Insolvency and Bankruptcy Board of India

Subject: Status Note on evolving jurisprudence under the Insolvency and Bankruptcy Code, 2016 for the period from December, 2024 to February 2025

A brief of selected judicial and quasi-judicial orders passed during December 2024 to February 2025 having significant bearing on the evolving jurisprudence under the Insolvency and Bankruptcy Code, 2016 (IBC/Code), is as under:

Supreme Court

1. **Committee of Creditors Vs. Directorate of Enforcement & Ors. [SLP (Civil) Nos. 29327- 29328 of 2019]**

CoC had filed a civil appeal against Directorate of Enforcement (ED) challenging the provisional attachment orders issued by the latter, post approval of the resolution plan. The issue before the Hon'ble Supreme Court (SC) was on the jurisdiction of the ED to attach the properties of the CD in view of section 32A of the Code. In the peculiar facts of the case, considering the prayer of the ED to proceed with the investigation of the case registered against the promoters of Bhushan Power and Steel Limited- CD, and seeking restitution of the attached properties to the SRA under the provisions of PMLA, SC directed ED to handover the properties that were provisionally attached, forthwith to SRA in terms of section 8(8) of the Prevention of Money Laundering Act, 2002 (PMLA) read with rule 3A of the said Rules.

2. **China Development Bank Vs. Doha Bank Q.P.S.C. & Ors. [Civil Appeal No. 7298 of 2022 & Ors.]**

A Deed of Hypothecation (DoH) was executed between China Development Bank (lender/appellant) and RCom entities comprising of four entities including Reliance Infratel Limited-CD-Chargers, whereby a charge was created on pooled properties, for securing repayment of the credit facilities provided by the lenders. It was agreed between the parties that if any entity fails in repayment, then all would jointly and severally be liable to make the repayment after realisation of hypothecated assets. The lenders submitted their claims as FCs after CIRP initiation against the CD and their claims were admitted as FC. Doha Bank, another FC, challenged the lender's status as FC, before NCLT, as the latter is not involved in the direct lending. AA upheld the status of lender as FC. In the appeal filed by another FC, NCLAT reversed the order of NCLT. Aggrieved by the NCLAT order, the lender filed an appeal before SC. The issue before SC was whether the appellants can be classified as FCs within the meaning of section 5(7) of the Code and can they be classified as secured creditors and paid as per security interest. The SC observed that '*financial debt*' as defined in section 5(8) of the Code includes liabilities arising from guarantee and direct lending is not a pre-requisite of section 5(8), when the debt arises from a valid guarantee. The DoH comprises of elements of guarantee and its legal effect must not be seen from its nomenclature. Clause 5(iii) of the DoH obligates that CD, who is not the borrower of the appellants, but agreed to discharge the liability of the third parties i.e., RCom entities to the lender in the case of default of RCom entities. Thus, by the covenants of the DoH, a guarantee was provided by the CD to the appellants in terms of section 126 of the Indian Contract Act, 1872. The SC, while allowing the appeal, held

that there is no requirement under section 5(8) of the Code that a debt becomes financial debt only when default occurs and restored the order of AA.

3. **Independent Sugar Corporation Ltd. Vs. Girish Sriram Juneja & Ors. [Civil Appeal No. 6071 of 2023]**

Unsuccessful resolution applicant (SRA)/ appellant filed appeal challenging the resolution plan duly approved by AA in favour of AGI Greenpac. The key issue was whether obtaining prior approval of Competition Commission of India (CCI) was mandatory before seeking CoC's approval for the resolution plan involving combination. RP contended that NCLAT in its judgement had held that while CCI approval is mandatory, obtaining the same prior to CoC's approval is directory. This was based on the understanding that the resolution applicant may not control the CCI's timeline, potentially causing undue delays. However, SC noted that when the language used in the provision is clear, courts must give effect to the meaning inferred from a statute, irrespective of consequences. The use of the word 'prior' in the proviso to sub-section (4) of section 31, must be given some meaning as by virtue of the same, the statute requires that the CCI approval for resolution plans containing combination proposals must be obtained prior to CoC's approval. The court referred to the Report of the Insolvency Law Committee, which recommended specific timelines for seeking approval from Government authorities and the CCI. The interplay between the IBC and the Competition Act, 2002 requires a delicate balance, with the IBC focused on expeditious revival of distressed assets, and the Competition Act, 2002 ensuring fair competition.

