

Section-wise Jurisprudence on IBC upto 31.03.2021

PREFACE

ne of the key functions of law is to ensure safety, security, and stability in the society. Law structures economic, social, and political interactions in a secure, stable and effective manner. It thus stipulates the mandate apropos acceptable and unacceptable behaviour in the society writ large. Stated simply, law channels the outcomes and allows the decision makers to anticipate likely outcomes and thereby, predicts consequences

of their actions. Clarity and certainty are, thus, strongly connected to the pursuit of the rule of law and suffuses an element of predictability for the stakeholders. Legal clarity and certainty, of course, also adds to the legitimacy of the judiciary while it fosters the rule of law. The Indian legal system has adopted a host of features that enhances legal certainty and clarity, chief of which is the adoption of the doctrine of stare decisis (binding nature of precedents). In fact, precedents convey information that allows the decision makers and stakeholders to predict, within certain bounds, the likely legal consequences of different choices and infer the possible range of outcomes of potential disputes and differences.

Legal discourse, in large part, determines the rules of the game and informs the players of those rules so that they can best seek out their potential within the confines of the law. Precedents serve as a primary source of legal research, insights and analysis, while stimulating the development of law. They illuminate on the interpretive strides made by the Courts when wading through the statutes. Legal research often begins with statutes or regulations, the primary law passed by the legislature or regulatory agency in the relevant jurisdictions. However, matters interpreting the terms and intent of the statute are invaluable source of law. It is essential to acquire familiarity with this body of law to determine the elements of a cause of action, the latest and updated stance of the Courts, and to increase an understanding of the litigation process.

In this milieu, this publication/compilation of Section-wise case laws is the sprouting of a seed long implanted, nurtured, and caressed by the Insolvency and Bankruptcy Board of India. It is the culmination of a scholarly and professional journey that began with the enactment of the Insolvency and Bankruptcy Code in May, 2016. As a dynamic and progressive economic legislation, the Code has been interpreted by the judiciary with deference to legislative intent in economic matters. Judicial pronouncements under the Code are very important resources to understand the various provisions of this ever-evolving law. This publication is *unique*, as it represents the largest up-to-date account of the jurisprudential development into the nuances of corporate insolvency resolution and other processes. It is *topical*, since it delineates the pronouncements, as per the statutory provisions applied and interpreted by the judiciary in much simpler manner.

The overall idea of this compilation is to encourage and publish material that is of scholarly depth, precision and independence, and at the same time, readable and engaging. Understood as a whole, this publication attempts to cover the case laws emerged till 31st March, 2021 and raises as many new questions as it concomitantly provides answers to. The discourse will generate further fruitful debates, and will continue with every emerging jurisprudence; undoubtedly, challenging the best minds in the field. It is envisioned that this compilation serves as a worthy part of the changing face of insolvency and bankruptcy law in the country.

31st March, 2021.

Legal Affairs Division Insolvency and Bankruptcy Board of India

Disclaimer: The contents of this publication are intended to provide inputs to the stakeholders more of academic value. The summary provided against each case law shall not be used as opinion of the IBBI before any court/tribunal/legal forum/other authority. The readers are advised to go through the original order/judgment as available on the concerned official websites for authentic usage. No claim or liability is to be cast on the IBBI for any spelling/typographical/othermistakes.

LIST OF ABBREVIATIONS

Abbreviation	Full Form
AA	Adjudicating Authority
AA Rules	The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
AFA	Autorisation for Assignment
Board/ IBBI	Insolvency and Bankruptcy Board of India
CCI	Competition Commission of India
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CoC	Committee of Creditors
Code	Insolvency and Bankruptcy Code, 2016
DRT	Debts Recovery Tribunal
ED	Enforcement Directorate
EPFO	Employees' Provident Fund Organisation
FC	Financial Creditor
FSP	Financial Service Provider
НС	High Court

Abbreviation	Full Form
ICD	Insolvency Commencement Date
IP	Insolvency Professional
IP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016
IPE	Insolvency Professional Entity
IRP	Interim Resolution Professional
IU	Information Utility
Liquidation Process Regulations	The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
MSME	Micro, Small and Medium Enterprise
MSME Act	The Micro, Small and Medium Enterprises Development Act, 2006
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCLT Rules	National Company Law Tribunal Rules, 2016
OC	Operational Creditor
PMLA	The Prevention of Money-Laundering Act, 2002
RBI	Reserve Bank of India
RP	Resolution Professional
SARFAESI Act	Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002

Abbreviation	Full Form
SC	Supreme Court of India
SEBI	Securities Exchange Board of India
UNCITRAL Legislative Guide	UNCITRAL (United Nations Commission on International Trade Law) Legislative Guide on Insolvency Law
UP RERA	Uttar Pradesh Real Estate Regulatory Authority

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
110.					Judgement
			Long title		
1.	Objectives of Code	which puts the CD back on its feet and is not a mere recovery legislation for creditors. The interests of the CD have, therefore, been bifurcated and	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
		separated from that of its promoters/those who are in management. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.			
2.		One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal No. 8337-8338 of 2017]	SC	31.08.2017
3.		CIRP is not a recovery proceeding to recover the dues of the creditors. The Code is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues.	Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017]	NCLAT	18.08.2017
4.		To get conversant to new law and to see fruits of it, it will take time, but just for the sake of this reason, we cannot wish away the mandate	DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/I & BP/NCLT/MAH/2017]	NCLT, Mumbai	10.04.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		of this nation which has come			
		through Parliament.			
5.		In view of Statement of Objects	Tourism Finance Corporation of	NCLAT	19.12.2019
		and Reasons of the Code read with	India Ltd. Vs. Rainbow Papers		
		section 53, the Government	Ltd. & Ors. [CA (AT) (Ins.) No. 354		
		cannot claim first charge over the	of 2019 and other appeals]		
6.		property of the CD. What is sought to be achieved in	V Hotels Ltd. Vs. Asset	NCLT, Mumbai	01.05.2019
0.		the Code is not shutting down of	Reconstruction Company (India)	NCLI, Wumbai	01.05.2019
		the CD, but reviving it by ousting	Ltd. [MA 693/2018 in CP No.		
		the defaulter promoters/directors	532/IBC/NCLT/MB/MAH/2018]		
		who were in control and	·····,····,····,····,····,····,		
		management of the CD.			
7.		The object of the Code is no doubt	Bharatbhai Vrajlalbhai Selani Vs.	NCLT,	21.08.2017
		to protect the genuine CD with a	State Bank of India [C.P. (IB) No.	Ahmedabad	
		view to maximise its value of	63/10/NCLT/AHM/2017]		
		assets and find out a resolution			
		plan to revive the CD.			
8.		The proceedings under Code are	Action Ispat & Power Pvt. Ltd. Vs.	HC, New Delhi	10.10.2019
		independent and have an object	Shyam Metalics & Energy Ltd. &		
		different from the one envisaged under the scheme of liquidation	Ors. [Company Appeal 11/2019 8 CM No. 21047/2010 CM No.		
		provided in the company law. The	& CM No. 31047/2019, CM No. 34726/2019]		
		former aims for resolution by way	5472672019]		
		of revival in a manner that benefits			
		all stakeholders, the creditors as			
		well as the CD.			
9.		Time is a crucial facet of the	Kridhan Infrastructure Pvt. Ltd.	SC	01.03.2021
		scheme under the Code and to	(now known as Krish Steel and		
		allow such proceedings to lapse	Trading Pvt. Ltd.) Vs. Venkatesan		
		into an indefinite delay will plainly	Sankaranarayan & Ors. [Civil		
		defeat the object of the Code.	Appeal No. 3299 of 2020]		
10	2	Application	Chate Dauly of India Market		14.00.2010
10.		Section 2(e) of the Code, which was brought into force on	State Bank of India Vs. V.	SC	14.08.2018
		23.11.2017 would, when it refers	Ramakrishnan & Anr. [Civil Appeal No. 3595 of 2018 with		
		to the application of the Code to a	4553 of 2018]		
		to the application of the code to a			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		personal guarantor of a CD applies only for limited purpose contained in sub-sections (2) and (3) of section 60. This is what is meant by strengthening the CIRP in the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Act, 2018.			
	3	Definitions	· · · ·		
11.		The CD cannot use the provisions of section 3, as a blanket cover to claim exclusion from proceedings under the Code on the ground that it is a financial service provider.	Apeejay Trust Vs. Aviva Life Insurance Co. India Ltd. [(IB)- 1885(ND)2019]	NCLT, New Delhi	04.11.2019
	3(6)	Claim			
12.		'Claim' under section 3(6) of the Code means a right to payment, even if it is disputed.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
13.		'Claim' gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
14.		The different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, as the cause of action is separate.	International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. and D. A. Toll Road Pvt. Ltd. [CA (AT) (Ins.) No. 72 and 77 of 2017]	NCLAT	01.08.2017
15.		The tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of the Code is to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time	K. K. V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No. 9/9/HDB/2017]	NCLT, Hyderabad	21.02.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		bound manner for maximisation of			
		value of assets.			
	3(7)	Corporate Person			
16.		National Highway Authority of India (NHAI) is a statutory body which functions as an extended limb of the Central Government and performs Governmental functions which obviously cannot be taken over by an RP, or by any other corporate body nor can NHAI ultimately be wound up under the Code. For all these reasons, it is not possible to either read in, or read down; the	Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals]	SC	27.11.2019
		definition of 'corporate person' in section 3(7) of the Code to include NHAI.			
	3(8)	Corporate Debtor			
17.		If a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in section 3(8) of the Code.	Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]	SC	26.03.2021
	3(10)	Creditor			
18.		The parties who have entered into agreement, for purchase of flat or shop or any immovable property, which contains a clause of assured or committed returns are 'financial creditors' under the Code.	Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 7 of 2017]	NCLAT	21.07.2017
19.		A 'decree holder' though covered under the definition of 'creditor' under section 3(10) of the Code would not fall within the class of	Biogenetics Drugs Pvt. Ltd. Vs. Themis Medicare Ltd. [C.P. (I.B) No. 696/ NCLT/ AHM/2019]	NCLT, Ahmedabad	18.02.2021

