

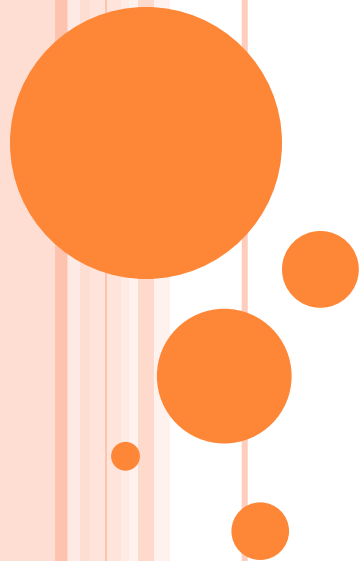
“CORPORATE INSOLVENCY RESOLUTION PROCESS

AND

EVOLVING JURISPRUDENCE”

ORGANIZED BY ICSI-WIRC

DECEMBER 07, 2019



M/S. INNOVENTIVE INDUSTRIES LTD. VS. ICICI BANK & ANR. [CIVIL APPEAL NOS. 8337- 8338 OF 2017] SC @ 31.08.2017

- The issues raised in the present appeal were:
 - i. Whether the provisions of Section 238 of the Code with non-obstante clause would prevail upon the local law/ state statute?
 - ii. Whether natural justice was violated when no notice was given to the Corporate Debtor?
 - iii. Limited time-frame of 14 days was available with the court for deciding the case & therefore, plea of the Corporate Debtor was not taken into consideration after the expiry of 14 days?



M/S. INNOVENTIVE INDUSTRIES LTD. VS. ICICI BANK & ANR. (CONTINUED)

- The Apex Court while deciding the issue no. 1 has held that the question repugnancy of Article 254 of the Constitution of India must be shown that the two enactments contained irreconcilable provision so that they cannot stand together or operate in the same field. Further, the doctrine of pith and substance must be applied in order to find out as to wherein, the competing statutes as a whole fall. Repugnancy must exist in fact and not depend upon a mere possibility.
- The Apex Court while deciding the issue no. 2 held that the Financial/Operational Creditor must give notice of application in advance to the Corporate Debtor to issue the provision of natural justice.
- The Apex Court while deciding the issue no. 3 held that 14 days was available with the court for deciding the case is recommendatory and not mandatory



M/S. INNOVENTIVE INDUSTRIES LTD. VS. ICICI BANK & ANR. (CONTINUED)

- SC held that for triggering Section 7 (1) of the IBC, a default could be in respect of default of financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor.
- SC also held that under Section 8(1) of the IBC, an operational creditor is required to deliver a demand notice on the occurrence of a default and under Section 8(2) of the IBC, then corporate debtor can bring to the notice of the creditor, existence of a dispute or the record of pendency of a suit or arbitration proceedings, which is pre-existing. Existence of such a dispute will make the application of operational creditor inadmissible




M/S. INNOVENTIVE INDUSTRIES LTD. VS. ICICI BANK & ANR. (CONTINUED)

- SC also held that under Section 7, the moment NCLT is satisfied that a default has occurred, the application of the financial creditor must be admitted (unless it is incomplete). The corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due.
- A debt may not be due if it is not payable in law or in fact.
- It is of no matter that the debt is disputed so long as the debt is “due” i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date.
- Non-obstante clause of IBC will prevail over the non-obstante clause in Maharashtra Relief Undertakings (Special Provisions Act), 1958



MOBILOX INNOVATIONS PRIVATE LTD VS. KIRUSA SOFTWARE PRIVATE LTD. [CIVIL APPEAL No(S). 9405/2017] SC@ 21.09.2017

- SC held that once an operational creditor has filed an Application, which is otherwise procedurally complete, the Adjudicating Authority has to consider the following:
 - Whether there is an “operational debt”, as defined under the Code, which exceeds INR 100,000;
 - Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid; and
 - Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute;
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MOBILOX INNOVATIONS PRIVATE LTD VS. KIRUSA SOFTWARE PRIVATE LTD. (CONTINUED)

- SC observed that all that the Adjudicating Authority must see is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble argument or an assertion of fact unsupported by evidence.
- SC was of the view that it is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster, it held that the Adjudicating Authority need not go into the merits and satisfy itself that the defense is likely to succeed at this stage of the proceeding.



