

2023

# YEARLY ROUND-UP

INSOLVENCY AND BANKRUPTCY CODE, 2016

RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE



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## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

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# RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

## INTRODUCTION

***“While the wheels of commerce turn on the axle of credit, the need for a robust and resilient insolvency framework becomes paramount. Strengthening the laws of insolvency is not merely a legal imperative; it is the cornerstone for fostering economic resilience, encouraging responsible risk-taking, and maintaining the delicate balance between debtor and creditor interests in the ever-evolving landscape of commerce.”***

The significance of insolvency laws in any legal system cannot be overstated. When an entity encounters financial distress and is unable to fulfill its credit obligations, insolvency laws play a crucial role in providing a structured framework for addressing the situation. Rather than merely assuring creditors of debt repayment in insolvency cases, these laws are designed to offer predictability regarding the consequences of insolvency, whether positive or negative.

India's Insolvency & Bankruptcy Code (hereinafter “IBC”) emerged in 2016 like a phoenix rising from the ashes of a developing and unready insolvency regime in the country's developing economy. The understanding of these consequences empowers creditors to assess credit terms, such as interest rates, maturity dates, and collateral requirements, for a specific enterprise. In essence, well-crafted insolvency laws contribute to a more rational and informed environment for creditors, resulting in a broader availability of credit within the market.

Beyond the individual creditor's perspective, insolvency laws also serve broader purposes. They aim to enhance the efficiency of investment decisions and ensure equitable treatment for similarly positioned creditors when dealing with an insolvent entity. Without a well-defined legal framework, disparities among creditors may arise, potentially impeding the ongoing operations of the distressed enterprise and adversely affecting other creditors.

In the absence of a comprehensive insolvency framework, the credit market may face challenges that could hinder the overall functioning of the economy. Therefore, understanding the importance of insolvency laws is essential for maintaining stability and fairness in financial transactions and business operations.

In the year 2023, IBC persisted in its transformative trajectory, further refining and fortifying India's insolvency laws through a dynamic interaction of legislative modifications and the evolving legal landscape. Noteworthy advancements during the year solidified the code's position as a resilient framework for addressing distressed debt and cultivating a dynamic credit market.

The comprehensive run-through for the year 2023, meticulously compiled by the Centre for Advanced Research on Corporate and Insolvency Laws (hereinafter “CARCIL”) at CNLU, elucidates pivotal court decisions and tribunal rulings that have played a significant role in shaping the landscape of insolvency law over the preceding year.





## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

### 1. RPS Infrastructure vs. Mukul Kumar [1]

- *Supreme Court upholds NCLAT's decision in Stressing timeliness in CIRP claims.*

#### **BENCH – Sanjay Kishan Kaul, Sudhanshu Dhulia [Supreme Court Of India]**

In this landmark decision, the Supreme Court ruled in favor of the liquidator in a case involving an electricity company (PVVNL) seeking to recover dues from a debtor (Raman Ispat) undergoing liquidation.

PVVNL argued that the Electricity Act's specific provisions, including the Uttar Pradesh Electricity Supply Code, 2005, created a special mechanism for recovering electricity debts and should prevail over the general Insolvency and Bankruptcy Code (IBC). They cited their secured creditor status and the earlier Rainbow Papers judgment, where the Court had granted priority to government debts.

The Court, however, disagreed. While acknowledging PVVNL's secured creditor claim, it emphasized Section 238 of the IBC, which grants it overriding effect in cases of conflict with other laws. This means the IBC's "waterfall mechanism" for debt repayment applies even to electricity dues, placing PVVNL's claim lower in priority than other secured creditors.

RPS Infrastructure's claim of unawareness was not considered valid for a commercial entity. It also emphasized that once the Committee of Creditors (COC) approves a resolution plan, it should not be subject to constant re-opening due to new claims. This could potentially create an endless process and disrupt the entire CIRP.

Introducing new claims, especially undecided ones, carries the risk of disrupting the resolution plan and introducing uncertainty for the Successful Resolution Applicant. The Court acknowledged this concern and upheld the NCLAT's decision.

**VIEWPOINT :** This judgment serves as a reminder for all parties involved in CIRP to adhere to timelines and submit claims promptly. It also reinforces the finality of an approved resolution plan and discourages the introduction of new claims that could jeopardize the entire process.

### 2. Paschimanchal Vidyut Vitran Nigam Ltd. v. Raman Ispat (P) Ltd. [2]

- *Supreme Court upholds IBC primacy, clarifies government dues in landmark electricity debt case.*

#### **BENCH – S. Ravindra Bhat, Dipankar Datta [Supreme Court Of India]**

The Supreme Court finally put the debate to rest in RPS Infrastructure vs Mukul Kumar & Anr., ruling that belated claims after the Committee of Creditors (CoC) approves the resolution plan are inadmissible. This clarifies a long-standing legal grey area and brings much-needed certainty to the CIRP process.

RPS Infrastructure, a claimant, had filed a belated claim based on an arbitral award against the Corporate Debtor undergoing CIRP.

The NCLAT had rejected the claim, citing the delay and potential disruption to the already approved resolution plan. The Supreme Court concurred with this decision, emphasizing the importance of timeliness and avoiding endless CIRP processes.

[1] 2023 SCC OnLine SC 1147

[2] 2023 SCC OnLine SC 842



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The Supreme Court reiterated that the IBC is a time-bound process. While delays can be condoned in certain circumstances, the 287-day delay by RPS Infrastructure was deemed unacceptable, especially for a commercial entity.

The Court highlighted that the public announcement of CIRP through newspapers constitutes deemed knowledge for all parties involved. RPS Infrastructure's claim of unawareness was not considered valid for a commercial entity. It also emphasized that once the Committee of Creditors (COC) approves a resolution plan, it should not be subject to constant re-opening due to new claims. This could potentially create an endless process and disrupt the entire CIRP. Introducing new claims, especially undecided ones, carries the risk of disrupting the resolution plan and introducing uncertainty for the Successful Resolution Applicant. The Court acknowledged this concern and upheld the NCLAT's decision.

**VIEWPOINT** : This judgment sets a clear precedent for future cases involving insolvency and conflicting sectoral laws. It emphasizes the importance of the waterfall mechanism in ensuring fair and equitable treatment of creditors during liquidation proceedings. Additionally, it clarifies the categorization of government-linked entities and their rights within the IBC framework.

### **3. Eva Agro Feeds Private Limited v. Punjab National Bank [3]**

*- Liquidators should act with due care and provide proper justifications for their decisions, particularly when deviating from established norms like accepting the highest bid.*

**BENCH** - Justice M. Venugopal (Judicial Member), Mr. V.P. Singh (Technical Member), Dr. Ashok Kumar Mishra (Technical Member) **[NCLAT Principal Bench, New Delhi]**

This is a significant judgment by the Supreme Court concerning the protection of the rights of the highest bidder in an insolvency auction. The case involved the sale of assets of a debtor company, where the Appellant (Eva Agro) emerged as the winner with the highest bid. However, the Liquidator, despite initially confirming the win, cancelled the auction and held another one, hoping for a better price.

The Supreme Court held that the Liquidator's actions were unjustified. While acknowledging the Liquidator's discretion to reject bids, it emphasized the need for transparency and adherence to natural justice principles. Specifically, the Court highlighted:

- The Liquidator cannot arbitrarily cancel an auction without providing specific reasons, especially when rejecting the highest bid. This applies even if the relevant regulation was introduced after the auction.
- The highest bid should be respected unless there are valid grounds like fraud or collusion. Merely expecting a better price in a subsequent auction is not sufficient justification to cancel the first one.
- Frequent cancellation and re-auctioning create uncertainty and discourage genuine bidders. The process should be conducted with transparency and finality.

This judgment upholds the rights of bidders in IBC auctions and reinforces the importance of fair and transparent insolvency proceedings.



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It sets a precedent for Liquidators to act with due care and provide proper justifications for their decisions, particularly when deviating from established norms like accepting the highest bid.

**VIEWPOINT** : Eva Agro's case serves as a reminder that even in insolvency situations, principles of natural justice and transparency must be respected. This will foster a more predictable and investor-friendly environment within the IBC framework.