SI. No.	Section	Dictum	Citation	Forum	Date of
NO.					Order/ Judgement
		FCs or OCs and therefore, a decree			
		holder cannot initiate CIRP against			
		the CD with an objective to			
	3(11) and	execute the decree. Debt and Default			
	3(12)	Debt and Default			
20.		When the definitions of	Brand Realty Services Ltd. Vs. Sir	NCLT, New	22.07.2020
		'operational debt', 'debt' and	John Bakeries India Pvt. Ltd.	Delhi	
		'default' are read together, it can	[(IB)1677(ND)/2019]		
		be said that the definition of 'debt'			
		as defined under the Code does			
		not mean 'operational debt' only, rather it includes 'financial debt' as			
		well as liability or obligation in			
		respect of a claim, which is due			
		from any person, and 'default'			
		means non-payment of 'debt', but			
		in order to trigger section 9 of the			
		Code, an OC is required to			
		establish a 'default' for non-			
		payment of 'operational debt' as			
		defined under section 5(21) of the			
		Code and if a person fails to			
		establish that, they cannot initiate CIRP.			
21.		It is latently and patently clear that	Rita Kapur Vs. Invest Care Real	NCLAT	02.09.2020
		once the 'debt' is converted into	Estate LLP and Ors. [CA (AT) (Ins.)		
		'capital', it cannot be termed as	No. 111 of 2020]		
22		'financial debt'.			24.00.2017
22.		The 'debt' is disputed so long as	Innoventive Industries Ltd. Vs.	SC	31.08.2017
		the 'debt' is 'due' i.e. payable unless interdicted by some law or	ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]		
		has not yet become due in the	103. 0557-0550 01 2017]		
		sense that it is payable at some			
		future date. It is only when this is			
		proved to the satisfaction of the			
		AA, that it may reject an			
		application and not otherwise.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
23.		Existence of an undisputed 'debt' is <i>sine qua non</i> of initiating CIRP.	Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Ltd. [Civil Appeal No. 9597 of 2018]	SC	23.10.2018
24.		If in terms of any agreement, interest is payable to the OC or the FC, then 'debt' will include interest, otherwise, the principal amount is to be treated as 'debt' which is the liability in respect of the 'claim' which can be made from the CD.	Krishna Enterprises Vs. Gammon India Ltd. [CA (AT) (Ins.) No. 144 of 2018 and other appeals]	NCLAT	27.07.2018
25.		Mere fact of 'debt' being due and payable is not enough to justify the initiation of CIRP at the instance of the FC, unless the 'default' on the part of the CD is established.	Park Energy Pvt. Ltd. Vs. Syndicate Bank and Anr. [CA (AT) (Ins.) No. 270 of 2020]	NCLAT	24.08.2020
26.		'Default' is defined in section 3(12) of the Code in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
27.		The context of section 3(12) of the Code is actual non-payment by the CD when a 'debt' has become due and payable.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017 and other appeals]	sc	11.10.2018
28.		An amount not released to FC due to misunderstanding between the consortium of banks, cannot be treated as 'default'.	R. Sridharan Vs. Assets Care & Reconstruction Enterprise Ltd. [CA (AT) (Ins.) No. 241 of 2018]	NCLAT	25.07.2018
29.		The legislature was conscious regarding liabilities arising from a particular type of lease and it made specific provision in section	Promila Taneja Vs. Surendri Design Pvt. Ltd. [CA (AT) (Ins.) No. 459 of 2020]	NCLAT	10.11.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		5(8)(d) of the Code to make it a 'financial debt'. No such provision was made in respect of an operational debt.			Judgement
30.		CIRP can be initiated against a CD which has 'defaulted' in repaying the loan in the capacity of co- borrower/pledgor, as the liability of borrower and co- borrower/pledgor is co-extensive under the Indian Contract Act, 1872.	Anand Rathi Global Finance Ltd. Vs. Doshi Holdings Pvt. Ltd. [C.P.(IB)-1220/(MB)/2020]	NCLT, Mumbai	19.02.2021
31.		It is beyond purview of the AA to venture into the question of the reason for the 'default' and the intention behind the 'default' as submitted by the CD especially when the application is filed under section 7 of the Code.	State Bank of India Vs. Shri Lal Mahal Ltd. [IB-613/ND/2019]	NCLT, New Delhi	25.02.2021
	3(23)	Person	·		
32.		A sole proprietary concern, not being a 'person' under section 3(23) of the Code and also when there is a pre-existing dispute, cannot file application under section 9.	R.G. Steels Vs. Berrys Auto Ancillaries (P) Ltd. [IB- 722/ND/2019]	NCLT, New Delhi	23.09.2019
33.		A 'trade union' is an entity established under a statute i.e. the Trade Unions Act, 1926 and is therefore, a 'person' under section 3(23) of the Code.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]	SC	30.04.2019
34.		A proprietorship concern does not fall within the purview of "person" as per section 3(23) for the purpose of filing an application under section 9 of the Code. Proprietorship concern cannot sue	Shri Shakti Dyeing Works Vs. Berawala Textiles Pvt. Ltd. [CP (IB) No. 854/NCLT/AHM/2019]	NCLT, Ahmedabad	25.01.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		and be sued unless it is			
		represented by a proprietor.			
	2(20)				
25	3(30)	Secured Creditor	Tourism Finance Companying of	NCLAT	10 12 2010
35.		The State Tax Officer does not come within the meaning of	Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd.	NCLAT	19.12.2019
		'secured creditor' as defined	& Ors. [CA (AT) (Ins.) No. 354 of		
		under section 3(30) read with	2019 and other appeals]		
		section 3(31) of the Code.			
	4	Application of Part-II			
36.		The enhancement of threshold	Madhusudan Tantia Vs. Amit	NCLAT	12.10.2020
		vide Notification dated 24.03.2020	Choraria & Anr. [CA (AT) (Ins.) No.		
		issued by the Ministry of	557 of 2020]		
		Corporate Affairs, is prospective in			
		nature and would not apply to the			
		pending applications filed prior to			
		the issuance of the said Notification.			
37.		The Notification dated 24.03.2020	Al Sadiq Sweets Vs. Krisenter	NCLT, Kochi	26.02.2021
		issued by the Ministry of	Impex Pvt. Ltd.		
		Corporate Affairs, whereby the	[IBA/35/KOB/2020]		
		minimum amount of default limit			
		was specified as rupees one crore,			
		is prospective in nature and not a			
		retrospective one.			
	5(5A)	Corporate Guarantor			
38.		If CIRP has been initiated against	State Bank of India Vs. D. S.	NCLAT	18.04.2018
		the CD, the insolvency and	Rajender Kumar [CA (AT) (Ins.)		
		bankruptcy process against the personal guarantor can be filed	No. 87 to 91 of 2018]		
		under section 60(2) before the			
		same NCLT and not before the			
		DRT.			
39.		Without initiating CIRP against the	Rai Bahadur Shree Ram and	SC	11.02.2019
		principal borrower, it is open to	Company Pvt. Ltd. Vs. Rural		
		the FC to initiate CIRP under	Electrification Corporation Ltd. &		
		section 7 against corporate	Ors. [Civil Appeal No. 1484 of		
			2019]		