M/s. KAPIL GUPTA & ANR. VS. INDIABULLS HOUSING FINANCE LTD. & ANR. [CIVIL APPEAL No. 20924/2017] SC@08.12.2017

- The questions arose for consideration in this appeal are:
- Can NCLT permit withdrawal of application under Section 7 of IBC after its admission?
- The Hon'ble Apex Court while exercising its power under Article 142 of the Constitution of India set aside the order passed by the NCLT rejecting the plea of the parties seeking withdrawal of Insolvency Resolution Process after they reach an amicable settlement.



MACQUARIE BANK LIMITED VS. SHILPI CABLE TECHNOLOGIES LTD. [CIVIL APPEAL NO.15135 OF 2017] SC @ 15.12.2017

- In the present appeal two important questions arose for consideration.
 - Whether in relation to an operational debt, the provision contained in Section 9(3)(c) of the Code is mandatory; and
 - Whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor.



MACQUARIE BANK LIMITED VS. SHILPI CABLE TECHNOLOGIES LTD. (CONTINUED)

- SC held that a lawyer on behalf of the operational creditor can issue a demand notice of an unpaid operational debt and observed as follows:
 - *"A conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the Code together with the Adjudicatory Authority Rules and Forms thereunder would yield the result that a notice sent on behalf of an operational creditor by a lawyer would be in order"*
- SC held that the provision contained in Section 9(3)(c) of the IBC is not mandatory for initiating insolvency proceeding



STATE BANK OF INDIA VS V. RAMAKRISHNAN & ANR [CIVIL APPEAL NO. 3595 OF 2018] SC @ 14.08.2018

- SC held that Section 14 of the IBC, which provides for a moratorium for the limited period mentioned in the IBC, on admission of an insolvency petition, would not apply to a personal guarantor of a corporate debtor.
- SC also observed that Section 14(3) of the IBC (introduced vide 2018 amendment) which states that provisions of Section 14(1) shall not apply to a surety in a contract of guarantee for corporate debtor, is retrospective.



ARCELORMITTAL INDIA PRIVATE LIMITED VS. SATISH KUMAR GUPTA [CIVIL APPEAL NOS.9402-9405 OF 2018] SC @ 04.10.2018

- SC while interpreting the Section 29A(c) of the IBC, observed the stage of ineligibility attaches when the resolution plan is submitted by a resolution applicant and not any anterior stage.
- SC held that the time limit for completion of the insolvency resolution process as laid down in Section 12 is mandatory and it cannot be extended beyond 270 days.



B.K. EDUCATIONAL SERVICES PRIVATE LIMITED VS. PARAG GUPTA AND ASSOCIATES [CIVIL APPEAL NO.23988 OF 2017] SC @ 11.10.2018

- SC held that the Limitation Act is applicable to applications filed under Sections 7 and 9 of IBC from the very inception and observed as follows:
 - *"The right to sue", therefore, accrues when a default occurs. If the default has occurred over three years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application."*



FORECH INDIA LTD. VS. EDELWEISS ASSETS RECONSTRUCTION CO. LTD. [COMPANY APPEAL No.818 OF 2018] SC @ 22.01.2019

- The Apex Court disposed off this appeal and declined to interfere with the Appellate Tribunal's order and granted liberty to the Appellant to apply under the proviso to section 434 of the Companies Act, 2013, to transfer the winding up proceeding pending before the High Court of Delhi to the NCLT, which can then be treated as a proceeding under section 9 of the Code.
- The Hon'ble Court further observed that the Financial Creditor's application under section 7 which has been admitted by the Tribunal is clearly an independent proceeding which must be decided in accordance with provisions of the Code



SWISS RIBBONS (P) LTD. AND ANOTHER VS. UNION OF INDIA AND OTHERS [W.P.(C)NO.37 OF 2019] SC @ 25.01.2019

- In the present writ petition various provisions of IBC were challenged. The apex court while disposing off the writ petition has upheld the upheld the constitutional validity of IBC in its "entirety".
- SC held that to attract the bar under Section 29A from participating in resolution process, "related person" should be a person connected to the defaulting entity.
- The Hon'ble Apex Court explained that the Code is a legislation which deals with economic matters and, in the larger sense, deals with the economy of the country as a whole.



SWISS RIBBONS (P) LTD. AND ANOTHER VS. UNION OF INDIA AND OTHERS (CONTINUED)

- The Court expressed its happiness in the working of the Code and stated that the experiment conducted in enacting the Code is proving to be largely successful.
- The Court expressed its happiness in the working of the Code and stated that the experiment conducted in enacting the Code is proving to be largely successful.
- The Court also commented that the defaulter's paradise is lost and in its place, economy's rightful position has been regained.