### **4. Union Bank of India v. Financial Creditors of M/s Amtek Auto Limited [4]**

- *Supreme Court of India has upheld the ruling of the NCLAT, affirming its authority to recall judgments on substantial grounds.*

**BENCH** - Rakesh Kumar Jain, Naresh Salecha, Alok Srivastava [**NCLAT Principal Bench, New Delhi**]

In this landmark judgment, the Supreme Court of India has upheld the ruling of the National Company Law Appellate Tribunal ("NCLAT"), affirming its authority to recall judgments on substantial grounds. This decision has significant implications for the NCLAT's role in ensuring procedural fairness and rectifying errors in its judgments.

The case arose from a reference made by a three-member NCLAT bench, seeking clarification on the Tribunal's power to recall judgments in the absence of explicit review powers. The NCLAT, in its five-member bench ruling, held that while it lacked the power of review, it could exercise inherent powers under Rule 11 of the NCLAT Rules, 2016 to recall judgments on specific grounds.

The NCLAT emphasized that this power of recall did not extend to re-examining cases to rectify apparent errors in judgments. However, it identified specific instances where recall could be justified, including procedural errors in the delivery of judgments, instances where necessary parties were not served or present during the initial judgment, and fraud played on the court to obtain a judgment.

The judgment addresses the interpretation of previous NCLAT judgments, particularly those in Agarwal Coal Corporation Private Limited Vs Sun Paper Mill Limited & Anr. and Rajendra Mulchand Varma & Ors Vs K.L.J Resources Ltd. & Anr., which suggested that the NCLAT had no power to recall judgments.

The Supreme Court clarified that these judgments did not accurately interpret the law, affirmed the NCLAT's interpretation of the law and declined to interfere with the lower court's order.

**VIEWPOINT** : This landmark decision reinforces the NCLAT's role in ensuring procedural integrity and upholding the rule of law. It emphasizes that even in the absence of an explicit review mechanism, the Tribunal can exercise its inherent powers to address systemic issues and protect the interests of justice.

### **5. M.K. Rajagopalan v Dr. Periasamy Palani Gounder. [5]**

- *The Supreme Court has ruled that a revised resolution plan cannot be directly submitted to the NCLT without final approval from the CoC.*

**BENCH** - Dinesh Maheshwari, Vikram Nath [**Supreme Court Of India**]

[4] 2023 LiveLaw (SC) 589

[5] (2023 SCC OnLine SC 574)



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In this judgment, the Supreme Court has laid down clear guidelines for determining the eligibility of resolution applicants under the Insolvency and Bankruptcy Code (IBC). The case involved M.K. Rajagopalan, whose proposed resolution plan for a debt-ridden company was initially approved but later challenged due to his alleged disqualification as a director under the Companies Act.

The crux of the matter lay in Section 164(2)(b) of the Companies Act, which disqualifies directors of companies that fail to meet financial obligations. The National Company Law Appellate Tribunal (NCLAT) had deemed Rajagopalan ineligible based on this provision, solely because his company hadn't fulfilled its dues.

The Supreme Court, however, overturned this interpretation. It emphasized that mere non-compliance cannot be equated with disqualification. A categorical order of disqualification from the competent authority is necessary before disqualifying a resolution applicant. The court clarified that the disqualification process must follow due course, with the Registrar of Companies playing a crucial role. This ruling reinforces the principle of natural justice and due process.

Resolution applicants cannot be disqualified based on assumptions or inferences. A clear and specific order from a legitimate authority is essential to establish disqualification.

Interestingly, the Supreme Court also identified other flaws in the resolution plan, making it unapprovable even without the disqualification issue. These included ineligibility under a separate law and procedural irregularities. Consequently, the NCLAT's order setting aside the approval was upheld, albeit for different reasons.

**VIEWPOINT :** The M.K. Rajagopalan case serves as a landmark judgment, offering much-needed clarity on resolution applicant eligibility under the IBC. It underlines the importance of following established procedures and ensuring that disqualification is not imposed lightly or based on assumptions. This will instill greater fairness and transparency in the insolvency resolution process, protecting the rights of both resolution applicants and creditors alike.

### **6. M. Suresh Kumar Reddy v. Canara Bank. [6]**

*- Upon confirmation of a payment default, the admission of an application under Section 7 of the IBC becomes mandatory*

#### **BENCH - Hon'ble Mr. Justice Sanjay Kishan Kaul, Hon'ble Mr. Justice Abhay S. Oka, Hon'ble Mrs. Justice B.V. Nagarathna [Supreme Court Of India]**

In this case, the Supreme Court has ruled that upon confirming a financial creditor's default, the NCLT has no discretion but to admit an application under Section 7 of the IBC. This clarifies the ambiguity caused by the earlier Vidarbha Industries judgment, which seemed to grant the NCLT some leeway.

The case involved Canara Bank seeking to initiate insolvency proceedings against a debtor company. The NCLT admitted the application, and a suspended director appealed, arguing that the NCLT should have considered settlement attempts and citing the Vidarbha Industries judgment for NCLT's discretion.

The Supreme Court, however, dismissed the appeal and emphasized:

- Previous judgments, like Innoventive Industries and E.S. Krishnamurthy, clearly stated that upon a confirmed default, admission is mandatory.
- The Vidarbha Industries judgment, granting NCLT some discretion, was specific to its unique circumstances and shouldn't be generally applied.
- Even partial non-payment constitutes a default, and the NCLT's role is limited to verifying the default and admitting/rejecting the application accordingly.
- Only when the debt is not yet due can the NCLT reject the application.



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**VIEWPOINT :** This judgment brings much-needed clarity. Corporate debtors can no longer use the Vidarbha Industries case as a shield to avoid insolvency proceedings. The NCLT's role is strictly limited to verifying the default and making a binary decision based on the evidence. This reinforces the IBC's objective of swift and efficient resolution of corporate insolvency.

### **7. Sanket Kumar Agarwal v. APG Logistics Private Limited. [7]**

- *The time taken by the court to issue a certified copy of the order is not considered when calculating the limitation period.*

### **BENCH – M. Venugopal, Naresh Salecha [NCLAT Chennai Bench]**

In this case, the Supreme Court has provided crucial clarifications regarding the computation of limitation period under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 (the Code). The court has addressed key issues related to excluding time taken by the court to provide a certified copy of an order, the commencement of the limitation period from the date of e-filing an appeal, and the application of relevant laws and rules. The case involved Mr. Sanket Kumar Agarwal (SKA) filing an appeal against the NCLT's dismissal of his Section 7 application.

The NCLAT dismissed the appeal as time-barred, citing the 45-day limitation period under the Code. However, the Supreme Court overturned the NCLAT's decision, emphasizing the exclusion of time taken for obtaining certified copies and the application of Section 238 of the Code, which allows for the application of the Limitation Act, 1963.

The court held that the limitation period commenced from the date of e-filing, and the date of NCLT's order was excluded from the calculation. Additionally, the court directed the Union Government to monitor regulations promoting e-filing across tribunals, promoting efficiency and streamlining legal procedures.

**VIEWPOINT :** This decision brings clarity and consistency to limitation period calculations in insolvency cases, benefiting lawyers and stakeholders. Additionally, the court's directive to promote e-filing across tribunals shows a commitment to modernizing and streamlining legal procedures in India.

### **8. Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd. [8]**

- *The Supreme Court ruled that IBC and criminal liability are not open to negotiation.*

### **BENCH – Sanjay Kishan Kaul; Abhay S. Oka; J.B. Pardiwala [Supreme Court Of India]**

In this case, Supreme Court ruled that personal liability of signatories/directors in cheque dishonour cases under the NI Act cannot be absolved during CIRP proceedings against the company under the IBC. This decision brings relief to creditors who feared losing everything if a defaulting company entered insolvency proceedings.

The case involved a company that defaulted on a loan and issued a bounced cheque. The creditor initiated criminal proceedings against the company and its director/promoter under the NI Act.

[7] (2023 SCC OnLine SC 976)

[8] (Criminal Appeal No. 172 of 2023)





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However, the company entered CIRP under the IBC, and the director sought to have the NI Act case dismissed.

The Supreme Court rejected the director's plea. It noted that the IBC and NI Act deal with different things: IBC focuses on corporate insolvency resolution, while NI Act addresses individual criminal liability for cheque dishonour. The court emphasized that the IBC's moratorium on proceedings doesn't apply to NI Act cases against directors.