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		guarantors as the creditor is also			
		the FC qua corporate guarantor.			
40.		The principal debtor (CD) is	State Bank of India Vs.	NCLT, Kolkata	04.09.2019
		discharged under the Code not on	Sungrowth Shares & Stocks Ltd.		
		the instance of a creditor but due	[CP (IB) No. 796/KB/2018]		
		to operation of law, i.e., approval			
		of resolution plan. Hence, the			
		guarantor is not discharged of its			
		liability merely because the			
		creditor consented to a resolution			
		plan of the principal debtor.			
41.		The corporate guarantees given by	Export Import Bank of India Vs.	NCLAT	16.01.2019
		the CD can be invoked only in the	CHL Ltd. [CA (AT) (Ins.) 51 of		
		event of a default on the part of	2018]		
		the borrower.			
42.		It makes no difference as to	The Karur Vysya Bank Ltd. Vs.	NCLT, Chennai	08.04.2019
		whether the corporate person	Maharaja Theme Parks and		
		stood as guarantor to an individual	Resorts Pvt. Ltd.		
		or a corporate person, and as so	[CP/1314/IB/2018]		
		long as the obligation in respect of			
		a claim is due from a corporate			
		person falling within the definition			
		of 'financial debt', then it is			
		obvious that the creditor can			
		proceed under Section 7 of the			
		Code against such corporate			
		person.			
43.		The Code is at a nascent stage and	Insolvency and Bankruptcy	SC	29.10.2020
		it is better that the interpretation	Board of India Vs. Lalit Kumar		
		of the provisions is taken up by the	Jain & Ors. [TP (Civil) No.(s)		
		SC to avoid any confusion and to	1034/2020 with other TPs]		
		authoritatively settle the law. It			
		directed that no further petitions			
		involving the challenge to the			
		notification dated November 15,			
		2019, which brought into force			
		certain provisions relating to the			
		personal guarantors (PGs) to CDs,			