VIJAY KUMAR JAIN VS. STANDARD CHARTERED BANK AND OTHERS [COMPANY APPEAL NO.8430 OF 2018 WITH WRIT PETITION (C) NO.1266 OF 2018] SC @ 31.01.2019

- The Apex Court framed the following issues:
 - Whether all participants in the meeting of Committee of Creditors, including members of the suspended Board of Directors, are entitled to notice/agenda including resolution plans together with documents/ issues to be voted upon at the meeting?
Held, Yes
 - Whether the Resolution Professional can be indemnified through non-disclosure agreement? **Held, Yes**



VIJAY KUMAR JAIN VS. STANDARD CHARTERED BANK AND OTHERS (CONTINUED)

- The Hon'ble Supreme Court while allowing the writ petition and company appeal has observed that the statutory scheme makes it clear that though the erstwhile Board of Directors are not members of the Committee of Creditors, yet, they have a right to participate in each and every meeting held by the Committee of Creditors
- The erstwhile Board of Directors also have a right to discuss along with members of the Committee of Creditors all resolution plans that are presented at such meetings under section 25(2)(i).



VIJAY KUMAR JAIN VS. STANDARD CHARTERED BANK AND OTHERS (CONTINUED)

- The Apex Court further stated that it cannot be again said that Operational Creditors, who may participate in such meetings but have no right to vote, are vitally interested in such resolution plans, and must be furnished copies of such plans before hand if they are to participate effectively in the meeting of Committee of Creditors.
- This is for reason that under section 30(2)(b), repayment of their debts is an important part of the resolution plan qua them on which they must comment.



VIJAY KUMAR JAIN VS. STANDARD CHARTERED BANK AND OTHERS (CONTINUED)

- The Apex Court also deliberated that so far as ‘Confidential information’ is concerned, it is clear that Resolution Professional can take an undertaking from members of the erstwhile Board of Directors to maintain confidentiality. [Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, read with paragraph 21 of the First Schedule].
- This can be in the form of a non-disclosure agreement in which the Resolution Professional can be indemnified in case information is not kept strictly confidential.



K. SASHIDHAR VS. INDIAN OVERSEAS BANK

[CIVIL APPEAL NO. 10673 OF 2018] SC @

05.02.2019

- SC observed that National Company Law Tribunal has no jurisdiction and authority to analyse or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.
- SC further observed that upon receipt of a "rejected" resolution plan, the adjudicating authority (NCLT) is obligated to initiate liquidation process under Section 33(1) of the IBC.



Y. SHIVRAM PRASAD VS. S. DHANAPAL & ORS. [CA (AT) (INS) No. 224 OF 2018] NCLAT @ 27.02.2019

- NCLAT held that
 - If the members or the ‘CD’ or the ‘creditors’ or a class of creditors like ‘Financial Creditor’ or ‘Operational Creditor’ approach the company through the liquidator for compromise / arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the Adjudicating Authority.
 - In case of failure of compromise / arrangement, Liquidator shall take steps for outright sale of the ‘Corporate Debtor’ so as to enable the employees to continue.



JK JUTE MILL MAZDOOR MORCHA VS JUGGILAL KAMLAPAT JUTE MILLS COMPANY LTD. [CIVIL APPEAL NO.20978 OF 2017] SC@30.04.2019

- SC held that a registered trade union can maintain a petition as an operational creditor on behalf of its members.
- SC held that a trade union is an entity established under a statute – namely, Trade Unions Act, and would thus fall within the definition of "person" under Sections 3(23) of the IBC.



JK JUTE MILL MAZDOOR MORCHA VS JUGGILAL KAMLAPAT JUTE MILLS COMPANY LTD. (CONTINUED)

- SC observed that instead of one consolidated petition by a trade union representing a number of workmen, filing individual petitions would be burdensome as each workman would thereafter have to pay insolvency resolution process costs, costs of the interim resolution professional, costs of appointing valuers, etc. under the provisions of the IBC read with Regulations 31 and 33 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- SC further observed that we must never forget that procedure is the handmaid of justice, and is meant to serve justice



PIONEER URBAN LAND AND INFRASTRUCTURE LTD AND ANR VS UNION OF INDIA [WRIT PETITION (CIVIL) NO. 43 OF 2019] SC @ 09.08.2019

- SC upheld the amendments made to the IBC to treat homebuyers as financial creditors. SC further held that:
 - The amendments do not violate Article 14 and 19(1)(g) of the Constitution and rejected the argument that they are 'arbitrary, unreasonable, excessive and disproportionate'.
 - The Amendment Act to the Code does not infringe Articles 14, 19(1)(g) read with Article 19(6), or 300-A of the Constitution of India.