The court also dismissed the argument that the NI Act proceedings were merely compensatory, stating that they are primarily punitive due to the potential imprisonment and fines involved. The criminal liability arises from the failure to honour a negotiable instrument, not just the financial debt.

Justice Pardiwala, in a concurring judgment, highlighted that the director's personal liability under the NI Act doesn't vanish even with the company's dissolution. While the company's liability ceases with the resolution plan's approval, the director's personal liability remains.

However, Justice Pardiwala clarified that once a new management takes over the company under the resolution plan, the NI Act proceedings against the original company will end.

**VIEWPOINT** ; This judgment clarifies that insolvency proceedings don't shield directors from personal liability for cheque dishonour. Creditors can pursue both corporate and individual avenues for recovery, ensuring greater accountability and deterring future defaults.

*-The Supreme Court held that during the Corporate Insolvency Resolution Process (CIRP), a resolution professional has the right to assume control over a third party's assets*

### **BENCH - V. Ramasubramanian, Pankaj Mithal [Supreme Court Of India]**

In this judgment, the Supreme Court has significantly expanded the reach of Resolution Professionals (RPs) during corporate insolvency resolution proceedings (CIRP) by recognizing development rights over third-party property as "assets" under the Insolvency and Bankruptcy Code (IBC). This decision empowers RPs to take control of such assets, even if a third party legally owns the land.

The case involved a company's development rights over a 10-acre plot owned by another entity. The company entered CIRP, and the RP sought to control the land as part of the company's assets.

Both the owner and a tenant occupying part of the land contested the RP's authority.

The Supreme Court, interpreting the IBC's definition of "property," ruled that development rights constitute an "asset" under the Code. This means that even though the company didn't own the land itself, its development rights qualified as an asset that the RP could manage during CIRP.

The Court distinguished a "licensee" like the tenant from a "lessee" with a stronger legal interest in the property. The tenant's rights were protected to the extent of the occupied land, while the RP's control over the overall development rights was upheld.

### **9. Victory Iron Works Ltd. v Jitendra Lohia & Anr. [9]**

[9] [(2023) 7 SCC 227]



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The Court's interpretation clarifies the nature of rights under joint development agreements (JDAs), which are increasingly common in brownfield projects. Developers can now rely on this judgment to protect their JDA rights during CIRP.

The Court's decision reaffirms the NCLT's and NCLAT's power to address possession rights of tenants/licenseses when a CD has an interest in the property during CIRP. This ensures a balance between protecting the CD's assets and respecting existing occupancies.

**VIEWPOINT** ; Overall, this judgment strengthens the RP's role in CIRP by allowing them to control assets beyond just the corporate debtor's immediate possessions. It also provides valuable guidance on interpreting JDA rights and navigating property disputes during insolvency proceedings.

### **10. Moser Baer Karamchari Union through its President Mahesh Chand Sharma vs Union of India. [10]**

*- The constitutional validity of Section 327(7) of the Companies Act, 2013, which exempts a company under liquidation via the Insolvency and Bankruptcy Code from the application of Sections 326 and 327, is affirmed by the Supreme Court*

**BENCH** – Hon'ble Mr. Justice M.R. Shah, Hon'ble Mr. Justice Sanjiv Khanna  
**[Supreme Court Of India]**

The Supreme Court has upheld a provision in the Companies Act that denies workers' dues priority over secured creditors during company liquidation under the IBC. This decision dismisses petitions challenging the constitutionality of Section 327(7) of the Companies Act. Previously, Sections 326 and 327 mandated prioritizing workers' dues and government dues during company winding up. However, Section 327(7), added in 2016, excluded these priorities under the IBC's liquidation process.

Moser Baer Karamchari Union and others challenged this provision, arguing it deprived workers of rightful dues like gratuity, provident fund, pension, and severance compensation. They also sought to keep workers' dues out of the IBC's "waterfall mechanism" for asset distribution.

The Supreme Court dismissed the petitions, acknowledging the IBC's new regime necessitated amending the Companies Act. It reasoned that having two different sets of rules for liquidation would be impractical.

The Court emphasized Section 53 of the IBC, which starts with a "non-obstante clause," overriding other laws and dictating asset distribution priorities during IBC liquidation. This "complete and comprehensive code" even compromises secured creditors' rights, the Court noted. While acknowledging workers' concerns, the Court stated that in economic matters, lawmakers have wider latitude and sacrifices are sometimes necessary for the greater good.

It emphasized that workers also benefit from company revival, and unless their sacrifices are demonstrably harsh or unjust, the Court won't interfere.

The Court concluded that Section 327(7) is not arbitrary or violative of the Constitution. While workers' dues may not get immediate priority under the IBC, the Court's reasoning highlights the need for a balanced approach that prioritizes revival and debt recovery, ultimately benefiting all stakeholders.



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**VIEWPOINT :** This ruling is likely to positively impact the IBC's effectiveness by providing much-needed clarity and stability for businesses, investors, and creditors. It emphasizes that while individual interests may be affected, the ultimate goal of economic revival and job creation remains paramount.

### **11. Indiabulls Asset Reconstruction Company Limited v Ram Kishore Arora & Ors. [11]**

*- The Supreme Court has affirmed NCLAT's order for a 'project-wise-resolution' process in the Supertech Insolvency case, permitting it to finish housing projects.*

**BENCH** – Hon'ble Mr. Dinesh Maheshwari and Hon'ble MR. P.V. Sanjay Kumar [Supreme Court Of India]

In this case, the Supreme Court upheld the National Company Law Appellate Tribunal's (NCLAT) order for a 'project-wise' insolvency resolution process for Supertech Ltd., a real estate company facing bankruptcy. This means that instead of treating the entire company as one entity for insolvency proceedings, the resolution will focus on individual projects, starting with Eco Village-II. The decision came in response to appeals filed by financial creditors who challenged the NCLAT's order, arguing for a single resolution process for the entire company.

However, the Court sided with the NCLAT, reasoning that a project-wise approach would avoid unnecessary hardship for homebuyers invested in ongoing projects other than Eco Village-II.

The Court acknowledged the potential benefits of a single resolution process for creditors, but emphasized the need to balance their interests with those of homebuyers.

It noted that disrupting ongoing projects could cause significant inconvenience and uncertainty, potentially harming the very buyers the IBC aims to protect.

Therefore, the Court upheld the NCLAT's order to continue construction of all projects except Eco Village-II under the supervision of the insolvency professional and ex-management. This ensures progress on existing projects while a separate resolution plan is pursued for Eco Village-II with the involvement of a creditors' committee.

**VIEWPOINT :** The Court's decision highlights the complex challenges involved in corporate insolvency, particularly when dealing with real estate companies with multiple projects. It prioritizes protecting homebuyers' interests while also allowing for a fair resolution for creditors through a project-specific approach.

### **12. Sanjay Kumar Agarwal v. Central Bureau of Investigation. [12]**

*- Under the Prevention of Corruption Act, a Resolution Professional as per the Insolvency and Bankruptcy Code (IBC) is classified as a 'Public Servant'*

**BENCH** – Hon'ble Mr. Justice Gautam Kumar Choudhary

[11] (2023 SCC OnLine SC 612)

[12] (Cr. M.P. No. 1048 of 2021)



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In this case, the Jharkhand High Court declared Resolution Professionals (RPs) as public servants under the Prevention of Corruption Act (PC Act). This means they can be prosecuted for bribery and other corruption offenses.

The case involved an RP accused of demanding bribes from a company director in exchange for favors during the insolvency resolution process. The RP challenged the charges, claiming he wasn't a public servant under the PC Act.

The court rejected his claim, finding that the broad definition of "public servant" in the PC Act encompasses RPs. It emphasized that RPs are appointed by a court, discharge public duties, and have significant power over corporate assets.

The court compared RPs to surveyors, who were previously ruled public servants for discharging public duties. It noted that while RPs aren't specifically listed as public servants under the I&B Code, that doesn't exclude them from the PC Act's wider definition.

Furthermore, the court clarified that Section 232 of the I&B Code, which grants certain immunities to specific public servants, doesn't apply to the PC Act. This means RPs cannot claim immunity from corruption charges under this provision.

The court concluded that RPs play a crucial role in protecting corporate assets and their duties are inherently public in nature. Therefore, they fall under the PC Act's definition of a public servant and can be held accountable for corruption.