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No.					Order/
					Judgement
		shall be entertained by any High			
		Court.			
44.		Neither section 14 nor section 31	Kiran Gupta Vs. State Bank of	HC, New Delhi	02.11.2020
		of the Code place any fetters on a	India & Anr. [W.P.(C) 7230/2020		
		bank/financial institutions from	& CM.APPL. 24414/2020 (stay)]		
		initiation and continuation of			
		proceedings against the guarantor			
		for recovering of their dues. The			
		liability of the principal borrower			
		and guarantor remain co-			
		extensive and a bank/financial			
		institution is entitled to initiate			
		proceedings against the personal			
		guarantor under the SARFAESI Act			
		during the continuation of the			
		CIRP against the principal			
		borrower.			
45.		CIRP can be proceeded against the	State Bank of India Vs. Athena	NCLAT	24.11.2020
		principal borrower as well as	Energy Ventures Pvt. Ltd. [CA		
	-(-)	guarantor.	(AT) (Ins.) No. 633 of 2020]		
	5(6)	Dispute			
46.		Any observations with regard to	Yogendra Yasupal Vs. Jigsaw	NCLAT	16.10.2017
		individual officer if made by a	Solutions & Anr. [CA (AT) (Ins.)		
		court of law or in any	No. 222 of 2017]		
		communication made by the			
		operational creditor, the same cannot be treated to be an			
		existence of dispute.			
47.		The test of existence of a dispute	Mobilox Innovations Pvt. Ltd. Vs.	SC	21.09.2017
-/.		is: (a) whether the corporate	Kirusa Software Pvt. Ltd. [Civil	30	21.03.2017
		debtor has raised a plausible	Appeal No.9405 of 2017]		
		contention requiring further			
		investigation which is not a			
		patently feeble legal argument or			
		an assertion of facts unsupported			
		by evidence (b) whether the			
		defence is not spurious, mere			
		bluster, plainly frivolous or			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		vexatious (c) a dispute, if it truly exists in fact between the parties, which may or may not ultimately succeed.			
48.		The dispute should not be a mere eyewash and attempt to derail the OC's entitlement to initiate the proceedings under sections 8 and 9 of the Code.	Simplex Infrastructures Ltd. Vs. Agrante Infra Ltd. [IB No. (IB)- 167(ND)/2017]	NCLT, New Delhi	10.08.2017
49.		A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) and an inter-se dispute between two groups of shareholders of the CD does not constitute a 'dispute' in reference to OCs. The 'dispute' under section 5(6) of the Code must be between the CD and the OCs.	Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd. & Anr. [CA (AT) (Ins.) No. 66 of 2017 and other appeals]	NCLAT	10.05.2018
50.		On the 'existence of a dispute', it was observed that section 5(6) is an inclusive provision and does not confine the AA from considering the existence of a dispute from a broader angle. Therefore, dispute in terms of section 8(2)(a) of the Code shall not be limited to instances specified in the definition under section 5(6).	Anuj Khanna Vs. Wishwa Naveen Traders & Anr. [CA (AT) (Ins.) No. 555 of 2020]	NCLAT	25.11.2020
	5(7)	Financial Creditor			
51.		Mere invocation of pledge of shares will not result in automatic conversion of debt into equity and repayment of debt.	State Bank of India Vs. Meenakshi Energy Ltd. [CP(IB) 184/7/HDB/2019]	NCLT, Hyderabad	07.11.2019
52.		The assignee of the debt is also entitled to file application and such assignee steps into the shoes of the FC.	Edelweiss Asset Reconstruction Company Limited Vs. Kalptaru Alloys Pvt. Ltd. [CP (IB) No. 84/7/NCLT/AHM/2017]	NCLT, Ahmedabad	05.09.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
53.		The grouping of FCs in accordance with the amount of security holding is not discriminatory.	Canara Bank Ltd. Vs. Deccan Chronicle Holdings Ltd. [IA 121 and 24/2019 in CP(IB)No. 41/7/HDB/2017]	NCLT, Hyderabad	09.05.2019
54.		Essential criteria for being an FC: (i) A person to whom a financial debt is owed and includes a person whom such debt has been legally assigned or transferred to (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5.	B.V.S. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd. [CA (AT) (Ins.) No. 38 of 2017]	NCLAT	22.12.2017
55.		The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The <i>Explanation</i> was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the <i>Explanation</i> is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]	SC	09.08.2019
56.		On the basis of counter indemnity obligation, EXIM Bank comes within the definition of section 5(7) r/w section 5(8) of the Code.	Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd. [CA (AT) (Ins.) No. 304 of 2017 and other appeals]	NCLAT	14.08.2018
57.		Home buyers are brought within the purview of the financial creditors under the Code.	Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]	SC	09.08.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
58.		In a 'Recurring Investment Plan'	Mohanlal Dhakad Vs. BNG Global	NCLAT	22.02.2021
		wherein the CD failed in its	India Ltd. [CA (AT) (Ins.) No. 684 of		
		commitment to offer the	2020]		
		allotment of plots of land as			
		promised by it or pay the assured			
		returns, or repay the sums			
		collected by it along with interest			
		on the maturity of the schemes			
		etc, the investor's position is that			
		of a FC as per section 5(7) read			
		with section 5(8) of the Code.			
59.		The SC reiterated that a person	Phoenix ARC Pvt. Ltd. Vs.	SC	03.02.2021
		having only security interest over	Ketulbhai Ramubhai Patel [Civil		
		the assets of CD, even if falling	Appeal No. 5146 of 2019]		
		within the description of 'secured			
		creditor' by virtue of collateral			
		security extended by the CD,			
		would not be covered by the			
		definition of 'financial creditor'			
		under the Code. It held that the CD			
		in the matter has only extended			
		security through pledge of shares			
		and there was no liability to repay			
		the loan taken by the borrower on			
		the CD. Therefore, the creditor in			
		such a case will at best be secured			
		creditor qua CD and not the FC qua			
		CD.			
	5(8)	Financial Debt			
60.		The Joint Development	Vipul Limited Vs. Solitaire	NCLAT	18.08.2020
		Agreement entered, is a contract	Buildmart Pvt. Ltd. [CA (AT) (Ins.)		
		of reciprocal rights and	No. 550 of 2020]		
		obligations, both parties are			
		admittedly Joint Development			
		Partners, who entered into a			
		consortium of sorts for developing			
		an Integrated Township and for			
		any breach of terms of contract,			
		Section 7 Application is not			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
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		maintainable as the amount cannot be construed as financial			
		debt as defined under section 5(8)			
		of the Code.			
61.		Pledge of shares would not fall	Vistara ITCL (India) Ltd. & Ors.	NCLAT	24.08.2020
		within the concept of guarantee	Vs. Dinkar Venkatasubramanian		
		and indemnity so as to bring it	& Ors. [CA (AT) (Ins.) No. 703 of		
		within the meaning of financial debt.	2020]		
62.		The payment received for shares,	Radha Exports (India) Pvt. Ltd.	SC	28.08.2020
		duly issued to a third party at the	Vs. K.P. Jayaram & Anr. [Civil		
		request of the payee as evident	Appeal No. 7474 of 2019]		
		from official records would not be			
		a debt.			
63.		In order to satisfy the requirement	Nikhil Mehta and Sons Vs. AMR	NCLAT	21.07.2017
		of this provision, the financial transaction should be in the	Infrastructure Ltd. [CA (AT) (Ins.) No. 07 of 2017]		
		nature of debt and no equity has			
		been implied by the opening			
		words of section 5(8) of the Code.			
64.		A financial debt is a debt together	Swiss Ribbons Pvt. Ltd. & Anr.	SC	25.01.2019
		with interest, if any, which is	Vs. Union of India & Ors. [WP		
		disbursed against the	(Civil) Nos. 99, 100, 115, 459,		
		consideration for time value of money.	598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of		
		money.	2018 and WP (Civil) 37 of 2019]		
65.		A transaction will be considered as	DF Deutsche Forfait AG & Anr.	NCLT, Mumbai	10.04.2017
		an operational debt if the payment	Vs. Uttam Galva Steel Ltd. [C.P.		
		is made to goods or services and if	No. 45/I & P/NCLT/MAH/2017]		
		money is lent in contemplation of			
		returns in the form of interest will be a financial debt.			
66.		It is manifestly clear that money	Shailesh Sangani Vs. Joel	NCLAT	30.01.2019
		advanced by a Promoter, Director	Cardoso & Anr. [CA (AT) (Ins.)		
		or a Shareholder of the CD as a	No. 616 of 2018]		
		stakeholder to improve financial			
		health of the Company and boost			
		its economic prospects, would			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		have the commercial effect of borrowing on the part of CD notwithstanding the fact that no provision is made for interest thereon.			
67.		In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]	SC	09.08.2019
68.		If Inter-Corporate Deposit is made for a certain period which was to be paid back with interest, then such transaction will fall in the definition of 'financial debt'.	Narendra Kumar Agarwal & Anr. Vs. Monotrone Leasing Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 549 of 2020]	NCLAT	19.01.2021
69.		The amount raised under a Forward Purchase Agreement (FPA) would not come within the definition of a 'financial debt' unless it bears the dual attributes of (i) having been disbursed against the consideration for time value of money and (ii) has the commercial effect of a borrowing.	State Bank of India Vs. Rajendra Bhuta, IRP of Prabhat Technologies (India) Ltd. & Ors. [IA No. 440 of 2020 in C.P. No. 1874/MB/2019]	NCLT, Mumbai	06.01.2021
70.	5(13)	Insolvency Resolution Process Cost If any cost is incurred towards supply of essential services during the period of moratorium, it may be accounted towards the insolvency resolution process costs.	Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017]	NCLAT	08.02.2018
71.		In case where a CoC has not been appointed as a result of non- initiation of the interim resolution process, it is clear that, whatever the AA fixes as expenses will be borne by the creditor who moved the application.	S3 Electricals and Electronics Pvt. Ltd. Vs. Brian Lau & Anr. [Civil Appeal No.103 of 2018]	SC	05.08.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
72.		The direction requiring the	Newogrowth Credit Pvt. Ltd. Vs.	NCLAT	Judgement 10.12.2020
72.		appellant to bear 27% of the CIRP	Resolution Professional, Bhaskar	NCLAT	10.12.2020
		cost is in consonance with and	Marine Services Pvt. Ltd. & Ors.		
		proportionate to the share of the	[CA (AT) (Ins.) No. 1053 of 2020]		
		appellant, is not arbitrary and			
		unreasonable.			
	5(14)	Insolvency Resolution Process Peric	pd		
73.		It is always open to the	Quinn Logistics India Pvt.	NCLAT	08.05.2018
		NCLT/NCLAT to exclude certain	Ltd. Vs. Mack Soft Tech Pvt. Ltd. &		
		period for the purpose of counting	Ors. [CA (AT) (Ins.) No. 185 of		
		the total period of 270 days. The	2018]		
		grounds include the following: (i) If			
		the CIRP is stayed by a court of law			
		or the NCLT/NCLAT/Supreme			
		Court (ii) If no RP is functioning for			
		one or other reason during the			
		CIRP (iii) The period between the			
		date of order of			
		admission/moratorium is passed			
		and the actual date on which the			
		RP takes charge for completing the CIRP (iv) On hearing a case, if order			
		is reserved by the			
		NCLT/NCLAT/Supreme Court and			
		finally pass order enabling the RP			
		to complete the CIRP (v) If the CIRP			
		is set aside by the NCLAT or order			
		of the NCLAT is reversed by the			
		Supreme Court and CIRP is			
		restored (vi) Any other			
		circumstances which justifies			
		exclusion of certain period.			
	5(20)	Operational Creditor			
74.		The OCs can be classified in three	Standard Chartered Bank Vs.	NCLAT	04.07.2019
		different classes for determining	Satish Kumar Gupta, R.P. of Essar		
		the manner in which the amount is	Steel Ltd. & Ors. [CA (AT) (Ins.) No.		
		to be distributed to them (as per	242 of 2019 and Other appeals]		
		section 5(21). However, they are			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
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		to be given the same treatment, if			
		similarly situated.			
75.		Custom Duty as a statutory due is only operational in nature when it	IRK Raju Vs. Immaneni Eswara Rao & Ors. [CA (AT) (Ins.) No. 1058	NCLAT	30.01.2020
		is paid to the relevant authority,	of 2019]		
		and not when it is repaid to a party			
		that has paid such statutory			
76.		authority. It is clear that an OC who has	Cooperative Rabobank U.A.	NCLAT	29.04.2019
70.		assigned or legally transferred any	Singapore Branch Vs. Shailendra	NCLAT	25.04.2015
		operational debt to an FC, the	Ajmera [CA (AT) (Ins.) No. 261 of		
		assignee or transferee shall be	2018]		
		considered as an OC to the extent			
		of such assignment or legal transfer.			
77.		The workmen of a Company come	Suresh Narayan Singh Vs. Tayo	NCLAT	26.09.2018
		within the meaning of an OC in	Rolls Ltd. [CA (AT) (Ins.) No. 112 of		
		terms of section $5(20)$ r/w section	2018]		
78.		5(21) of the Code. An OC means a person to whom an	Innoventive Industries Ltd. Vs.	SC	31.08.2017
		operational debt is owed, and an	ICICI Bank & Anr. [Civil Appeal		
		operational debt under section	Nos. 8337-8338 of 2017]		
		5(21) means a claim in respect of			
79.		provision of goods or services. A Trade Union or Association of	JK Jute Mill Mazdoor Morcha Vs.	NCLAT	12.09.2017
/ 5.		workmen/employee does not	Juggilal Kamlapat Jute Mills Co.	NOLAT	11.05.2017
		come within the meaning of OC as	Ltd. [CA (AT) (Ins.) No. 82 of 2017]		
		no services is rendered by the			
		Workmen's Association/Trade Union to the CD to claim any dues			
		which can be termed to be debt as			
		defined in sub-section (11) of			
		section 3.			
	5 (21)	Operational Debt			
80.		The advance amount paid for	Andal Bonumalla Vs. Tomato	NCLAT	20.08.2020
		supply of sugar is not an operational debt.	Trading LLP & Anr. [CA (AT) (Ins.) No. 752 of 2019		
		operational acon			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
81.		The dues towards the Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt with accordingly.	Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA - 666/2019 in (IB)-250(ND)/2017]	NCLT, New Delhi	22.10.2019
82.		In case assets seized by the ED were purchased out of the proceeds of crime, the amount as may be generated out of the assets would come within the meaning of operational debt payable to the ED for which it may file claim in terms of the Code.	JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA (AT) (Ins.) No. 957 and other appeals]	NCLAT	25.10.2019
83.		Lease of immovable property cannot be considered as supply of goods or rendering of any services. For a debt to be operational, claim must be regarding provision of goods, services, employment or the Government dues.	M. Ravindranath Reddy Vs. G. Kishan & Ors. [CA (AT) (Ins.) No. 331 of 2019]	NCLAT	17.01.2020
84.		Claim arising out of lease of immovable property neither falls in the category of goods or services including employment nor is it a debt of repayment of dues arising under any law.	Sudhir Garg Vs. ASG Hospital Pvt. Ltd. [CP No. (IB)-12/9/JPR/2019]	NCLT, Jaipur	10.01.2020
85.		Lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus cannot fall within the definition of operational debt.	Parmod Yadav & Anr. Vs. Divine Infracon Pvt. Ltd. [IB - No. (IB) 229 (ND)/2017]	NCLT, New Delhi	28.09.2017
86.		All statutory dues including Income Tax, Value Added Tax, etc., come within the meaning of operational debt.	Pr. Director General of Income Tax (Admn. & TPS) Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) No. 205 of 2017 & other appeals]	NCLAT	20.03.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
07					Judgement
87.		Operational debt would include a claim in respect of the provision of	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil)	SC	25.01.2019
		goods or services, including	Nos. 99, 100, 115, 459, 598, 775,		
		employment, or a debt in respect	822, 849, and 1221 of 2018, SLP		
		of payment of dues arising under	(Civil) No. 28623 of 2018 and WP		
		any law and payable to the	(Civil) 37 of 2019]		
		Government or any local			
		authority.			
88.		The amount due from the buyer of	Renish Petrochem FZE Vs. Ardor	NCLT, Ahmedabad	31.07.2017
		the goods, and which is due to the seller and is guaranteed by the	Global Pvt. Ltd. [C.P. (I.B) No. 33/9/NCLT/AHM/2017]	Anmedabad	
		guarantee agreement, is also an	55/5/NCLI/ARIVI/201/]		
		operational debt.			
89.		Transaction of sale of share is an	Samskar Financial Services Pvt.	NCLT, Kolkata	21.08.2019
		operational debt.	Ltd. Vs. Votary Trading Pvt. Ltd.		
			[C.P. (IB) No. 735/KB/2019]		
90.		The property seized by Kolkata	Kolkata Municipal Corporation	HC, Calcutta	29.01.2021
		Municipal Corporation (KMC) towards recovery of municipal tax	and Anr. Vs. Union of India and Ors. [WPA No.977 of 2020]		
		dues from CD, can be the subject-	OIS. [WPA NO.577 01 2020]		
		matter of the CIRP under the Code			
		as the claim of KMC had attained			
		finality and fastened a liability			
		upon the CD, thus constituting an			
		'operational debt' under section			
		5(21) of the Code.			
91.	7	Initiation of CIRP by FC The Joint Development	Vipul Limited Vs. Solitaire	NCLAT	19 09 2020
91.		Agreement entered into, is a	Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.)	NCLAT	18.08.2020
		contract of reciprocal rights and	No. 550 of 2020]		
		obligations, both parties are			
		admittedly 'Joint Development			
		Partners', who entered into a			
		consortium of sorts for developing			
		an integrated township and for			
		any breach of terms of contract,			
		section 7 application is not maintainable as the amount			
		maintainable as the amount			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		cannot be construed as financial debt as defined under section 5(8) of the Code.			
92.		An application under section 7 admitted by the AA being an independent proceeding has to be decided in terms of the provisions of the Code and the CIRP has to proceed unhindered and notwithstanding pendency of any other proceedings.	Action Barter Pvt. Ltd. Vs. SREI Equipment Finance Ltd. &Anr. [I.A. Nos. 811/2020, 917/2020, 962/2020 & 1587/2020 in CA (AT) (Ins.) No. 1434 of 2019]	NCLAT	21.09.2020
93.		Decree holders under UP RERA seeking execution of decree/recovery of money due under the Recovery Certificate, cannot claim to be allottees of a real estate project and the application under section 7 is impermissible. Though decree holder is included in the definition of 'creditor', they do not fall within the definition of FC and hence cannot seek initiation of CIRP as FC.	Sushil Ansal Vs. Ashok Tripathi & Ors. [CA (AT) (Ins.) No. 452 of 2020]	NCLAT	14.08.2020
94.		There being a continuous cause of action evident from the books of account of the CD wherein liability of loan payable to the FC is accepted, the application under section 7 cannot be held to be barred by limitation.	Mack Soft Tech Pvt. Ltd. Vs. Quinn Logistics India Ltd. [CA (AT) (Ins.) No. 143 of 2017 and other appeals]	NCLAT	21.05.2018
95.		The CD is NBFC and being FSP, section 7 application could not be admitted against it.	Saumil A. Bhavnagri Vs. Nimit Builders & Anr. [CA (AT) (Ins.) No.710 of 2019]	NCLAT	21.11.2019
96.		The AA exceeded its jurisdiction while directing that all FCs should submit information of default of CDs from the IU while filing	Univalue Projects Pvt. Ltd. Vs. The Union of India & Ors. [W.P. No. 5595 (W) of 2020 With C.A.N. 3347 of 2020 and another appeal]	HC, Calcutta	18.08.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		applications under section 7. This is beyond section 424 of the Companies Act, 2013, and section 7(3)(a) of the Code r/w rule 4 of AA Rules and regulation 8 of CIRP Regulations.			
97.		While admitting an application under section 7, the AA should be satisfied that the default has occurred, the application is complete and no disciplinary proceeding is pending against the proposed IRP.	Noor Alam & Ors. Vs. Prism Infracon Ltd. [CP(IB)No. 762/KB/2017]	NCLT, Kolkata	03.07.2018
98.		The SC held that the RBI circular dated 12 th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is <i>ultra vires</i> of section 35AA of the Banking Regulation Act, 1949 and all actions taken under the said circular which has triggered the CIRP under section 7 will fall along with the circular.	Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors. [Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 and other appeals]	SC	02.04.2019
99.		The order of admission by NCLT, which was set-aside by the NCLAT, was restored stating that FC being a foreign company need not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.	Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794- 21795 of 2017]	SC	03.08.2018
100.		If the two CDs collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under section 7 will be maintainable	Mamatha Vs. AMB Infrabuild Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 155 of 2018]	NCLAT	30.11.2018