4. **(a)Bank of Baroda Vs. Farooq Ali Khan and Ors [Civil Appeal No. 2759/2025]**

The Bank of Baroda (Bank) had lent various loans to the CD – Associate Décor Ltd since 2010. Farooq Ali Khan, promoter and director of CD had executed a deed of guarantee for securing these loans. As the CD defaulted in making repayments to the Bank, the CIRP against CD was initiated. Subsequently, the Bank invoked the deed of guarantee against the personal guarantor (PG). The PG has paid amounts towards full and final settlement. Thereafter, the FC filed application for initiating IRP against the PG. AA, *vide* order dated 16.02.2024, appointed a resolution professional and directed him to submit report in terms of section 99 of the IBC. Further, AA observed that objections raised by the guarantor shall be entertained after the receipt of RP's report. Aggrieved by the AA's order, the PG filed a WP before the Karnataka HC which held that the liability of the PG stood discharged in view of the settlement between the FC and the PG, and thus, the insolvency proceedings against PG stood disposed of before the AA. On appeal filed by the Bank, the issue before SC was whether the HC correctly exercised its writ jurisdiction to interdict the personal insolvency proceedings against the PG? SC while disposing of the appeal, held that the HC incorrectly exercised its writ jurisdiction on two grounds firstly, it precluded the statutory mechanism and procedure under the IBC from taking its course, and secondly, the HC arrived at a finding on the existence of the debt, which is a mixed question of law and fact which is in the domain of the AA under section 100 of the IBC. The Hon'ble SC explained that the existence of the debt will first be examined by the RP in his report and will then be judicially examined by the AA in terms of provisions of the IBC. SC while allowing the appeal, held that the HC had erroneously exercised its jurisdiction even prior to the submission of the RP's report, thereby precluding the AA from performing its adjudicatory function under the IBC.

(b) **Mohammed Enterprises (Tanzania) Ltd. Vs. Farooq Ali Khan & Ors. [Civil Appeal No. 48 of 2025]**

In another appeal in connection with the same CD, certain issues pertaining to inadequate service of notice of committee meetings, approval of resolution plan by the CoC in violation of natural justice principles were dealt with by the Karnataka HC. On an appeal filed by the successful resolution applicant before the SC, the issue was whether the HC was justified in exercising its supervisory and judicial review powers in the CIRP of the CD under Article 226 of the Constitution of India? SC while allowing the appeals held that "*High Court should have noted that Insolvency and Bankruptcy Code is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Adherence of protocols and procedures maintains legal discipline and preserves the balance between the need for order and the quest for justice. The supervisory and judicial review powers vested in High Courts represent critical constitutional safeguards, yet their exercise demands rigorous scrutiny and judicious application. This is certainly not a case for the High Court to interdict CIRP proceedings under the Insolvency and Bankruptcy Code*."

High Court

5. **Harsh Mehta Vs. Securities and Exchange Board of India & Ors. [W.P. No. 4844 of 2024]**

Harsh Mehta (petitioner) had acquired 6700 equity shares of the Reliance Capital Limited-CD after the approval of resolution plan by AA. The approved resolution plan provides NIL value to the equity shareholders and the shares of CD were delisted accordingly. The stock exchange issued circulars suspending trading of CD's shares. The petitioner being aggrieved with the delisting of shares of CD, filed a WP, challenging the regulation 3(2)(b)(i) of the SEBI (Delisting of Equity Shares) Regulations, 2021 (Delisting Regulations), as the said regulation was *ultra vires* to Securities Contracts (Regulation) Act, 1956 (SCRA) and Securities and Exchange Board of India Act, 1992 (SEBI). The issue before HC was whether the regulations are manifestly arbitrary and violative of Article 14 of the Constitution. The HC while dismissing the WP, observed that (i) the petitioner invested a minuscule percentage of shares after being aware that CD was in CIRP. (ii) The Delisting Regulations provides that it would not apply to shares of a listed company delisted pursuant to IBC approved resolution plan. The provisions of SEBI and SCRA, empower SEBI to regulate financial markets and protect the interest of investors, and SEBI acted within its regulatory scope and no breach of power had thus been committed. (iii) IBC aims to provide a comprehensive framework for expeditious resolution and asset maximisation, and SEBI's decision to not to govern the delisting, cannot be held to be *ultra vires* as the NCLT approved plan is consistent with the objective of SEBI Act.