**VIEWPOINT :** This ruling has significant implications for RPs, who must now conduct themselves with utmost integrity and transparency. It also serves as a reminder that the PC Act has a broad reach and can be applied to various categories of officials, not just those directly employed by the government.

### **13. Sabarmati Gas Limited v Shah Alloys Limited. [13]**

- *According to Section 5 of the Limitation Act, a 'Sufficient Cause' is defined as a reason for which a party cannot be held responsible.*

#### **BENCH – M.R. Shah, C.T. Ravikumar [ Supreme Court Of India]**

In this case, the Supreme Court has laid down a simple definition for "sufficient cause" under Section 5 of the Limitation Act, 1963, in the context of Corporate Insolvency Resolution Process (CIRP) applications. Justice C.T. Ravikumar stated that "sufficient cause" refers to a reason for which a party cannot be blamed for the delay.

This case involved Sabarmati Gas Ltd., seeking CIRP against Shah Alloys Ltd. as an operational creditor. NCLT and NCLAT dismissed their application due to limitation and a pre-existing dispute.

A key question was whether the limitation period for an IBC application could exclude the period when the creditor's right to sue was suspended under Section 22(1) of the Sick Industrial Companies (Special Provisions Act, 1985) (SICA).

The Court noted that Section 22(1) SICA legally barred proceedings against an industrial company. It ruled that when such a legal bar exists, and permission from BIFR is denied, the suspension period should be excluded while calculating the limitation period under Section 22(5) SICA. However, since Section 9 IBC lacks a specific exclusion provision, the Court clarified that such a period can still be considered a "sufficient cause" for condoning delay under Section 5 of the Limitation Act.



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The Court emphasized that Section 5 solely relies on "sufficient cause" for delay condonation. It reiterated that "sufficient cause" implies a reason beyond the party's control.

The Court mandated Adjudicating Authorities to consider delay condonation requests when an application falls outside the limitation period. However, in this particular case, the Court dismissed the appeal due to the pre-existing dispute between the parties.

**VIEWPOINT :** This judgment clarifies the concept of "sufficient cause" for IBC applications and establishes the obligation to consider delay condonation requests even when limitation applies. It also highlights the importance of addressing pre-existing disputes before seeking CIRP.

### **14. Engine Lease Finance B.V. v Resolution Professional of Go Airlines (India) Ltd. & Anr. (2023 SCC OnLine NCLAT 505)**

*- The NCLAT has granted permission for the inspection of aircraft engines that are leased*

**BENCH – Shri Mahendra Khandelwal, Hon'ble Member (Judicial) Shri Rahul Bhatnagar, Hon'ble Member (Technical) [NCLT, New Delhi, Court No. 5, Division Bench ]**

The National Company Law Appellate Tribunal (NCLAT) permitted the lessor of aircraft engines of Go Airlines to conduct inspection of the leased engines. The lessor, Engine Lease Finance B.V., had filed an application under Section 60(5) of the Insolvency and Bankruptcy Code (IBC) before the NCLT, seeking permission to depute an agency or an inspector to conduct inspection of the Four Engines leased to Go Airlines.

The NCLT had rejected the prayer and granted interim relief only to the extent of protection and maintenance of aircraft/engines by the Resolution Professional. The aircraft lessors of Go Airlines had approached the Delhi High Court in writ jurisdiction, whereby the High Court on 05.07.2023 issued a direction to the Resolution Professional to permit inspection of the Aircrafts. The Resolution Professional filed an appeal against the order dated 05.07.2023. However, the Appellate Court on 12.07.2023 refused to interfere with the direction pertaining to the inspection.

The Lessor contended that in view of the High Court order, inspection of the engines can be permitted. Further, the Resolution Professional has already permitted inspection with respect to some Aircraft lessors.

The NCLAT Bench opined that the NCLT's order, to the extent of refusing inspection to the Lessor, cannot be sustained. The Resolution Professional has been directed to permit inspection within 10 days.

The Bench held that the observations made by the NCLT in order dated 26.07.2023 should not be considered final, since the same has been made at prima facie stage. The contentions of the parties are left open. The Appeal was accordingly disposed of.

**VIEWPOINT :** In essence, the NCLAT has allowed the lessor to inspect the engines of Go Airlines, despite the NCLT's earlier rejection of the lessor's application. This is a significant development for aircraft lessors, as it gives them the right to inspect their leased engines, even if the airline is undergoing insolvency proceedings.



## 15. Vishal Chelani & Ors. Vs. Debashis Nanda [15]

*- The Supreme Court of India has affirmed the status of home buyers in real estate projects as financial creditors under the Insolvency and Bankruptcy Code (IBC).*

**BENCH** –Hon’ble Justice Rakesh Kumar Jain (Member(Judicial)) Hon’ble Mr. Naresh Salecha (Member (Technical)) **[NCLAT, Principle Bench, New Delhi]**

In this significant judgment, the Supreme Court of India clarified a long-debated issue surrounding the status of home buyers in real estate projects concerning the Insolvency and Bankruptcy Code (IBC). The case addresses a crucial legal question regarding whether home buyers who had sought remedies under the Real Estate (Regulation and Development) Act, 2016 (RERA) can be considered as financial creditors under the IBC.

A group of home buyers invested in Bulland Buildtech’s real estate project, seeking refunds due to delays. UPRERA upheld their right, but insolvency proceedings were initiated. A resolution plan differentiated between RERA-seeking buyers and those not, categorized as unsecured creditors with less favorable terms.

The main issue before the Court was whether such a classification, differentiating between home buyers who sought relief under RERA and those who did not, could be upheld. The Supreme Court has ruled that home buyers who sought redress under the Real Estate (Regulation and Development) Act, 2016 (RERA) could be elevated to the status of financial creditors under the Indian Bankruptcy Code (IBC).

The Court examined Section 5(8)(f) of the IBC, which defines “financial debt” and includes any amount raised from an allottee under a real estate project. The Court questioned the validity of segregating RERA-procured financial claims from those not pursuing RERA remedies, particularly in insolvency proceedings.

The Court cited a precedent from the Mumbai Bench of the National Company Law Tribunal, which ruled that allottees in real estate projects fell under the definition of “financial debt.” The ruling was a victory for justice and equity in dealing with home buyers’ fiscal claims.

**VIEWPOINT :** This judgment is not just a legal milestone; it has broader implications for home buyers, real estate developers, and the insolvency resolution process in India. It emphasizes the importance of a consistent and inclusive approach in dealing with the financial claims of home buyers.

## 16. Tottempudi Salalith v State Bank Of India & Ors. [16]

*-Under Section 7, a time-barred recovery certificate can be separated from a composite claim.*

**BENCH** – Justice Venugopal M. [Member (Judicial)], Balvinder Singh [Member (Technical)] **[NCLAT, Chennai Bench]**

[15] (2023 SCC OnLine SC 1324)

[16] Civil Appeal No. 2348 / 2021



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

This case raised several critical issues related to the period of limitation for a decree passed by the Debt Recovery Tribunal (DRT). The verdict from this case has far-reaching implications for the legal landscape in India.

Totem Infrastructures Ltd was granted credit facilities by several banks, including the State Bank of Hyderabad, State Bank of Mysore, State Bank of Travancore, State Bank of Bikaner, Jaipur, and State Bank of Patiala. The banks merged with the State Bank of India in 2017, initiating Section 7 IBC proceedings. The State Bank of India filed an application under Section 7 IBC, which was admitted by the Adjudicating Authority.

The Supreme Court rejected the argument that SBI had initiated proceedings before the DRT and that the proceeding under Section 7 IBC was not maintainable before the NCLT. The court ruled that recovery certificates give a fresh cause of action, allowing financial creditors to initiate the Corporate Insolvency Resolution Process. The court also noted that IBC is not a debt recovery mechanism but a mechanism for revival of a company fallen in debt. The application for initiation of insolvency proceedings was filed based on three recovery certificates, with two within limitation and one time barred. The court held that the application with respect to the two recovery certificates issued in 2017 are maintainable. If the Appellate Tribunal is of the opinion that the recovery certificate barred by limitation is concerned, the claim based on the recovery certificate could be segregated from the composite claim, with the Committee of Creditors treating the sum reflected in the recovery certificate as part of the claims made in pursuance of the public announcement.