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		against both of them jointly and not individually against one or other.			
101.		The time limit of 7 days for removal of defects in the application as provided in proviso to sub-section (5) of section 7, is directory and not mandatory in nature.	Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017and other appeals]	SC	19.09.2017
102.		The 7 days for rectification of defects is to be counted not from the 'date of the order' passed by the AA but from the 'date of receipt' of such notice from the AA to rectify the defects in the application. Further, the holidays such as Saturdays, Sundays and other holidays of the AA are to be excluded.	Palogix Infrastructure Pvt. Ltd Vs. ICICI Bank Ltd. [CA (AT) (Ins.) No. 30 of 2017 and other appeals]	NCLAT	20.09.2017
103.		The filing of an application may not result into mechanical admission of application. The AA in exercise of judicial discretion needs to deal with such application in accordance with law and based upon facts, evidence and circumstance placed before it. The AA is certainly required to extend hearing and reasonable opportunity to the company to explain as to why such an application should not be entertained.	Essar Steel India Ltd. Vs. Reserve Bank of India [Special Civil Application 12434 of 2017]	HC, Gujarat	17.07.2017
104.		The scheme of section 7 stands in contrast with the scheme under section 8 where an OC is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
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		debtor in the manner provided in			
		section 8(1) of the Code.			
105.		A perusal of Form – 1 prescribed	Bank of India Vs. Tirupati	NCLT, New	03.07.2017
		under AA Rules would reveal that	Infraprojects Pvt. Ltd. [C.P. No. IB-	Delhi	
		there is no requirement specified	104(PB)/2017]		
		in any part of the proforma with			
		regard to power of attorney. It			
		does not however lead to the			
		conclusion that there is no			
		requirement of filing a power of			
		attorney. But then it is a different matter and would not be hit by the			
		defect in the proforma. It is not			
		that every defect is hit by section			
		7(2) of the Code.			
106.		In the application filed for	V. R. Hemantraj Vs. Stanbic Bank	SC	12.10.2018
		commencement of CIRP, the AA is	Ghana Ltd. & Anr. [Civil Appeal		
		not required to get into the merits	No. 9980 of 2018]		
		of a foreign decree, because the	-		
		AA under the Code does not have			
		the powers of a Civil Court.			
107.		The AA being not a Court of law	Naveen Luthra Vs. Bell Finvest	NCLAT	29.11.2018
		and as the AA does not decide a	(India) Ltd. & Anr. [CA (AT) (Ins.)		
		money claim or suit, it cannot	No. 336 of 2017 and other		
		exercise any of the power vested	appeals]		
		under sections 3 or 4 of the			
		Usurious Loans Act, 1918.			
108.		When the NCLT receives an	Sree Metaliks Ltd. & Anr. Vs.	HC, Calcutta	07.04.2017
		application under section 7, it	Union of India & Anr. [W.P. 7144		
		must afford a reasonable opportunity of hearing to the CD	(W) of 2017]		
		as section 424 of the Companies			
		Act, 2013, mandates it to ascertain			
		the existence of default as claimed			
		by the FC in the application.			
109.		Section 7 application filed under	Forech India Ltd. Vs. Edelweiss	SC	22.01.2019
		the Code is an independent	Assets Reconstruction Co. Ltd.		
		proceeding and must run its entire	[Civil Appeal No. 818 of 2018]		

