

# IBC CASE LAWS

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# INTRODUCTION

- The Preamble of the Code provides for re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets.
- It envisages specific roles for each participant- the stakeholders comprising debtors and creditors, and the ecosystem comprising AA, Insolvency and Bankruptcy Board of India, information utilities, and insolvency professionals- in different processes and specifies timelines for performance of each task in a process.
- The provisions relating to corporate insolvency resolution process (CIRP) under the Code came into force on 1<sup>st</sup> December, 2016. The Adjudicating Authority (AA) and the Appellate Authority have since dealt quite a few applications for resolution and appeals respectively and have settled a number of issues.

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- 3 Main sources of Law:
  - Customary law
  - Statutory law
  - Case law
- Case law provides certainty; in the sense that a case with sufficiently similar material facts yields a similar outcome. It also provides consistency and fairness as similar cases are dealt in the same way. It assumes additional significance in the initial days of a statutory law such as the Insolvency and Bankruptcy Code, 2016(Code), when different plausible views emerge on an issue and the right view needs to be established.
- The ensuing case laws illustrate the following essential elements recognised / upheld by the Adjudicating Authority:
  - Time is the essence of the Code
  - Proceedings under the Code are not adversarial in nature
  - Principles of natural justice (including abuse and misuse of the process under the Code)
  - ‘Dispute’ and ‘existence of dispute’

# CASE LAWS HAVING SUBSTANTIAL BEARING ON IMPLEMENTATION OF THE CODE

## ➤ Time is the essence of the Code:

- J.K. Jute Mills Company Limited V. M/s. Surendra Trading Company: It has been observed that the procedural part of Section 7 / Section 9 / Section 10 are directory in nature. The Code broadly prescribes four timelines in respect of CIRP:
  - (a) 14 days for the AA to admit or reject an application for initiation of CIRP;
  - (b) 7 days for an applicant to rectify defects in the application for CIRP;
  - (c) 30 days for the Interim Resolution Professional to discharge his duties; and
  - (d) 180 days for creditors to complete a CIRP.
- Held, that timelines of 14 and 30 days are directory in nature, while those of 7 and 180 days ( $180 + 90 = 270$  days) are mandatory under the Code.

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- **Proceedings under the Code are not necessarily adversarial:**
  - DF Duetsche Forfait AG and Anr. Vs. M/s. Uttam Galva Steel Ltd.: The Adjudicating Authority observed that an apparent reading of the Code will reveal that it is not an 'adversarial proceeding'. Prevalence of a democratic system ensures the Adjudicating Authority cannot hang on to the conventional approach that a legal proceeding shall be adversarial only. Ergo, the mandate given by legislature has to be observed. Further, purposive approach of the legislature to be seen instead of crucifying the Code as a harsh remedy.

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## ➤ Rule of principles of natural justice:

- Sree Metaliks Limited and another V. UOI and Anr.: Calcutta High Court observed that the requirement of NCLT and NCLAT to adhere to the principles of natural justice be determined from Section 7(4) of the Code and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. It held that, the NCLT is obliged to afford a reasonable opportunity to the financial debtor and it may do so prior to admitting the petition filed under Section 7 of the Code.
- M/s. Starlog Enterprises Limited V. ICICI Bank: Section 424 of the Companies Act, 2013 requires the NCLT and NCLAT to adhere to the principles of natural justice. Held, it is the mandatory duty of the Adjudicating Authority to issue notice before admitting application for CIRP u/S 9 of the Code.

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- M/s. Innoventive Industries Ltd. V. ICICI Bank & Anr. : Different decisions of the Hon'ble Apex Court illuminated to determine as to how far rule of natural justice is an essential element. The Tribunal observed that it is mandatory for the adjudicating authority to follow the Principles of rules of natural justice while passing an order under the Code. It held that *the Adjudicating Authority is bound to issue a limited notice to the corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by the corporate debtor and to find out whether the application is complete and or there is any other defect required to be removed.* However, adherence to Principles of natural justice does not mean that in every situation the adjudicating authority is required to afford reasonable opportunity of hearing to the corporate debtor before passing its order.
- Unigreen Global Pvt. Ltd.: Broad guidelines pertaining to disclosures to be made by the Corporate Debtor have been enunciated under the Code. *Costs imposed u/S 65 of the Code with a view to discourage the parties from abusing the process envisaged under the Code.*

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- **‘Dispute’ and ‘existence of dispute’ u/S 5(6) of the Code:**
  - Kirusa Software Pvt. Ltd. V. Mobilox Innovations Pvt. Ltd.: Adjudicating Authority to examine whether ‘notice of dispute’ *in fact* raises the dispute and that too within the parameters of two definitions - 'debt' and 'default'. Definition of ‘dispute’ is *inclusive and not exhaustive* under the Code and applies to all kinds of disputes in relation to ‘debt’ and ‘default’.
  - M/s. One Coat Plaster V. M/s. Ambience Pvt. Ltd. & Shivam Construction Co. Ltd.: Definition of ‘dispute’ U/s 5(6) of the Code elucidated and held to be an illustrative one. Also, NCLT U/s 8(1) has sufficient room to determine whether a ‘dispute’ exists.



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- Essar Projects India Ltd. V. MCL Global Steel Pvt. Ltd.: Section 5(6) read with Section 8 of the IBC reveals that the Corporate Debtor needs to prove that the ‘dispute’ is in existence either by way of suit in court of law or arbitration. A mere mentioning that the ‘dispute’ is in existence in relation to a debt is not sufficient.
- M/s. DF Deutsche Forfait AG and Anr. V. M/s. Uttam Galva Steel Ltd.: ‘Dispute’ held to be a dispute in a suit or arbitration and *not otherwise*. ‘Existence of dispute’ held to be pendency of either suit or arbitration proceeding before the receipt of notice u/S 8 of the Code.

THANK YOU