PIONEER URBAN LAND AND INFRASTRUCTURE LTD AND ANR VS UNION OF INDIA (CONTINUED)

- Section 5(8)(f) as it originally appeared in the IBC being a residuary provision, always subsumed within it allottees of flats/apartments. The explanation together with the deeming fiction added by the Amendment Act is only clarificatory of this position in law.
- The RERA has to be read harmoniously with IBC, as amended by the Amendment Act. It is only in the event of conflict that the Code will prevail over the RERA.



M/s. SURENDRA TRADING COMPANY Vs. M/S. JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED AND OTHERS [CIVIL APPEAL NO. 8400 OF 2017] SC@19.09.2019

- Issue before the Apex Court
 - *The present appeal raises question "Whether the time limit prescribed in Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as Code 2016) for admitting or rejecting a petition or initiation of insolvency resolution process is mandatory?"*
- The Hon'ble Apex Court observed that:
 - It is to be borne in mind that limit of 180 days mentioned in Section 12 also starts from the date of admission of the application.
 - Period prior thereto which is consumed, after the filing of the application under Section 9 (or for that matter under Section 7 or Section 10), whether by the Registry of the adjudicating authority in scrutinising the application or by the applicant in removing the defects or by the adjudicating authority in admitting the application is not to be taken into account.

M/S. SURENDRA TRADING COMPANY Vs. M/S. JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED AND OTHERS (CONTINUED)

- Provision for removing the defects within seven days is directory and not mandatory in nature.
- While interpreting the provisions to be directory in nature, at the same time, it can be laid down that if the objections are not removed within seven days, the applicant while re-filing the application after removing the objections, file an application in writing showing sufficient cause as to why the applicant could not remove the objections within seven days.



NEERAJ JAIN VS. YES BANK LTD. [CA (AT) (INS.) NO. 323 OF 2019] NCLAT @ 10.04.2019

- An application under section 7 of IBC being an independent proceeding has nothing to do with the pendency of the criminal cases relating to the misappropriation of the funds by the employee of the CD



EDELWEISS ASSET RECONSTRUCTION MANAGEMENT COMPANY LIMITED VS. ORISSA MANGANESE AND MINERALS LIMITED & ORS. [CA (AT) (INS.) NO. 437 OF 2018] NCLAT @ 23.04.2019

- A financial creditor cannot file a claim against the guarantor of a debt availed by a principal debtor when there is no default in repaying the loan by principal debtor but the guarantor is undergoing CIRP because there is neither a default committed by the principal debtor nor the guarantee has been invoked by the FC.



COMMISSIONER OF CUSTOMS (PREVENTIVE), WEST BENGAL VS. RAM SWARUP INDUSTRIES LTD. [CA (AT)(INS.) NO. 437,438, 444 & 500/2018][NCLAT @ 20.06.2019]

- After initiation of CIRP and declaration of moratorium, assets of the CD cannot conduct auction sale of assets of corporate debtor for realizing customs duty payable by the CD.



PETER JOHNSON JOHN (EMPLOYEE) VS. KEC INTERNATIONAL LTD. [CA (AT) (INS.) NO. 188-2019] NCLAT @ 03.07.2019

- Where a civil suit stands instituted by operational creditor for realizing the decretal amount as per a foreign court's judgement, it constitutes a pre-existing dispute, which operates as an embargo on powers of the Adjudicating Authority to initiate a corporate insolvency resolution process at the instance of the corporate debtor.



NUI PULP AND PAPER INDUSTRIES PVT. LTD. VS. ROXCEL TRADING GMBH [CA (AT)(INS.) NO. 664 OF 2019] NCLAT@17.07.2019

- Adjudicating Authority can pass an order to restrain the CD and its directors from alienating, encumbering or creating third party rights with respect to its assets before the application under Section 7 or Section 9 of the IBC, as the case may be, is actually admitted.
- By exercising inherent powers under Rule 11 of NCLT Rules, 2016, the Adjudicating Authority may pass such an order if it necessary for meeting the ends of justice or to prevent abuse of the process of the Adjudicating Authority.