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		course, which has nothing to do			
		with the pendency of winding up			
		proceedings before the HC.			
110.		Once the application under	Micro Dynamics Vs. Cosmos	NCLAT	12.10.2020
		section 7 of the Code, which was the basic edifice for order of	Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 875 of 2020]		
		admission, was dismissed and	(AT) (IIIS.) NO. 875 01 2020]		
		proceedings emanating therefrom			
		and consequential thereto were			
		closed, the incidental and ancillary			
		applications will not survive for			
		further consideration.			
111.		The AA directed the CD to provide	Supertech Township Project Ltd.	NCLAT	18.01.2021
		information about the allottees of	Vs. Inderpal Singh Khandpur HUF		
		the project to the respondent for meeting the threshold criteria to	[CA (AT) (Ins.) No. 17 of 2021]		
		initiate the class action. While			
		dismissing the appeal, the NCLAT			
		observed that no legal right vested			
		in the CD has been infringed by			
		such direction and no prejudice			
		can be claimed by the CD on			
		account of providing such			
		information. It directed the CD to			
		display the information about the			
		allottees with full particulars on its website within two weeks.			
112.		i. The term 'allotment' under	Manish Kumar Vs. Union of India	SC	19.01.2021
		second proviso to section 7 means	& Anr. [Writ Petition (C) No.26 of		
		allotment in the sense of	2020 with other writ petitions]		
		documented booking as			
		mentioned in section 11(1)(b) of			
		the Real Estate (Regulation and			
		Development) Act, 2016. A person			
		to whom allotment of a plot, apartment, or a building has been			
		made is an allottee. The allottee			
		would also include a person who			
		acquires the allotment either			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		through sale, transfer or otherwise. What is required is allotment <i>qua</i> apartments, and not promised flats as per a brochure. ii. The default under section 7			
		need not be <i>qua</i> the applicant or applicants. Any number of applicants, without any amount being due to them, could move an application under section 7, if they are financial creditors (FCs) and there is a default, even if such default is owed to none of the applicants but to any other FC.			
		iii. It does not matter whether a person has one or more allotments in his name or in the name of his family members. As long as there are independent allotments made to him or his family members, all of them would qualify as separate allottees.			
113.		An action under section 7 of the Code could be legitimately invoked against a corporate guarantor concerning guarantee offered by it in respect of a loan account of the principal borrower, who had committed default and is not a "corporate person".	Laxmi Pat Surana Vs. Union Bank of India & Anr. [Civil Appeal No. 2734 of 2020]	SC	26.03.2021
114.		Purely contractual disputes cannot be decided by the AA under section 7 of the Code in a summary proceedings.	Ketaki Shah Talati Vs. Mirador Constructions Pvt. Ltd. [C.P.(IB) 1707/MB/2019]	NCLT, Mumbai	02.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
115.		Any proceeding which is pending before the AA under section 7 of Code and if the petition is admitted by the AA recording the satisfaction with regard to the default and the debt being due from the CD, any application under section 8 of the Arbitration and Conciliation Act, 1996 made thereafter will not be maintainable.	Indus Biotech Pvt. Ltd. Vs. Kotak India Venture (Offshore) Fund (earlier known as Kotak India Venture Ltd.) & Ors. [Arbitration Petition (Civil) No. 48/2019 with another appeal]		26.03.2021
	8	Insolvency Resolution by OC			
116.		The CD did not raise the dispute before the statutory notice and the dispute raised in reply to the application does not require any investigation. Such dispute is a patently feeble legal argument and is not supported by evidence.	Gaurang Nipinbhai Nagarsheth Vs. POSCO- India Pune Processing Center Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 214 of 2020]	NCLAT	20.08.2020
117.		A dispute must truly exist in facts and should not be spurious, hypothetical and illusory.	Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr. [Civil Appeal No. 2730 of 2020]	SC	20.07.2020
118.		The expression 'existence of a dispute, if any', infers that a dispute shall not only be limited to instances specified in the definition as provided under section 5(6) of the Code, as it has far arms, apart from pending Suit or Arbitration.	Kuntal Construction Pvt. Ltd. Vs. Bharat Hotels Ltd. [CA (AT) (Ins.) No. 542 of 2020]	NCLAT	04.09.2020
119.		The moment there is pre- existence of a dispute, the OC gets out of the clutches of the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
120.		The expression 'an operational creditor may on the occurrence of a default deliver a demand notice' under section 8 of the Code must	Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]	SC	15.12.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		be read as including an OCs authorised agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the AA Rules.			
121.		So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017	sc	21.09.2017
122.		A prior notice under section 8 of the Code is mandatory before initiation of interim resolution process, in the absence of which, the AA was right in rejecting the application.	Seema Gupta Vs. Supreme Infrastructure India Ltd. & Ors. [CA (AT) (Ins.) No. 53 of 2017]	NCLAT	25.05.2017
123.		OCs cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos.21824 & 21825 of 2017]	sc	14.08.2018
124.		Pendency of the case under section 138/141 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, cannot be held to be a dispute pending before a court of law. Such pendency actually amounts to admission of debt and not an existence of dispute.	Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Ins.) No. 623 of 2018]	NCLAT	13.11.2018
125.		The legislative intent of issuance of demand notice under section 8(1) is not a mere formality but a mandatory provision.	Prajna Prakash Nayak Vs. ASAP Info Systems Pvt. Ltd. &Anr. [CA (AT) (Ins.) No. 196 of 2018]	NCLAT	11.07.2018
126.		Due to the demand notice not being served by the OC, the NCLAT quashed all orders, interim arrangement, moratorium, appointment of IRP, as declared earlier by AA.	Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt. Ltd. [CA (AT) (Ins.) No. 31 of 2017]	NCLAT	03.05.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
127.		The CD can show and satisfy the AA that a default has not occurred in the sense that the debt, which may also include a disputed claim, is not due or payable in law or in fact.	Neha Himatsingka & Anr. Vs. Himatsingka Resorts Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 201 and another appeal]	NCLAT	30.11.2018
128.		The OC had a relief open under the MSME Act and utilising the same does not mean that there is a pre- existing dispute. The context of the word 'dispute' in section 18 of the MSME Act takes colour from section 17 thereof and is different from the context of section 5(6) read with section 8 of the Code.	iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd. [CA (AT) (Ins.) No. 1142 of 2019]	NCLAT	13.01.2020
129.		Since arbitration proceedings u/s 37 of Arbitration and Conciliation Act, 1996, on the same subject matter was pending, the AA dismissed the application holding that the dispute has already been in pre-existence in between the petitioner and the CD even before section 8 notice was issued by the petitioner.	CG Power & Industrial Solutions Ltd. Vs ACC Ltd. [CP No. 1681/IB &C/2017]	NCLT, Mumbai	16.02.2018
130.		A mistake in a demand notice does not necessarily mean it is defective, and if a CD wants to question the validity of the demand it must show that a prejudice was suffered as a result of such defect.	Rajendra Bhai Panchal Vs. Jay Manak Steels & Anr. [CA (AT) (Ins.) No. 592 of 2020]	NCLAT	20.10.2020
131.		If the CD did not choose to appear in response to the notice issued upon it at the pre-admission stage and did not take stand as regards a pre-existing dispute <i>qua</i> the operational debt, then it cannot be	Ravinder Kumar Kalra (Director of Suspended Board of Evershine Solvex Pvt. Ltd.) Vs. Ricela Health Foods Ltd. & Ors. [CA (AT) (Ins.) No. 54 of 2020]	NCLAT	01.02.2021