The Tottempudi Salalith case's judgment offers crucial clarity and consistency in complex legal matters, impacting creditors, debtors, and the legal community.

It establishes a framework for understanding limitation periods and reflects the evolving landscape of insolvency and debt recovery laws in India.

**VIEWPOINT :** This landmark judgment not only resolves specific issues but also advances jurisprudence in the broader field of insolvency and debt recovery.

### **17. Standard Chartered Bank Singapore (Ltd.) vs. RCI Industries and Technologies Limited. [17]**

*- NCLAT held that insufficient stamping of documents leads to rejection under the IBC.*

### **BENCH - Shri Bachu Venkat Balaram Das, Hon'ble Member (Judicial) and Dr. Binod Kumar Sinha Hon'ble Member (Technical) [NCLT, New Delhi Bench, Court No. III]**

The Insolvency & Bankruptcy Code, 2016 and the Indian Stamp Act, 1899 have been a topic of interest, particularly in relation to the rejection of applications under sections 7 or 9 of the Code. The IBC outlines procedures for initiating insolvency procedures, but the plea of "insufficient stamping" has been used as a defense to claim that the agreement cannot be admitted into evidence to establish the existence of debt. However, adjudicating authorities have consistently ruled that non-stamping of documents does not render a corporate insolvency resolution process application non-maintainable when there is other material to prove default in payment of debt.



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

In a recent case, the Hon'ble National Company Law Tribunal, New Delhi Bench extended this principle to Section 9 applications filed by operational creditors. This move is a welcome step for operational creditors in the interplay between IBC and the Stamp Act.

The National Credit Union Limited (NCLT) faced a case where the issue of insufficient stamping of an agreement was a key consideration. RCI argued that a document executed outside India, such as the RPA, would be inadmissible and cannot be relied upon to prove debt in India unless sufficiently stamped. SCB argued that under Section 9 of the IBC, the test for admission of a CIRP only includes the establishment of a default on a debt payable and no pre-existing dispute. The NCLT agreed with SCB's submissions, stating that even if the documents have not been stamped under the provisions of the Indian Stamp Act, such non-stamping shall not render the instant application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 as non-maintainable.

RCI also raised objections by relying on the provisions of the Foreign Reserve Bank of India (FRA) to contend that SCB, being a foreign bank, was not legally capable of factoring receivables. SCB argued that the RPA, having been executed in Singapore, was not mandated to comply with the FRA. The NCLT agreed with SCB's submissions and admitted the Section 9 application.

**VIEWPOINT :** The Judgement upholds the intent of the IBC by disallowing procedural lacunas in insufficiently stamped documents, allowing defaulting corporate debtors to desist from the Code. It upholds the Code's independence and pertinence, ensuring operational creditors are protected from procedural irregularity, especially when evidence corroborates the debt's default.

### **18. Priyal Kantilal Patel v. IREP Credit Capital Pvt. Ltd. & Anr. [18]**

*- The nature of a financial debt remains unchanged, even in the event of a violation of agreed terms*

**BENCH** – Justice Ashok Bhushan (Chairperson), Barun Mitra Member (Technical) [NCLAT, Principle Bench, New Delhi]

The Financial Creditor filed a fresh Section 7 Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 to commence the corporate insolvency resolution process (CIRP) against the Corporate Debtor due to the default in redemption of the debentures held by the Financial Creditor. The Financial Creditor argued that the act of filing a fresh Section 7 Application was contrary to the stipulation under the settlement agreement, which provided that in the event of default by the Corporate Debtor, the Financial Creditor shall be entitled to revive the disposed Section 7 Application. The Adjudicating Authority admitted the fresh Section 7 Application and directed the commencement of CIRP for the Corporate Debtor. The Corporate Debtor assailed the Admission Order before the National Company Law Appellate Tribunal, New Delhi, arguing that the breach of the settlement agreement did not constitute a financial debt and that the Financial Creditor had obtained the consent of the majority Debenture Holders. The NCLAT examined the fresh Section 7 Application and observed that the financial debt claimed by the Financial Creditor was the same as originally claimed in the earlier/disposed Section 7 Application.





## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The NCLAT held that merely because the consent terms were breached, it did not lead to a conclusion that the financial debt would be wiped out or the nature and character of the financial debt would change.

The NCLAT dismissed the Appeal filed by the Corporate Debtor and upheld the Admission Order of the Adjudicating Authority.

**VIEWPOINT :** The judgment affirms the established position that a financial creditor should not be lured into a settlement where its statutory rights are taken away and that a mere obligation to pay an amount under a settlement agreement does not constitute financial debt for the purposes of initiation of CIRP.

### **19. Greater Noida Industrial Development Authority v. Roma Unicon Designex Consortium. [19]**

*- The NCLAT has clarified that the assets of a subsidiary company should not be included in the Corporate Insolvency Resolution Process (CIRP) proceedings of the parent company.*

**BENCH** – Ashok Bhushan (Chairperson), Barun Mitra, Alok Srivastava [NCLAT, Principle Bench, New Delhi]

The resolution plan for a project in Greater Noida Industrial Development Authority (GNIDA) was deemed unenforceable due to the allotment of land to a consortium, which included Earth Towne Infrastructures Pvt. Ltd., Raus infra Ltd., and Shalini Holdings Limited. The resolution plan sought to transfer development rights and land titles to a third party without prior permission from the lessor.

The NCLT could not have directed the transfer of the leased land without the approval of the Appellant.

The Tribunal ruled that the Resolution Professional and Flat Buyer Association can file an application for land transfer in favor of the proposed applicant. The resolution plan would only be considered once the Appellant's dues are paid. The National Court of Arbitration and Dispute Resolution (NCLAT) in New Delhi ruled that the Insolvency and Bankruptcy Code, 2016 (IBC) separates the assets of the Corporate Debtor and the subsidiary of the Corporate Debtor. The IBC states that assets of the subsidiary cannot be included in the CIRP of a holding company, as both companies have separate legal statuses. The NCLAT also ruled that the assets of landholding companies cannot be treated as assets of the Corporate Debtor. Based on the above-mentioned findings and conclusions, the orders of the NCLT were set aside and accordingly, the appeals were disposed of.

**VIEWPOINT :** The NCLAT's ruling is significant as it reinforces the distinct legal separation between a holding company and its subsidiary companies, particularly in the context of insolvency proceedings.

### **20. Union Bank of India vs. P.K. Balasubramanian. Comp. App. [20]**

*- The Supreme Court has ruled that personal guarantors of corporate debtors are accountable under the Insolvency and Bankruptcy Code (IBC).*

[19] (2023 SCC OnLine NCLAT 1612)

[20] Comp. App. (AT) (CH) (Ins.) No. 293 of 2022



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

### **BENCH – M. Venugopal, Shreesha Merla [NCLAT, Chennai Bench]**

Union Bank of India (now Andhra Bank) has challenged the order passed by the National Company Law Tribunal, Chennai, which dismissed an application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 (IBC).

The Appellant's primary grievance was that the application was filed three days prior to the application of the order creditor, State Bank of India (SBI), against the same Personal Guarantor.

The Appellant relied on settled law that the date of filing an application/petition should be the date on which actual filing was made.

SBI argued that the Appellant had not raised any challenge to SBI's Section 95 Application before the Adjudicating Authority.

The NCLAT observed that the Section 95 Application of the Appellant was dismissed on the premise that the IBC does not define the 'date of filing'.

The NCLAT held that the date of filing is the date of presentation of the Section 95 Application, and even if there is a defect in the application, the date of presentation shall remain the same.

The NCLAT upheld the order, observing that an interim moratorium against the Personal Guarantor commences on the date of filing of a Section 95 Application in relation to all debts.

It also clarified that the interim moratorium under Section 96 of IBC shall commence on the 'date of filing' of the Section 95 Application, ensuring no further Section 95 Applications can be filed against the same Personal Guarantor.

**VIEWPOINT :** The ruling brings much-needed clarity and practicality to the handling of insolvency proceedings against personal guarantors under the IBC. It streamlines the process by preventing unnecessary duplication and promoting consolidation, resulting in a more efficient and fair resolution for both creditors and the guarantor.

