon India	Mumbai			
		will not apply on applications filed under	Ltd. [CP(IB)No				
		the Code as they are not 'suits' but are only	3637/MB.IV/2018]				
		'proceedings'. Conflict of i	interest				
768.		The RP may not be currently in	Kanakabha Ray Vs. Narayan	NCLAT	18.08.2020		
700.		employment of the FC or drawing salary	Chandra Saha & Ors. [CA (AT)	INCLAT	18.08.2020		
		under it but the fact remains that on	(Ins.) No. 687 of 2020]				
		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.					
		Power of AA	to review				
769.		The power to review is not an inherent	Deepakk Kumar Vs. Phoenix	NCLAT	17.09.2020		
		power under rule 11 of the NCLT Rules,	ARC Pvt. Ltd. and Anr. [CA (AT)				
		2016, and hence, a review jurisdiction	(Ins.) No. 848 of 2019]				
		cannot be pressed into service as an					
		appellate jurisdiction.					
770		Power of AA to issue no		NCLAT	20.02.2022		
770.		AA while exercising jurisdiction under the code is empowered to issue non-bailable	Vikram Puri (Suspended Directors) & Anr. Vs Universal	NCLAT	28.02.2022		
		warrant against any person or party. in	Buildwell Private Limited &				
		addition to enforcement of non-bailable	Anr. [CA (AT) (Insolvency) No.				
		warrants, it shall be also open for the AA to	1018 of 2021]				
		recommend for initiation of prosecution	1010 01 2021]				
		against the suspended directors of the CD					
		and the daspointed directors of the ob					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement	
		in event of commission of an offence within meaning of Code.				
771.		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 f	ee of RP			
772.		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	
773.		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	
774.		AA noted that in many cases, the creditors sitting on the CoC and stakeholders' consultation committee do not loosen their 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.	Sarvesh Kashyap Vs Bank of India [IA No.05/ALD/2021 in CP(IB)No.344/ALD/2018]	NCLT, Allahabad	22.02.2022	
Power of HC in writ jurisdiction						

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
775.		There is no absolute bar on the HC to	Atin Arora Vs. Oriental Bank of	HC,	13.08.2020
		entertain an application under Article 227	Commerce [C.O. No. 3894 of	Calcutta	
		of the Constitution, when a challenge is	2019 with CAN 12340 of 2019]		
		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.			
		Notes on Clauses and cons	struction of provisions		
776.		There is no doubt whatsoever that Notes	Vijay Kumar Jain Vs. Standard	SC	31.01.2019
		on Clauses are an important aid to the	Chartered Bank & Ors. [Civil		
		construction of sections of the Code as they	Appeal No. 8430 of 2018 with		
		show what the drafting committee had in	WP (C) No.1266 of 2018]		
		mind when such provisions were drafted.			
	I	FC's obligation to mee	_	_	
777.		For effective continuation of CIRP, the FC	Reliance Commercial Finance	NCLT,	12.04.2019
		constituting the CoC has to contribute to	Ltd. Vs. Noble Resourcing	New Delhi	
		the expenses, fee and other cost of the	Business and Solution Pvt. Ltd.		
		process, otherwise the whole process	[(IB)-494(PB)/2017]		
		would come to a halt and cause			
		unnecessary delay.	a Lavry Food		
778.		Power of IBBI to frame regulations	CA. Venkata Siva Kumar Vs. IBBI	HC, Madras	28.07.2020
//0.		with regard to the fee payable by IPs and	& Ors. [W.P. No. 9132 of 2020	nc, iviauras	28.07.2020
		IPEs cannot be questioned if the power is	and W.M.P. No. 11134 of 2020		
		used for carrying out the purposes of the	and w.wi.r. No. 11134 of 2020]		
		Code.			
		Ex-employee of FC	hecoming IRP		
779.		Substitution of RP on the apprehension of	State Bank of India Vs.	SC	19.08.2020
775.		bias was challenged before the SC on the	Metenere Ltd. [Civil Appeal No.	50	23.00.2020
		premise that the proposed IRP was an <i>ex</i> -	2570 of 2020]		
		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			