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		said that no opportunity of being			
		heard was provided to it.			
132.		As the arbitration was invoked	Naresh Sevantilal Shah Vs.	NCLAT	19.01.2021
		after the service of the first	Malharshanti Enterprises & Anr.		
		demand notice, the AA rightly	[CA (AT) (Ins.) No. 415 of 2020]		
		concluded that there was no pre-			
		existing dispute prior to the			
		demand notice, in terms of section			
		8 of the Code preventing the			
133.		initiation of CIRP. In case of a CD who refuses to	D. Srinivasa Rao Vs. Vaishnovi	NCLAT	05.01.2021
133.		accept the delivery of notice under	D. Srinivasa Rao VS. Vaisnnovi Infratech Ltd. [CA (AT) (Ins.) No.	INCLAT	05.01.2021
		section 8 of the Code, it would not	880 of 2020]		
		be justified to say that the notice			
		has not been served on the CD.			
	9	Application for initiation of CIRP by	⁷ OC		
134.		Except the CD, no other party has	Damont Developers Pvt. Ltd. Vs.	NCLAT	24.04.2019
		the right to intervene at the stage	Bank of Baroda & Anr. [CA (AT)		
		of admission of an application	(Ins.) No. 436-437 of 2019]		
		under section 7 or 9 of the Code.			
135.		The AA is empowered to restore	Hemang Phopalia Vs. The	NCLAT	05.09.2019
		the name of the Company and all	Greater Bombay Co-operative		
		other persons in their respective	Bank Ltd. & Anr. [CA (AT) (Ins.)		
		position for the purpose of	No. 765 of 2019]		
		initiation of CIRP under sections 7			
		and 9 of the Code based on the			
		application, if filed by an FC or OC or workman within twenty years			
		from the date the name of the			
		Company is struck off under sub-			
		section (5) of section 248 of the			
		Companies Act, 2013.			
136.		While admitting an application	Shashikant Thakar Vs. Windsor	NCLT,	04.09.2020
		under section 9 of the Code, the	Paper Pvt. Ltd. [CP(IB)No.	Ahmedabad	
		AA directed the OC to pay an	701/9/NCLT/AHM/2019]		
		advance of Rs. 25,000/- to the IRP			
		within two weeks from the date of			
		receipt of the order, for the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		purpose of smooth conduct of the CIRP and that the IRP has to file a proof of receipt of such amount to the AA with the First Progress Report.			
137.		Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. A cost of Rs. 5 lakh was imposed on the OC.	Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019]	NCLAT	18.11.2019
138.		CIRP is not a 'suit', a 'litigation' or a 'money claim' for any litigation and no one is selling or buying the CD a 'resolution plan'. It is not an auction or a recovery or liquidation. It is a resolution process so that the CD does not default on dues.	Excel Metal Processors Ltd. Vs. Benteler Trading International GMBH and Anr. [CA (AT) (Ins.) No. 782 of 2019]	NCLAT	21.08.2019
139.		Once an application under sections 7 or 9 is filed, it is not necessary for the AA to await hearing of the parties for passing order of moratorium under section 14 of the Code. To ensure that one or other party may not abuse the process or for meeting the ends of justice, it is always open to the AA to pass appropriate interim order.	NUI Pulp and Paper Industries Pvt. Ltd. Vs. Roxcel Trading GMBH [CA (AT) (Ins.) No. 664 of 2019]	NCLAT	17.07.2019
140.		The applicability of Form 3 or Form 4 under of the AA Rules depends on whether invoices were generated during the course of transaction or not. Further, a copy of invoice is not mandatory if the demand notice is issued in Form 3 provided the documents to prove the existence of operational debt	Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1354 of 2019]	NCLAT	24.02.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and the amount in default is attached with the application. Also, submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, if demand notice is delivered in Form 3 and documents to prove the existence of operational debt and the amount in default is attached with the application.			
141.		Unless the decree of a foreign court and decretal amount is adjudicated upon by a Civil Court as a legally payable claim, the same would not constitute a debt in the hands of OC and unless the debt is crystallized and payable in law, the issue of default would not be attracted.	Peter Johnson John (Employee) Vs. KEC International Ltd. [CA (AT) (Ins.) No. 188 of 2019]	NCLAT	03.07.2019
142.		A copy of the certificate required under section 9(3)(c) of the Code from the financial institution maintaining accounts of the OC confirming that there is no payment of an unpaid operational debt by the CD is certainly not a condition precedent to triggering the insolvency process under the Code.	Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]	SC	15.12.2017
143.		The definition of the word 'dispute' is not exhaustive but is, in fact illustrative. In other words, a CD is not left with the only option of showing the existence of dispute by way of a pending suit, arbitration or to show the breach of representation or warranty. The CD would be well within its right to	Annapurna Infrastructure Pvt. Ltd. & Ors Vs. Soril Infra Resources Ltd. [C.P. No. (IB)- 22(PB)/2017]	NCLT, New Delhi	24.03.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		show that 'goods' and services were not supplied at all or the supply was far from satisfactory in case of demand raised by an OC. Hence, a CD would be well within its rights to reject the demand on any sustainable grounds. It would therefore, depend on the facts and circumstances of each case.			
144.		In view of Rule 8 of AA Rules, it was open to the OC to withdraw the application under section 9 before its admission but once it was admitted, it cannot be withdrawn even by the OC, as other creditors are entitled to raise claim pursuant to public announcement under section 15 read with section 18 of the Code.	Mother Pride Dairy India Pvt. Ltd. Vs. Portrait Advertising & Marketing Pvt. Ltd. [CA (AT) (Ins.) No. 94 of 2017]	NCLAT	13.07.2017
145.		The 'operational debt' under the Code is a claim in respect of provision of goods or services, including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Central/State Government/local authority. Hence, it is confined to four categories like goods, services, employment and the Government dues.	Vinod Awasthy Vs. AMR Infrastructures Ltd. [C.P No. (IB)- 10 (PB)/2017]	NCLT, New Delhi	20.02.2017
146.		Since the OC has not submitted the information as required for admission of application under section 9 before the AA, and in the absence of non-supply of requisite information in terms of Rule 5 of the AA Rules, the application	Transparent Technologies Pvt. Ltd. Vs. Multi Trade [CA (AT) (Ins.) No. 207 of 2017]	NCLAT	25.10.2017