### **21. Akashganga Processors Pvt. Ltd. v. Shri Ravindra Kumar Goyal & Ors. [21]**

*-The NCLAT Delhi has ordered a modification of the resolution plan, stating that no discrimination can occur between different classes of creditors.*

### **BENCH – Justice Ashok Bhusan (Chairperson) Barun Mitra [Member (Technical)] [NCLAT, Principal Bench, New Delhi]**

The resolution applicant (RA) was disappointed by the Adjudicating Authority's decision to reject the application filed by the Resolution Professional (RP) seeking approval of the resolution plan submitted by the RA. The Adjudicating Authority argued that the resolution plan violated Section 30 (2)(e) and (f) of the Insolvency and Bankruptcy Code, 2016 (IBC), as it sought to discriminate among one class of creditors.



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The RA preferred an appeal against the order, which was dismissed.

The National Company Law Appellate Tribunal (NCLAT) reiterated the settled position that there can be differential payment mechanisms in the payment of debts of different classes of creditors, viz., financial creditors and operational creditors of a corporate debtor. However, there can be no difference or discrimination in inter-se payment within one class of creditors.

The NCLAT modified the resolution plan to include payment for all operational creditors, as opposed to the two operational creditors to which payments were envisaged under the resolution plan.

The NCLAT observed that by way of a slight modification to the resolution plan, the same can be allowed to sail through, as the same has already been approved by 99.84% of the voting share of the Committee of Creditors (CoC).

The RA believes that the NCLAT judgment reiterating the position that there cannot be discrimination in payment in relation to one class of creditors is the correct application of the settled legal position and may not require any interference. However, the RA must note that the power available to the Adjudicating Authority qua judicial review is limited and can only be dealt within the four corners of Section 30(2) of the IBC.

**VIEWPOINT :** The law in relation to IBC is still evolving, with recent judgments creating distinctions within one class of creditors and their rights. The courts are yet to test the position if one can treat such a class as a sub-class of creditors and then make a distinction/discrimination in payments to such creditors.

### **22. Dilip B Jiwrajka Vs Union of India & Ors. [22]**

[22] (2023 SCC OnLine SC 1530)

*-The Supreme Court has affirmed the constitutionality of IBC provisions pertaining to personal guarantors and stated that Section 97 cannot be interpreted to include an adjudicatory role.*

**BENCH** – Dr D.Y. Chandrachud, C.J. and J.B. Pardiwala and Manoj Misra, JJ. **[Supreme Court Of India]**

The Supreme Court in Dilip B. Jiwrajka v. Union of India upheld the constitutional validity of several key provisions of the Insolvency and Bankruptcy Code, 2016 (Code) for individuals and partnership firms.

The Code allows an insolvency resolution process to be initiated by a debtor or a creditor, with an interim moratorium starting from the date of the application.

A Resolution Professional (RP) is appointed under Section 97 to examine the application and submit a report to the Adjudicating Authority (AA) recommending its acceptance or rejection. During this process, the RP may request information from the debtor. The AA then passes an order either admitting or rejecting the application.

The petitioners argued that the automatic imposition of an interim-moratorium and appointment of an RP without granting any opportunity of a personal hearing to the debtor is violative of natural justice principles and manifestly arbitrary. They also contended that the scheme should provide for the determination of jurisdictional questions before an RP is appointed for performing tasks provided under Section 99 of the Code.



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The Respondents focused on the time bound resolution of insolvency as the "heart and soul" of the Code, arguing that personal hearings at any stage prior to Section 100 would have a cascading effect on the timelines envisaged for resolution under Chapter III of Part III of the Code. The Court agreed with the Respondents' submission that timelines under the Code are of paramount importance and that the interim-moratorium under Section 96 only applies to the "debt" and is for the debtor's benefit.

**VIEWPOINT :** The ruling significantly bolsters India's credit ecosystem by upholding the validity IBC provisions for personal guarantors, enabling lenders to effectively pursue debt recovery from both principal borrowers and their guarantors through a systematic resolution process. This judgment removes legal roadblocks, streamlines insolvency proceedings, and strengthens creditor confidence, ultimately contributing to a more robust and efficient credit environment in India.

### **23. Abhishek Singh v. Huhtamaki Ppl Ltd. & Anr. [23]**

*-Supreme Court holds that an application for withdrawal of corporate insolvency resolution process under IBC can be allowed even prior to the constitution of the committee of creditors.*

**BENCH – B.R. Gvai and Vikram Nath, JJ.  
[NCLT BENCH]**

In the case, the Supreme Court of India clarified that Section 12A of the Insolvency and Bankruptcy Code (IBC) does not bar applications for withdrawal of the Corporate Insolvency Resolution Process (CIRP) even before the constitution of the Committee of Creditors (CoC).

This judgment aligns with Regulation 30A of the Insolvency and Bankruptcy Board of India (IBBI) Regulations, which allows for the withdrawal of CIRP applications under Section 12A of the IBC at a stage when the CIRP has been initiated, the Interim Resolution Professional has been appointed, but the CoC has not yet been constituted.

The law in relation to IBC is still evolving, with recent judgments creating distinctions within one class of creditors and their rights.

The courts are yet to test the position if one can treat such a class as a sub-class of creditors and then make a distinction/discrimination in payments to such creditors.

The case pertains to an application filed by Abhishek Singh under Section 12A of the IBC seeking withdrawal of the CIRP against Huhtamaki Ppl Ltd. & Anr.

The Supreme Court observed that the purpose of Section 12A is to ensure that the CIRP process is not misused by the corporate debtor or any other person to stall the insolvency resolution process.

The Court also noted that the withdrawal of CIRP applications under Section 12A of the IBC is permissible at any stage of the CIRP process, provided that the application is filed before the issuance of the invitation for expression of interest.



**VIEWPOINT** : The Supreme Court's ruling brings much-needed clarity and strengthens the application of the IBC's withdrawal provisions. By reinforcing the IBBI's role and highlighting the NCLT's responsibilities, it paves the way for smoother and more efficient CIRP resolution processes.

#### **24. Manesh Agarwal vs. Pramod Kumar Sharma [24]**

*-The Supreme Court has clarified that resolution plans are not required to align with the liquidation value of the corporate debtor.*

Bench – Justice Ashok Bhushan (Chairperson), Dr. Alok Srivastava [Member (Technical)], Ms. Shreesha Merla [Member (Technical)].  
**(NCLT, Principal Bench, New Delhi)**

In this case, the NCLAT New Delhi noted that the term 'undischarged insolvent' has not been defined in the Insolvency and Bankruptcy Code (IBC). The NCLAT held that until a competent court declares the status of undischarged insolvency, a resolution applicant cannot be disqualified under Section 29A of the IBC, merely on account of being the sole shareholder and director of a company that had undergone liquidation. The present appeal before the NCLAT pertains to the interpretation of Section 29A of the IBC, which deals with the eligibility of resolution applicants. The case involves Manesh Agarwal and Pramod Kumar Sharma, who are the appellant and respondent, respectively. The appeal was filed by Manesh Agarwal against the order passed by the National Company Law Tribunal.

The NCLT had rejected the resolution plan submitted by Manesh Agarwal for the corporate debtor, on the grounds that he was an undischarged insolvent. The NCLT had held that Manesh Agarwal was ineligible to submit a resolution plan under Section 29A of the IBC.

The NCLAT, in its order, observed that the term 'undischarged insolvent' has not been defined in the IBC. The NCLAT held that until a competent court declares the status of undischarged insolvency, a resolution applicant cannot be disqualified under Section 29A of the IBC, merely on account of being the sole shareholder and director of a company that had undergone liquidation. The NCLAT set aside the order passed by the NCLT and remanded the matter back to the NCLT for fresh consideration.

**VIEWPOINT** : The NCLAT ruling clarifies the interpretation of Section 29A of the IBC. The ruling highlights that without a formal court declaration of an individual's undischarged insolvency status, a resolution applicant cannot be automatically disqualified. The ruling underscores the need for a legal determination of insolvency status before disqualification, ensuring a fair and legally sound insolvency resolution process.

#### **25. Peter Beck and Partner Vermoegensverwaltung GMBH v. Sharon Bio-medicine Limited & Ors. [25]**

*The NCLAT in Delhi has ruled that varying payments can be made to unsecured financial creditors who agree and disagree.*

[23] (2023 SCC OnLine SC 349)

[24] (2022 SCC OnLine SC 298)



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### **BENCH – Ashok Bhushan (Chairperson) and Barun Mitra [Member (Technical)], (NCLT, Principal Bench, New Delhi)**

In this case, the NCLAT, New Delhi ruled that differential payments can be made between unsecured financial creditors who voted in favor of a resolution plan and those who voted against it.