6. **Vijendra Kumar Jain Vs. IBBI [W.P. No. 12320 of 2024]**

One of the OCs had filed an appeal before NCLAT against the approved resolution plan. The NCLAT in its order observed that the RP should have been more dutiful and alert in responding to the emails of OC concerning their claims backed by arbitral award. RP had failed to take cognizance of objectional comments of SRA on Arbitral award passed in favour of OC, while the resolution plan was in consideration before the CoC and AA. Subsequently, IBBI after investigation, issued show cause notice (SCN) to RP for dereliction of duty. Thereafter, his registration as RP was suspended for a period of one year by the order of Disciplinary Committee (DC). Thereafter, RP filed WP in Bombay HC, challenging the order of DC. The

HC observed that the SCN was issued on the sufficient grounds, and the DC had adhered to the principles of natural justice in passing the order. Further, it noted that there was sufficient material available with DC, based on which the SCN was disposed. It further noted that by not considering the claim of OC in CIRP and not taking cognizance of remarks made by SRA on the arbitral award, in the resolution plan, RP had failed in the performance of his duties. HC while dismissing the WP held that the suspension order passed by the DC based on material available is proportionate, and the DC has jurisdiction under the Code to take into consideration all related aspects including the conduct of RP.

7. **Mandava Holdings Private Limited Vs. PTC India Financial Services Limited & Ors. [W.P. No. 20620 of 2024]**

Corporate Applicant's application was admitted by AA and CIRP was commenced. Later, One Time Settlement (OTS) was proposed by the promoter of CD which was rejected by CoC. Thereafter, CoC approved the resolution plan with 83.35% of votes. A WP was filed by the promoter challenging such rejection of OTS. Some of the major issues for consideration before Telangana High Court were- (i) Can the RBI Regulations create new rights which are not contemplated under the IBC? (ii) Can a sole FC, entertain OTS once the CIRP of CD commences? and (iii) Can an application for withdrawal from CIRP be entertained after the approval of plan by CoC? HC held that any settlement must be done within the statutory framework of the IBC only. It observed that *"The Court is hence of the view that the mandate of the RBI Framework must give way to the CIRP of the Borrower Entity once the process has been initiated. It is further relevant that paragraph 14 of the RBI Circular provides that "the compromise settlements with the borrowers under the above framework shall be without prejudice to the provisions of any other statute in force" which indicates that the RBI Framework recognizes the precedence of the relevant statute (the IBC in this case) …".* With regards to issue of sole creditor entertaining the OTS, it was held that if any entity wants to withdraw from the CIRP, it must obtain the approval of the entire CoC in accordance with law. The option of negotiating with only one creditor is not contemplated under the law. Further, section 12A of the IBC makes it clear that once a resolution plan is approved by the CoC, it becomes binding and cannot be undone even by the NCLT and neither the CoC nor the SRA can deviate from the approved resolution plan.

National Company Law Appellate Tribunal

8. **D.D. International Private Limited & Anr. Vs. Rajesh Kumar Agarwal Liquidator, Divine Alloys and Power Company Limited & Ors. [CA(AT)(Ins) No. 1559 of 2023]**

The issue whether the AA can forfeit 50% of the EMD towards damages in the event of failure to pay the full sale consideration by the highest bidder in the e-auction sale conducted by the liquidator, was dealt by the NCLAT. In the facts of the case, the highest bidder having paid EMD and refundable participation deposit in the e-auction conducted by the liquidator, subsequently raised concern that a piece of land on which a plant is situated, did not belong to the CD. Thereafter, the liquidator forfeited both the sums for not making the balance payment on time. The bidder filed an application before AA under section 60(5) of the Code. AA, although, observed an error on the part of the liquidator in non-disclosure of the status of

ownership of CD over the land, observed that bidder had access to virtual data room and had even inspected the site, before participating the e-auction and thus due diligence was required from the bidder. The NCLT ordered the forfeiture of 50% of EMD and refundable participation deposit as damage was caused to CD. On appeal by the highest bidder NCLAT observed that although the virtual data room was provided to bidder, exact details of the property put for sale were not disclosed to the bidder. It held that there is no procedure for imposing damages; for the sake of argument, even if it is presumed that AA has jurisdiction to impose damages, the Tribunal is firstly required to quantify the damages caused to CD and how the said damages can be compensated. While allowing the appeal it held that forfeiting the deposit amounts towards damages is arbitrary and directed the liquidator to return the deposited amounts.