Sl. No.	Section	Dictum	Citation	Forum	Date of
					Order/ Judgement
		AA to appoint a new RP, it further observed			ou.gement
		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.			
		Dispensation of ju-			
780.		The NCLAT closed its functioning as one of	Marathe Hospitality Vs.	SC	10.07.2020
		its employees was suffering from Covid-19.	Mahesh Surekha & Ors. [SLP (C)		
		On appeal, the SC observed that the doors	No(s). 8139 of 2020]		
		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.			
		Commo	n PD		
781.		The AA will admit applications under	Edelweiss Asset Reconstruction	NCLAT	20.09.2019
701.		section 7 filed against five CDs and appoint	Company Ltd. Vs. Sachet	NCLAI	20.03.2013
		a common RP and the project will be	Infrastructure Pvt. Ltd. [CA (AT)		
		completed in one go by initiating a	(Ins.) No. 377-385 of 2019]		
		consolidated resolution plan for total	() (
		development.			
		Consolidation of asse	ets and liabilities		
782.		The AA ordered that the assets and	State Bank of India & Anr. Vs.	NCLT,	08.08.2019
		liabilities of the Videocon group companies	Videocon Industries Ltd. & Ors.	Mumbai	
		should be substantively consolidated due	[MA 1306/2018 in CP Nos. 02-		
		to common control, common directors,	2018 and other applications]		
		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.			

Sl. No.	Section	Dictum	Citation	Forum	Date of	
					Order/	
783.		The concept of group insolvency is	Punjab National Bank Vs. KSK	NCLT,	Judgement 12.02.2021	
		unknown to the Code. If the AA directs	Mahanadi Power Company Ltd.	Hyderabad		
		CoCs and RPs of different CDs to resolve	& Ors. [IA No. 32/2020 in CP(IB)			
		insolvencies of different CDs together,	No. 492/07/HDB/2019]			
		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.				
		Penalty for failure to provide				
784.		The AA imposed cost of Rs. 10 lakh on the	Asset Reconstruction Company	NCLT,	28.03.2019	
		appellants because they failed to provide	(India) Ltd. Vs. Shivam Water	Mumbai		
		any information pertaining to assets,	Treaters Pvt. Ltd. [CP(IB)			
		finance and operations of the CD and did	1882(MB)/2018]			
		not extend their cooperation to RP for				
		taking control and custody despite				
		directions under section 19.	-f f+!			
785.		Penalty for initiating CIRP Starting of CIRP against a functional	Vinod Mittal Vs. Rays Power	NCLAT	18.11.2019	
763.		company is a serious matter and parties	Experts &Anr. [CA (AT) (Ins.)	NCLAT	10.11.2019	
		cannot be allowed to play hide and seek. It	No. 851 of 2019]			
		imposed a cost of Rs. 5 lakh on the OC and	10.031012013]			
		Rs. 2.5 lakh on the son of the director of the				
		OC.				
		Penalty for abuse	of power by RP			
786.		The action or rather inaction by the RP in	BMW India Financial Services	NCLT,	16.10.2019	
		not taking a decision on the claim is his	Pvt. Ltd. Vs. SK Wheels Pvt. Ltd.	Mumbai		
		abuse of the power under the Code, and	[MA No. 2319/2019 in CP (IB)			
		contrary to justice and public policy. The RP	4301/ 2018]			
		was directed to pay the amount claimed by				
		him along with a cost of one lakh rupees to				
		the applicant.				
		Penalty for non-implement				
787.		AA imposed a cost of Rs. 10 lakh because	Ingen Capital Group LLC Vs.	NCLAT	30.04.2019	
		the appellant did not implement the	Ramkumar S.V. Anr. [CA (AT)			
		resolution plan which was approved by the	(Ins.) No. 795 of 2018]			
		CoC and the AA.				
	Penalty for non-cooperation with RP					

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
788.		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

Insolvency and Bankruptcy Board of India

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