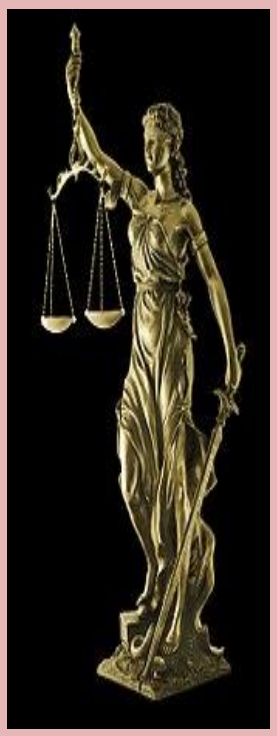
Indian Institute of Insolvency Professionals of ICAI
(Company formed by ICAI as per Section 8 of the Companies Act 2013)

Case Snippets

Volume 2, Number 2 (November 20, 2019)



Pratima P. Shah vs. IDBI Bank Limited & Ors. (NCLAT , 30th September 2019)

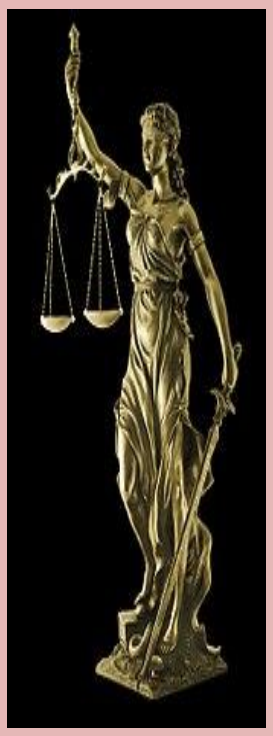
The NCLAT held that applications under Section 7, Section 9 and Section 10 of the Code are the only applications for initiation of Corporate Insolvency Resolution Process, which cannot be filed, if prohibited in terms of Section 11 of the Code. For initiation of Fast Track Corporate Insolvency Resolution Process under Section 55, the prohibition under Section 11 is not applicable.

Similarly, for initiation of the Corporate Insolvency Resolution Process by reference under subsection (b) of Section 4 of The Sick Industrial Companies Repeal Act, 2003 , the prohibition under Section 11 is not applicable. Such a reference should be treated as a Corporate Insolvency Resolution Process by reference under subsection (b) of Section 4 of SIC Repeal Act, 2003. In absence of any prescribed form for such a reference, the NCLAT held that it was open to the corporate debtor to suitably draft the format of reference. If the corporate debtor chose Form 6 for the purpose of reference, it will continue to be a reference by a corporate debtor under subsection (b) of Section 4 and such reference will not be hit by Section 11.The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules*, 2016* do not mandate the intimation of pendency of any winding-up proceeding before any Court.

The NCLT before referring the matter under Section 77(a) of the Code was required to record its prima-facie opinion after giving an opportunity of hearing to the person accused. Such a procedure is required to be followed before referring any matter to the Registrar of Companies/ Insolvency and Bankruptcy Board of India or the Central Government for punishment under Chapter VII of the Code.

It was also laid down that a subsequent bench of the NCLT has no jurisdiction to sit in appeal over the order passed by the earlier bench of the NCLT nor it is competent to deliberate on such issue.

Securities and Exchange Board of India Vs. Assam Company India Ltd. & Ors. [NCLAT] [29th August, 2019]



SEBI passed an interim order against the Corporate Debtor under sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, inter alia, directing: "the shares held by the promoters and directors in ACIL shall not be allowed to be transferred" However, the AA approved the resolution plan for the Corporate Debtor providing for delisting of its equity shares. SEBI contended before the NCLAT that delisting of securities in the resolution plan is clearly an attempt to wriggle out of the jurisdiction of and proceedings instituted by it and the resolution plan involving delisting of equity shares ought not to be proceeded without hearing SEBI. The NCLAT held that the interim order passed by SEBI (Appellant) does not amount to any existing law, to attract Clause (e) of Section 30(2) of the I&B Code, therefore, the Appellant cannot take plea that the approved Resolution Plan is in contravention of any law for the time being in force.

It was further clarified: "the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the SEBI or any competent authority to take steps against erstwhile Promoters, Directors or Officers or others, if any or all of them had violated any of the provisions under SEBI Act or rule framed thereunder or any other law as may be taken against such person of listed company."