AHLUWALIA CONTRACTS (INDIA) LIMITED VS. RAHEJA DEVELOPERS LTD. [CA (AT)(INS.) NO. 703 OF 2018] NCLAT @ 23.07.2019

- A dispute which is raised by a CD to an FC's claim subsequent to receipt of legal / demand notice thereof (from the FC) does not satisfy the requirements of Section 9 (5) (ii) (d) of IBC regarding a pre-existing dispute.
- In order for a dispute to be called a pre-existing dispute, it must exist before the receipt of the demand notice or invoice and in case the dispute is raised subsequent to receipt of legal / demand notice, the requirements of Section 9 (5) (ii) (d) of IBC are not satisfied.



KAUTILYA INDUSTRIES PVT. LTD. VS. PARASRAMPURIYA SYNTHETIC LTD. [CA (AT)(INS.) NO. 282 OF 2019] NCLAT @ 31.07.2019

- Liquidator can accept the resolution plans which were not accepted in Corporate Insolvency Resolution Process as scheme or arrangement in liquidation process.



L&T INFRASTRUCTURE FINANCE COMPANY LTD. VS. GWALIOR BYPASS PROJECTS LTD. CA (AT) (INS.) NO. 676 OF 2019] NCLAT @ 19.08.2019)

- An FC cannot challenge an order of admission of CIRP application filed by another FC on the ground that it has a superior claim over CD's assets as compared to the applicant FC.
- Such a challenge to an order of admission of CIRP application is not maintainable.



EXCEL METAL PROCESSORS LIMITED VS. BENTLER TRADING INTERNATIONAL GMBH [CA (AT) (INS.) NO. 782 OF 2019] NCLAT @21.08.2019)

- If an Adjudicating Authority has jurisdiction to entertain a CIRP application then an objection as to Adjudicating Authority's jurisdiction is not maintained merely on the basis that the agreement inter-se the parties provides for exclusive jurisdiction with a court outside India.



SHWETA VISHWANATH SHIRKE VS. THE COMMITTEE OF CREDITORS [CA (AT) (INS.) NO. 601 OF 2019] NCLAT @ 28.08.2019

- An application under filed under Section 12A of IBC cannot be rejected / dismissed by the Adjudicating Authority merely on the ground that the promoter is not eligible to file a resolution plan under section 29A of IBC.
- Section 29A of IBC is not applicable for entertaining or considering an application filed under section 12A of IBC.



BANNARI AMMAN SPINNING MILLS LTD. VS. MY CHOICE KNIT & APPARELS PVT. LTD. [CA (AT) (INS.) NO. 513 OF 2019] NCLAT @ 03.09.2019

- Adjudicating Authority has no jurisdiction to reject the application under Section 9 of IBC only on the ground that corporate debtor is MSME.



HEMANG PHOPHALIA VS. THE GREATER BOMBAY CO-OPERATIVE BANK LTD. [CA (AT) (INS) NO. 765 OF 2019] NCLAT @ 05.09.2019

- An application under Section 7 and 9 of IBC will be maintainable against the Corporate Debtor, even if the name of a CD has been struck off.



VINEET KHOSLA VS EDELWEISS ASSET RECONSTRUCTION CO. LTD. [CA (AT) (INS.) NO. 441 OF 2019] - NCLAT @06.09.2019

- At the stage of admission of application under Section 7 of IBC, Adjudicating Authority is not required to consider if resolution for a given company would be possible or not and whether or not it would be possible to keep it a going concern.



SANJAY KUMAR RUIA VS. CATHOLIC SYRIAN BANK LTD. [CA (AT) (INS.) NO. 876 OF 2019] NCLAT@11.09.2019

- Professional fee of Resolution Professional and cost incurred by the Resolution Professional, if approved by the Committee of Creditors, it should be allowed as resolution cost by the Liquidator.



JET AIRWAYS (INDIA) LTD. (OFFSHORE REGIONAL -HUB OFFICES THROUGH ITS ADMINISTRATOR MR. ROCCO MULDER) VS. STATE BANK OF INDIA & ANR. CA (AT) (INS.) No. 707 OF 2019

- The Company was subject to parallel insolvency proceedings in India and in the Netherlands. In India, the Company was admitted into CIRP under IBC. In Netherlands, the Company had been declared bankrupt and the Dutch Trustee has been appointed to manage the estate of the Company
- Administrator, Jet Airways (India) Ltd. (Offshore Regional Hub) had approached NCLAT as he was facing difficulties in discharging his duties because the COC was not sharing any information.
- NCLAT approved “Cross Border Insolvency Protocol” agreed between RP & Administrator and issued directions for joint CIRP of the Company under IBC, in compliance with the terms and conditions of said protocol.