9. **NCC Limited Vs. Golden Jubilee Hotels Private Limited & Ors. [CA(AT)(Ins) No. 426, 430, 432 & 710 of 2020]**

The appeals were filed by some OCs challenging the approved resolution plan of Golden Jubilee Hotels Pvt. Ltd-CD on the grounds that the plan was discriminatory, as it provided full payments to certain OCs who were categorized as "Special Operational Creditors" (SOC), while other OCs received nothing. The SOC comprising of Telangana State Tourism Corporation Limited (TSTCL) and Shilparamam Arts, Crafts & Cultural Society were deemed critical to the CD's survival due to their role as lessors of the land on which the hotel was constructed. The key issues in this case were whether sub-classification within the category of OCs is permissible under the Code and whether differential treatment among creditors within the same class is justified. The NCLAT ruled in favour of the resolution plan, emphasizing the paramountcy of the CoC's commercial wisdom. It stated that sub-classification is permissible as long as it is based on reasonable criteria, such as the criticality of certain creditors to the CD's survival. Payments to SOC were upheld, as their role in sustaining the CD's operations justified their prioritization. It clarified that the Code requires fairness and equity in creditor treatment but does not mandate equality or proportionate distribution. The resolution plan provided nil payment to most OCs, as the same is justified by the nil liquidation value in terms of section 53 of the Code. FCs faced significant haircuts, recovering only 40% of their claims. However, the plan ensured payments to SOC to maintain essential assets for the debtor's operations. In a broader observation, it suggested revising the waterfall mechanism to allow smaller OCs to receive a minimum recovery, emphasizing the need for legislative amendments to address systemic inequities

10. **Straw Commodities LLP Vs. Anram Agro Trading Private Limited [CA(AT)(Ins) No. 2292 of 2024]**

The AA has dismissed the OC's application based on various communications between the parties on WhatsApp concluded that there were pre-existing disputes. The OC filed an appeal before NCLAT. The issue for consideration is whether there were pre-existing disputes between the parties. NCLAT observed that although the CD has not responded to the notice issued under section 8 of the Code, there were pre-existing disputes between the parties as evidenced by the conversation between the OC and CD through WhatsApp. The NCLAT has not considered the submission of the OC that these messages are required to meet with provision of section 65B of Indian Evidence Act. It observed that the OC has not denied the conversation between the parties in the grounds of appeal. NCLAT while dismissing the appeal

of OC held that there were pre-existing disputes between parties and noted that WhatsApp is a common mode of communication.

11. Canara Bank vs. Vivek Kumar, [I.A. No. 1301, 1302 of 2023, 7105, 7610 of 2024 in CA (AT) (Ins) No. 390 of 2023]

Canara Bank had lent funds to AVJ Developers (India) Pvt. Ltd. (CD) for purchase of residential units by the individual homebuyers in the CD's project. A tripartite agreement was entered into amongst the Bank, the Homebuyers and the CD. Owing to CD's default in the execution of the project, CIRP was initiated against the CD. The Bank filed its claim in the process as a financial creditor. The RP rejected the claim on the ground that only individual homebuyers are entitled to file claims directly with the RP and that Bank's claims were also not backed by proper authorisation of the homebuyers. Aggrieved with the same, the Bank approached the AA who held that the bank had not directly financed the CD and the real financial creditors are the homebuyers. In the appeal filed by the Bank, the issues for consideration before NCLAT were (1) whether Bank's claim should be considered as FC on the strength of tripartite agreement; (2) whether the non-registration of mortgage in terms of section 77 of the Companies Act, 2013 impacts Bank's claim for treatment as secured creditor; and (3) whether the recovery certificate issued by the Debts Recovery Tribunal be considered towards Bank's claim as FC. NCLAT observed that the tripartite agreement is very categorical which states that the entire advance provided by the bank to the homebuyers shall be refunded by the builder to the bank. The clause 16 of the said agreement also provides that in case the builder fails to pay the amount as stated in this clause, the borrower shall pay the entire loan amount with interest, including panel interest etc., in terms of loan agreement. It further observed that, while normally it is only the homebuyers who can file claims as FC, but a peculiar clause has been provided in the tripartite agreement which create the rights of the Bank for the right to payment in terms of section 3(6) of the Code. Thus the primary responsibility to repay in the present case lies with the CD and secondary responsibility with the homebuyers. On the issue of non-registration of charges as per section 77 of Companies Act, it relied on its own judgment in *Canara Bank Vs, Rajendran,* and held that non-registration of charges will not adversely impact the rights of the Bank. Also, the recovery certificate issued by the Debts Recovery Tribunal will strengthen the Bank's claim as the same may fall within the definition of financial debt defined under sub-section (8) of section 5 of the Code.