Sharon Bio-Medicine Limited, a corporate debtor, entered into Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). A resolution plan was approved by the Committee of Creditors with 79.28% voting share. The dissenting financial creditor, Peter Beck and Partner Vermoegensverwaltung GMBH, argued that there cannot be any discrimination between unsecured financial creditors based on their vote.

The NCLAT relied on Section 30(2)(b) of the IBC and Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations). They stated that dissenting creditors are entitled to the minimum payment as per Section 53(1) of the IBC in case of liquidation and have payment priority over creditors who voted in favor of the plan.

The NCLAT also considered Form-H of the CIRP Regulations, which clearly distinguishes between unsecured financial creditors who voted in favor of the plan and those who did not. They concluded that there can be different payments to these two categories. The NCLAT rejected the dissenting creditor's argument and dismissed the appeal. They held that assenting financial creditors are entitled to payment as proposed in the plan, while dissenting financial creditors are entitled to the minimum entitlement as per Section 30(2)(b). Since the liquidation value of the dissenting creditor was nil, they were not entitled to any payment under the plan.

**VIEWPOINT :** This landmark ruling promotes a balanced approach to interpreting commercial contracts and is likely to influence future contract drafting for commercial transactions in India. It protects negotiated agreements, recognizes the complexity of hybrid instruments, and encourages context-based analysis to ensure fair and accurate interpretation.

### **26. Tata Steel BSL Limited v. Venus Recruiters Ltd. [26]**

*-The Division Bench of the Delhi High Court has stated that the adjudication of an avoidance application under the IBC can continue beyond the Corporate Insolvency Resolution Process (CIRP) of a corporate debtor.*

### **BENCH – Satish Chandra Sharma, C.J., Subramonium Prasad, J (High Court of Delhi, New Delhi)**

In this case, the Delhi High Court has ruled that avoidance applications filed under the Insolvency and Bankruptcy Code (IBC) against a corporate debtor can be heard even after the approval of the resolution plan and completion of the Corporate Insolvency Resolution Process (CIRP).

The case involved Bhushan Steel Limited, which was admitted into CIRP on 26 July 2017. The Resolution Professional filed avoidance applications against Venus Recruiter Pvt. Ltd. and others on 9 April 2018, seeking to avoid certain transactions.



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The resolution plan was approved by the Adjudicating Authority on 15 May 2018 and fully implemented, but the avoidance applications were still pending.

The High Court held that the phrase "arising out of" or "in relation to" under Section 60(5)(c) of the IBC is broad enough to include avoidance applications even after CIRP has concluded. The Court reasoned that CIRP and avoidance applications are separate proceedings, with CIRP being time-bound and avoidance applications requiring a detailed investigation of suspect transactions. The Court further held that the Resolution Professional does not become functus officio with respect to avoidance applications simply because CIRP has concluded. The Resolution Professional's remuneration for handling these applications should be determined by the Adjudicating Authority.

Finally, the Court set aside a previous order that had held that avoidance applications cannot survive beyond the conclusion of CIRP and directed the NCLT to proceed with the hearing of the avoidance applications. The Court also directed that any amounts recovered from the avoidance applications should be distributed among the secure creditors in accordance with the law. This decision clarifies that avoidance applications under the IBC can be heard even after the completion of CIRP, and that the Resolution Professional does not become functus officio with respect to such applications. This will provide comfort to creditors who may have claims against a corporate debtor even after it has exited CIRP.

**VIEWPOINT :** This landmark ruling promotes a balanced approach to interpreting commercial contracts and is likely to influence future contract drafting for commercial transactions in India. It protects negotiated agreements, recognizes the complexity of hybrid instruments, and encourages context-based analysis to ensure fair and accurate interpretation.

### **27. M/s. IFCI Limited v. Sutanu Sinha & Ors.**

*-The Supreme Court has provided clarification on whether Compulsorily Convertible Debentures should be treated as equity or debt*

**BENCH** – Justice M. Venugopal, [Member (Judicial)], Shreesha Merla [Member (Technical)] (NCLAT, Appellate Bench, Chennai)

In this landmark judgement, the Supreme Court of India ruled that under IBC Compulsory Convertible Debentures (CCDs) should be considered an equity instrument, not a debt. This case involved the insolvency of IVRCL Chengapalli Tollways Ltd (ICTL), where IFCI had invested in CCDs issued by the company.

The issue before the Court was whether the investment in CCDs should be treated as debt or equity. IFCI argued that it should be considered debt, as the conversion of CCDs to equity became impossible due to ICTL's insolvency. However, the Supreme Court disagreed. The Court pointed out that CCDs are a hybrid instrument with characteristics of both debt and equity.

While they offer a fixed return like debt, they also have the potential to convert into equity shares, giving the investor a share in the company's ownership. In this case, the Court concluded that the CCDs were clearly intended to be part of the equity funding for the project, as per the Concessionaire Agreement and the financing plan.

[26] (2023 SCC OnLine Del 155: (2023) 172 CLA 239

[27] (2023 INSC 1023)



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The Court further noted that treating the CCDs as debt would be unfair to other equity shareholders, who would have been diluted if the CCDs were converted. Additionally, it would have provided IFCI with a preferential position over other creditors in the insolvency proceedings.

Therefore, the Supreme Court ruled that the investment in CCDs should be treated as equity, not debt. This means that IFCI has no claim to recover the principal amount of the investment or any interest.

**VIEWPOINT :** While the Court acknowledged that this was a difficult situation for IFCI, it emphasized that the complexities of commercial documents depend on the nature of the business and each party should understand its obligations and potential benefits.

### **28. Mr. Brajesh Mishra and Others vs. M/s Dolphin Offshore Shipping Ltd.**

*-The NCLT Mumbai has held that if operational creditors individually do not meet the Rs. 1 Crore threshold, a joint petition under the IBC cannot be sustained.*

**BENCH – Hon’ble Shri Kuldip Kumar Kareer, [Member (Judicial)], Hon’ble Smt. Anuradha Sanjay Bhatia, [Member (Technical)] (NCLT, Mumbai Bench, Court No. V, Mumbai)**

In this case, the NCLT in Mumbai ruled that in a joint petition under Section 9 of the Insolvency and Bankruptcy Code (IBC) filed by multiple operational creditors is not maintainable if their individual claims do not meet the minimum threshold of Rs. 1 crore.

In this case, 23 operational creditors, who were employees of the company, filed a joint petition against M/s Dolphin Offshore Shipping Ltd. alleging unpaid salaries and other dues exceeding Rs. 2.86 crore. However, none of the individual claims exceeded Rs. 1 crore, the minimum threshold for filing a petition under Section 9.

The NCLT relied on the judgment of Sadashiv Nomaya Nayak and Others vs. Gammon India and Contractors Private Limited, which held that individual claims must meet the threshold requirement for a joint petition to be maintainable.

Therefore, the NCLT dismissed the petition as none of the individual creditors had a claim exceeding Rs. 1 crore.

**VIEWPOINT :** This ruling clarifies that operational creditors can only file joint petitions under Section 9 of the IBC if their individual claims meet the minimum threshold. This ensures that the IBC's procedures are not misused by numerous creditors with small claims against a single company.

### **29. EPC Constructions India Limited through its Liquidator – Abhijit Guhathkurtha v. M/s Matix Fertilizer and Chemicals Limited. [29]**

*-The NCLT Kolkata has ruled that a preference shareholder does not qualify as a financial creditor unless the preference shares are due for redemption*





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### **BENCH – Smt. Bidisha Banerjee, [Member (Judicial)] Shri Balraj Joshi, [Member (Technical)] (NCLT, Division Bench, Court No. II, Kolkata)**

In this case, the NCLT in Kolkata ruled that preference shareholders cannot be considered financial creditors under the Insolvency and Bankruptcy Code (IBC) unless their shares become redeemable. This decision was made in the case of EPC Constructions India Limited v. M/s Matix Fertilizer and Chemicals Limited.