JET AIRWAYS (INDIA) LTD. (OFFSHORE REGIONAL - HUB OFFICES THROUGH ITS ADMINISTRATOR MR. ROCCO MULDER) VS. STATE BANK OF INDIA & ANR. (CONTINUED)

- NCLAT held

-*We set aside part of the impugned order dated 20.06.2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench in so far it relates to the observations that the ‘Dutch Court’ has no jurisdiction in the matter of ‘corporate insolvency resolution process’ of ‘Jet Airways (India) Limited, (Offshore Regional Hub) and the consequential directions as given to the ‘Resolution Professional’ in respect of ‘Offshore proceedings.*



**SAGAR SHARMA VS. PHEONIX ARC (P) LTD.
[CIVIL APPEAL NO. 7673 OF 2019]
SC@30.09.2019**

- The date of commencement of IBC does not triggers a fresh period of limitation for filing a CIRP application under Section 7 of IBC
- An application under section 7 of IBC has to be considered keeping in mind the relevant article of the limitation act.



ABHAY N. MANUDHANE VS. GUPTA COAL INDIA (P) LTD. [CA (AT) (INS.) NO. 786 OF 2019] NCLAT @ 01.10.2019

- A CD (under liquidation) cannot file an application u/s – 7 or u/s -9 of IBC against different companies with respect to default in payment of debts payable by such companies to the CD.
- By virtue of Section 11(d) of IBC, a CD, in respect of whom liquidation order has been passed, cannot make an application to initiate CIR under Chapter II of IBC against either and FC or an OC.



DUNCANS INDUSTRIES LTD. VS A J AGROCHEM CIVIL APPEAL NO. 5120 OF 2019 (SC @ 04.10.2019)

- Notification under Section 16E of the Tea Act, 1953 was issued authorising Tea Board to take over the management but actual management of tea undertaking continued to be with the tea undertaking owned by the Appellant Corporate Debtor (because of interim order of Division Bench of the High Court).
- NCLT dismissed Section 9 Application but appeal preferred was allowed by NCLAT. Being aggrieved, appeal was preferred before Supreme Court which dismissed the said appeal held:
 - Section 16G of the Tea Act does not apply because taking over of the actual management being sine quo non for making Section 16G applicable, and
 - Consent of Central Government is not required before initiating proceedings under Section 9 of IBC.



ACTION ISPAT & POWER (P) LTD. VS. SHYAM METALICS & ENERGY LTD. & ORS. [CO. APP 11/2019] DELHI HIGH COURT @ 10.10.2019

- The process of IBC is meant to find the best possible solution in a given case, which is beneficial to the company concerned as well as its creditors and other stakeholders.
- Company Judge in the interest of equity and justice may transfer the winding up petition to NCLT at the instance of a creditor



JSW STEEL LIMITED VS. MAHENDER KUMAR KHANDELWAL [CA (AT) (INS.) NO. 957 OF 2019] NCLAT @ 14.10.2019

- The Directorate of Enforcement (ED) while investigating allegations against the promoters / directors of the CD under the provisions of PMLA cannot attach property of the CD or part thereof which is undergoing CIRP.
- The ED while conducting investigation under PMLA is though free to deal with and attach the personal assets of the erstwhile promoters acquired through crime proceeds.



JAIPRAKASH ASSOCIATES LTD. & ANR. VS. IDBI BANK LTD. & ANR. [CIVIL APPEAL NO. 6486 OF 2019] SC @ 06.11.2019

- Invoking article 142 of the Constitution, the Supreme Court directed 90 days extended period, envisaged in the third proviso to Section 12(3) of IBC, to reckon from 06.11.2019 (date of the order) instead of 16.08.2019 (date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019]



RAHUL JAIN VS. RAVE SCANS (P.) LTD. & ORS. [CIVIL APPEAL NO. 7940 OF 2019] SC @ 08.11.2019)

- Resolution Plan submitted to and approved by NCLT was challenged by a financial creditor on the grounds of discrimination between financial creditors.
- The resolution process had begun well before the amended Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 came into force, and the resolution plan was prepared and approved before that event.
- The Supreme Court observed that the NCLAT, requiring the Appellant to match the pay out (offered to other financial creditors) to financial creditor, was not justified.
- Supreme Court set aside the NCLAT's order / directions and restored the order passed by the NCLT.