12. Anita Goyal Vs. Vistra ITCL (India) Ltd. and Anr., [CA (AT) (Insolvency) No.2282 of 2024 with CA (AT) (Insolvency) No.2283 of 2024]

The CD - Nivaya ASL Private Limited issued debentures (optionally convertible and nonconvertible debentures) to the FC - Vistra ITCL (India) Limited and executed two Debenture Trust Deeds in favour of them. The Trust Deed provided for execution of personal guarantee by Ms. Anita Goel and Mr. Ayush Goel (PGs). On the failure of the CD to repay the creditors, the FC invoked guarantee and issued separate notices to PGs under section 95(4)(b) of the Code. The AA appointed RP to submit report under Section 99. AA, after considering the said Report admitted the application under section 100 of the IBC. The PGs filed an appeal against this order of admission before the NCLAT. The key issue dealt by the NCLAT was- (i) whether the appointment of RP was in contravention of Section 97(3) of IBC. (ii) whether an application for personal insolvency against a PG must be filed before the AA, when no CIRP or liquidation proceedings of the CD is pending before the AA. The NCLAT observed that the

AA has appointed the RP, relying on Form-C submitted by RP, which contains his consent certifying that there are no disciplinary proceedings pending against him. Further, it held that rule 8 of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 read with sub-section (3) of section 97 provides for mechanism of nomination by the IBBI. Thus, the appointment of RP by the AA was not found violative of section 97(3) of the Code. On the second issue, the NCLAT relied on its decision in *State Bank of India vs. Mahendra Kumar Jajodia – (2022)* and the judgment of the Hon'ble SC in the case *Lalit Kumar Jain vs. Union of India & Ors. (Transferred Case (Civil) No.245/2020)*, held that the intimate connection between PG and CD to whom they stood guarantee, as well as the possibility of the two separate processes being carried on in different forums, with its attendant uncertain outcomes, led to carving out personal guarantors as a separate species of individuals, for whom the AA was common. NCLAT while dismissing the appeals held that an application for personal insolvency against a PG shall be filed before the AA, even when no CIRP or liquidation proceeding of the CD is pending before the AA.

13. State Bank of India Vs. IDBI Bank Ltd. [Company Appeal (AT) (Insolvency) No. 321 of 2024 with Company Appeal (AT) (Insolvency) No. 335 of 2024]

AA vide order dated 08.10.2021 directed the liquidation of the CD. FCs including IDBI Bank submitted a claim in the liquidation process of the CD. The Liquidator declared Shakambhari Ispat & Power Limited as the successful H-1 bidder for the sale of the CD as a going concern. The liquidator proposed to distribute the sale proceeds as per the security interest, which was opposed by IDBI Bank. IDBI Bank has filed IA praying that the proceeds should be distributed in proportion to their admitted claim on a pro-rata basis and filed an IA for the same. The AA held that, as per section 53(1), the distribution must be in proportion to the admitted claims of the Secured Creditors. In the appeals filed by other FCs, NCLAT relying on the judgment of SC in the case of *India Resurgence Arc Pvt. Ltd. vs. Amit Metaliks Ltd. & Anr*., held that distribution of sale proceeds as per the admitted claims of the FCs on a pro-rata basis interpretation is binding and must be followed.