The case involved EPC, which invested INR 250 crore in the Corporate Debtor in exchange for 25 crore preference shares with a cumulative dividend of 8%. The Corporate Debtor defaulted on the redemption of these shares, prompting EPC to file a petition under Section 7 of the IBC. The NCLT dismissed the petition on the grounds that preference shares are not considered debt unless they are redeemable.

They analyzed the definition of equity and preference share capital under the Companies Act and concluded that preference shareholders have preferential rights to profits and capital, but they are still considered members of the company with voting rights.

This section also states that preference shareholders cannot be paid until the company fully discharges its debt obligations. Therefore, non-payment of dividends does not automatically make preference shareholders creditors.

The NCLT then looked at the definition of "debt" and "default" under the IBC and concluded that since there was no liability to pay dividends due to the company's losses, there was no default. This further reinforced their decision that CRPS were not financial debts.

Based on their analysis, the NCLT concluded that preference shareholders cannot step into the shoes of creditors unless their shares are redeemable.

This decision clarifies the difference between debt instruments and preference shares and removes ambiguity surrounding the treatment of preference shareholders in insolvency proceedings. It holds that non-payment of dividends does not automatically make them creditors and they cannot initiate CIRP under Section 7 of the IBC.

**VIEWPOINT :** his decision clarifies the difference between debt instruments and preference shares and removes ambiguity surrounding the treatment of preference shareholders in insolvency proceedings. It holds that non-payment of dividends does not automatically make them creditors and they cannot initiate CIRP under Section 7 of the IBC.

### **30. Sanjay Agarwal v. State Tax Officer. [30]**

*-The Supreme Court has affirmed the precedence of government dues in bankruptcy proceedings.*

### **BENCH – A.S. Bopanna and Bela M. Trivedi (Supreme Court Of India)**

The Supreme Court of India dismissed a batch of review petitions filed against the 2022 judgment in State Tax Officer v. Rainbow Papers Ltd. This judgment held that the definition of a secured creditor under the Insolvency and Bankruptcy Code (IBC) includes any government or governmental authority and that a resolution plan which ignores dues to the government is liable to be rejected.

[29] (Company Petition (I.B.) No. 156/KB/2022)

[30] (2023 SCC OnLine SC 1406)



## RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

The review petitioners argued that the Rainbow Papers judgment failed to consider the 'waterfall mechanism' in Section 53 of the IBC, which prioritizes the payment of secured creditors over unsecured creditors. However, the Supreme Court rejected this argument, stating that the Rainbow Papers judgment had considered all relevant provisions of the IBC.

The Court also emphasized that a coordinate bench cannot comment upon the judgment of another coordinate bench of equal strength. If one bench disagrees with the decision of another bench, the proper course is to refer the matter to a larger bench for an authoritative decision.

In the Rainbow Papers case, the Supreme Court held that the National Company Law Appellate Tribunal (NCLAT) had erred in law by rejecting an application by the Government of Gujarat for realizing dues towards VAT from the corporate debtor. The Court further clarified that the State is a secured creditor under the GVAT Act and that its debts should rank equally with other specified debts, including workmen's dues.

**VIEWPOINT :** The dismissal of these review petitions confirms that the definition of a secured creditor under the IBC includes any government or governmental authority and that a resolution plan which ignores dues to the government is liable to be rejected. This decision has important implications for the insolvency resolution process in India, as it ensures that governments are treated fairly in the distribution of assets from insolvent companies.

### **31. Fervent Synergies Limited VS Manish Jaju.**

*-The NCLAT Delhi has ruled that the doctrine of promissory estoppel cannot be invoked against an approved Resolution Plan.*

### **BENCH – Ashok Bhushan (Chairperson), Barun Mitra, Arun Baroka (NCLAT, Principal Bench, New Delhi)**

The NCLAT in New Delhi had dismissed an appeal filed by Fervent Synergies Limited (Appellant) challenging the exclusion of its claim from the approved resolution plan for Sivana Reality Private Limited (Corporate Debtor).

The Appellant had purchased 10 flats from the Corporate Debtor and claimed financial creditor status. However, their claim was initially rejected due to the lack of a No Objection Certificate (NOC) from LIC Housing Finance Limited (LICHFL), the mortgagee of the project. Later, the claim was restored, but the Appellant was classified as an "affected homebuyer" under the resolution plan, resulting in less favorable treatment compared to "unaffected homebuyers" who obtained the required NOC.

The Appellant contended that this classification was discriminatory and argued that the doctrine of promissory estoppel should apply due to the initial acceptance of their claim by the Resolution Professional. They also alleged fraud and violation of their rightful claim.

The NCLAT, however, rejected these arguments. They held that the classification of homebuyers based on the NOC from LICHFL was reasonable and in accordance with the provisions of the Insolvency and Bankruptcy Code (IBC). Furthermore, they ruled that the doctrine of promissory estoppel cannot be applied against an approved resolution plan that complies with the IBC and relevant regulations.

The NCLAT emphasized that the Appellant, as a member of the "affected homebuyers" class who approved the resolution plan, cannot now individually challenge its provisions.



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They also highlighted that the Appellant did not challenge the NCLT's order approving the resolution plan, which further strengthens the decision.

**VIEWPOINT** : This case clarifies that the doctrine of promissory estoppel has limited application in the context of approved resolution plans under the IBC. While fair treatment of creditors is paramount, the NCLAT's ruling emphasizes the need for adherence to the IBC's provisions and the finality of approved resolution plans.

### **32. Ramkrishna Forgings Limited v Ravindra Loonkar & Anr. [32]**

*-The Apex Court has reinforced the importance of reasoned orders and the necessity for the NCLT to operate within the defined parameters of the Insolvency and Bankruptcy Code*

#### **BENCH – Hon'ble Mr. Justice Ahsanuddin, Hon'ble Mr. Justice Vikram Nath (Supreme Court Of India)**

The Supreme Court's ruling comes in a case involving the National Company Law Tribunal's (NCLT) exercise of power under Section 31(2) of the Insolvency and Bankruptcy Code, 2016. The court emphasized that when the NCLT decides not to approve a resolution plan, it must pass a reasoned order, as the recording of cogent reasons is a crucial duty of courts and tribunals. The case involved ACIL, the Corporate Debtor, which underwent Corporate Insolvency Resolution Process (CIRP) under the IBC. Ramkrishna Forgings Limited (SRA) submitted a resolution plan that was approved by the Committee of Creditors (CoC).

The NCLAT affirmed the NCLT's order, citing the discovery of an avoidance transaction of approximately Rs. 1000 Crores and the significant financial implications involved. SRA then appealed to the Supreme Court, arguing that the IBC already provides a mechanism for asset valuation, making the appointment of an Official Liquidator unnecessary. Additionally, they contended that the NCLT should not interfere with the commercial decisions of the CoC.

The Supreme Court, comprising Justice Vikram Nath and Justice Ahsanuddin Amanullah, held that the NCLT can reject a resolution plan only through a reasoned order, as per Section 31(2) of the IBC. The court underscored that the NCLT's jurisdiction and powers derive solely from the Code and its regulations. In this case, the lack of detailed reasoning in the NCLT's order prompted the Supreme Court's intervention, emphasizing the duty of courts and tribunals to provide cogent reasons for their decisions.

Addressing concerns raised during the proceedings, the court clarified that the NCLT has the authority to direct the re-valuation of Corporate Debtor's assets when necessary, but such power must be exercised strictly within the confines of the IBC. The court referred to previous judgments to support its stance and emphasized the need for legal principles to be applied in the context of specific facts. Ultimately, the Supreme Court set aside the orders of both the NCLT and the NCLAT and directed the NCLT to pass appropriate orders regarding the approval of the resolution plan.

**VIEWPOINT** : The Supreme Court's ruling strengthens the CoC's autonomy within the IBC framework, encourages efficient resolution through limited NCLT intervention, and offers valuable guidance for future cases. This contributes to a more robust and predictable insolvency regime in India.



# RUN-THROUGH OF 2023 EVOLVING IBC JURISPRUDENCE

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Centre for Advanced Research in Corporate & Insolvency Law (CARCIL) is a Centre of Excellence established with a vision to facilitate the highest standard of research in Corporate Law, Governance Insolvency and allied laws in India. The Centre aims to provide a platform to carry out research projects, organize academic workshops, conduct Faculty Development Programs etc. and work towards the advancement of Corporate and Insolvency laws in India.

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