No.		Citation		Date of
				Order/
				Judgement
	cannot be treated as an			
	application under section 9 for			
	initiation of CIRP against the CD.			
147.	A dispute could be proved by	One Coat Plaster Vs. Ambience	NCLT, New	01.03.2017
	showing that a suit has been filed	Pvt. Ltd. [CA No. (I.B.)	Delhi	
	or arbitration is pending.	07/PB/2017 and [CA (I.B.) No.		
		08/PB/2017]		
148.	The OC had no account in India	Rio Glass Solar SA Vs. Shriram	NCLT, Chennai	10.08.2017
	and it was not possible to produce	EPC Ltd. [CP/537/(IB)/CB/2017]		
	a certificate from any bank in India			
	in terms of definition of 'financial institution' in section 3(14) of the			
	Code. The AA observed that this			
	interpretation will render the			
	provisions of the Code otiose and			
	the purpose and object of the			
	legislation would be defeated.			
149.	Section 16G(1)(c) of the Tea Act,	A.J. Agrochem Vs. Duncans	NCLAT	20.06.2019
	1953, relates to winding up, while	Industries Ltd. [CA (AT) (Ins.) No.		
	section 9 of the Code is for	710 of 2018]		
	initiation of CIRP to ensure revival			
	and continuation of the CD.			
	Therefore, these provisions			
	occupy different fields.			
	Accordingly, no permission of the			
	Central Government is required			
	for initiation of CIRP of the CD in			
	terms of section 16G (1) of the Tea			
150	Act, 1953.	Common India Ital Ita	NCLAT	10.12.2010
150.	As the amount is due from the	Gammon India Ltd. Vs. Neelkanth Mansions &	NCLAT	19.12.2018
	partnership firm, application under section 9 is not	Neelkanth Mansions & Infrastructure Pvt. Ltd. [CA (AT)		
	maintainable against one of the	(Ins.) No. 698 of 2018]		
	members of the partnership firm.			
151.	Bank was directed to issue	Magicrete Buildings Solutions	NCLT, Mumbai	31.07.2017
	certificate as required under	Pvt. Ltd. Vs. Pratibha Industries		52107/12017
	section 9 of the Code and it was	Ltd. [T.C.P. No.		
	clarified that all citizens of the	409/(MAH)/2017]		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		country are bound by the statute governing the people of this country, including the Bank.			Judgement
152.		Since money was paid as advance for supply of goods but the goods were not supplied, the payment cannot be considered to be an 'operational debt' and hence, application under section 9 was not maintainable.	Roma Infrastructures India Pvt. Ltd. Vs. A.S. Iron & Steel (I) Pvt. Ltd. [CA (AT) (Ins.) No. 223 of 2019]	NCLAT	22.04.2019
153.		'Proceedings' under section 138 of the Negotiable Instruments Act, 1881 as well as Order 37 of the Code of Civil Procedure, 1908, will not prohibit an application under section 9 of the Code.	Shailendra Sharma Vs. Ercon Composites & Ors. [CA (AT) (Ins.) No. 159 of 2020]	NCLAT	13.01.2021
154.		Dismissal of an application under section 9 of Code as being non- maintainable for a technical defect such as incomplete Form 5, is not warranted.	Silvassa Cement Products Pvt. Ltd. Vs. Noor India Buildcon Pvt. Ltd. [CA (AT) (Ins.) No. 675 of 2020]	NCLAT	22.01.2021
155.		The SC upheld the direction of NCLAT which ordered OC to pay the CIRP costs and fees of the IRP/RP, after the dismissal of its section 9 application by NCLAT.	RajkumarBrothersandProductionPvt.Ltd.Vs.AmilineniShareholderanderstwhileDirectorofAmilionnTechnologiesPvt.Ltd.& Anr.[Civil Appeal No.4044 of2020]	SC	22.01.2021
	10	Initiation of CIRP by Corporate App	licant		
156.		Since the applicant was not a director and was disqualified under section 164 of the Companies Act, 2013, he had no authority to file the application.	Neesa Infrastructure Ltd. Vs. State Bank of India & Ors. [C.P. (I.B.) 61/10/NCLT/AHM/2018]	NCLT, Ahmedabad	17.09.2020
157.		The IRP moved the AA stating that the application filed by the CD under section 10 of the Code was based on fraud and non-disclosure of material particulars. While	Alpfly Private Ltd. Vs. Ravi Kant Gupta & Ors. [CA No. 448-C/3-ND of 2019 in C.P. IB No. in 358/ND/2018]	NCLT, New Delhi	30.09.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		holding that the application had been actuated by fraudulent and malicious intent, the order of admission and initiation of CIRP was recalled. The corporate veil was also pierced to identify the persons behind fraudulent initiation of CIRP.			Jugement
158.		Section 10 does not empower the AA to go beyond the records as prescribed under section 10 and the information as required to be submitted in Form 6 of the AA Rules, subject to ineligibility prescribed under section 11.	Unigreen Global Pvt. Ltd. Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017
159.		The shareholder has a right to decide whether approving or disapproving the decision be proceeded with the CIRP under section 10 of the Code.	Export-Import Bank of India & Anr. Vs. Astonfield Solar (Gujarat) Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 754 of 2018]	NCLAT	04.12.2018
160.		CIRP was ordered to speed up preferably within a period of 100 days as the Corporate Applicant had already availed the moratorium as provided under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.	Amit Spinning Industries Ltd. [IB- 131 (PB)/2017]	NCLT, New Delhi	01.08.2017
161.		An order of CIRP under section 10 cannot be passed, as the applicant obtained a fresh certificate of incorporation as well as new registered office address, and the name of CD as appearing in the application is not in existence. It is necessary to relook the provisions of section 10 and tighten the same to avoid any further misuse. If a company chooses to file	Prithivraj Spinning Mill Pvt. Ltd. Vs. Indian Overseas Bank, Coimbatore & Ors. [IBA/120/2020]	NCLT, Chennai	09.12.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		application under section 10, the company ought to maintain a <i>status quo</i> as on the date of filing of the application and this <i>status</i> <i>quo</i> shall not prevent the creditors and others from proceeding against it, till the disposal of the application by the AA.			Judgement
	10A	Suspension of initiation of CIRP			
162.		The <i>Explanation</i> given under section 10A reinforces the retrospectivity in the applicability of section 10A and because of the applicability of the newly inserted section, the primary application under section 9 cannot be proceeded with as the date of default was beyond the prescribed date under the section.	Siemens Gamesa Renewable Power Pvt. Ltd. Vs. Ramesh Kymal [IA/395/2020 in IBA/215/2020]	NCLT, Chennai	09.07.2020
163.		The substantive part of section 10A is to be construed harmoniously with the first proviso and the explanation. Reading the provisions together, it is evident that Parliament intended to impose a bar on the filing of applications for the commencement of CIRP in respect of a CD for a default occurring on or after March 25, 2020. The retrospective bar on the filing of applications for the commencement of CIRP during the stipulated period does not extinguish the debt owed by the CD or the right of creditors to recover it.	Ramesh Kymal Vs. Siemens Gamesa Renewable Power Pvt. Ltd. [Civil Appeal No. 4050 of 2020]	SC	09.02.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		The decision of the NCLAT was upheld that the bar on filing application for initiation of CIRP applies to defaults committed after March 25, 2020 though such application was filed after March 25, 2020 but before June 5, 2020.			
	11	Persons not entitled to make applic	cation		-
164.		Since the HC already admitted the winding up proceedings and ordered for winding up of the CD, therefore the question of initiation of CIRP against same CD does not arise.	Innoventive Industries Ltd. Vs. Kumar Motors Pvt. Ltd. [CA (AT) (Ins.) No. 181 of 2017]	NCLAT	09.02.2018
165.		Two parallel insolvency proceedings cannot run against a CD.	Jai Ambe Enterprise Vs. S.N. Plumbing Pvt. Ltd. [MA 78/2018 in CP 1268/I&BC/NCLT/MB/MAH/2017]	NCLT, Mumbai	06.02.2018
166.		CD under liquidation is not entitled to make an application to initiate CIRP in terms of section 11(d).	Abhay N. Manudhane Vs. Gupta Coal India Pvt. Ltd. [CA (AT) (Ins.) No. 786 of 2019]	NCLAT	01.10.2019
167.		Section 11 is of limited application and only bars a CD from initiating an application under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of the section, it does not follow that until a liquidation order has been made against the CD, an insolvency application may be filed under section 7 or 9 of the Code.	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]	SC	22.01.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
168.		The intention of the legislature was always to target the CD only insofar as it purported to prohibit application by the CD against itself, to prevent abuse of the provisions of the Code. It could never had been the intention to create an obstacle in the path of the CD, in any of the circumstances contained in section 11, from maximizing its assets by trying to recover the liabilities due to it from others.	Manish Kumar Vs. Union of India & Anr. [Writ Petition (C) No.26 of 2020 with other writ petitions]	SC	19.01.2021
	12	Time-limit for completion of insolve	ency resolution process		•
169.		The matter was admitted on 16.08.2017 and on intimation, the RP took charge on 14.09.2017. Accordingly, NCLAT directed AA to exclude the 30 days for the purpose of counting the period of CIRP.	Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT) (Ins.) No. 161 of 2018]	NCLAT	16.05.2018
170.		The resolution plan, which had consumed the time available under section 12 of the Code, has failed owing to nonfulfillment of the commitment by Liberty House. However, the SC noted that the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16.08.2019) permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. Accordingly, it permitted the RP to invite fresh offers within a period of 21 days.	Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal]	SC	24.09.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
171.		The NCLAT was not inclined to set- aside the order for re-starting the CIRP, even if there was some infirmity in the impugned order during the resolution process as almost two years had elapsed since the time CIRP was initiated.	Sunil S. Kakkad Vs. Parag Sheth & Anr. [CA (AT) (Ins.) Nos. 1260- 1261 of 2019 and another appeal]	NCLAT	19.11.2019
172.		Time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
173.		The statutory scheme laying down time limits sends a clear message that time is the essence of the Code.	Surendra Trading Company Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals]	SC	19.09.2017
174.		Circumstances must exist for grant of extension of time under section 12(1).	Sky Blue Papers Pvt. Ltd., In re. [CP No. IB No. 09/Chd/CHD/2017]	NCLT, Chandigarh	03.10.2017
175.		It was AA's duty to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.	Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins.) No. 35 of 2018]	NCLAT	20.02.2018
176.		The AA can extend the time limit provided under section 12 of the Code if it is satisfied that grave injustice would be caused in case the prayer of extension is made for no fault of the applicant.	RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [CA (IB) Nos. 270/KB/2017, 238/KB/2018, 288/KB/2018 in CP (IB) No. 170/KB/2017]	NCLT, Kolkata	18.04.2018
177.		It is always open to the AA/Appellate Tribunal to exclude certain period for the purpose of counting the total period of 270 days, if the facts and	Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018]	NCLAT	08.05.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		circumstances justify exclusion, in			Judgement
		unforeseen circumstances.			
178.		Section 12, construed in the light	Arcelormittal India Pvt. Ltd. Vs.	SC	04.10.2018
		of the object sought to be	Satish Kumar Gupta & Ors. [Civil		
		achieved by the Code, and in the light of the consequence provided	Appeal Nos. 9402-9405 of 2018 and other appeals]		
		by section 33, makes it clear that	and other appears		
		the periods mentioned are			
		mandatory and cannot be			
		extended. Regulation 40A of the			
		CIRP Regulations presents a model			
		timeline of the CIRP, and it is of utmost importance for all			
		authorities concerned to follow			
		this model timeline as closely as			
		possible.			
179.		The SC took <i>suo motu</i> cognizance	In Re: Cognizance for Extension of	SC	23.03.2020
		of the situation arising out of COVID-19 and resultant difficulties	Limitation [Suo Moto Writ (Civil) No. 3 of 2020]		
		that may be faced by litigants			
		as to period of limitation			
		prescribed under general law of			
		limitation or under Special Laws			
		(both Central and/or State). In			
		exercise of its powers under Articles 141 and 142			
		of the Constitution, it ordered			
		extension of period of limitation			
		for all proceedings, from			
		15.03.2020, until further orders,			
		and declared that the order is binding on all courts/tribunals and			
		authorities.			
180.		SC ruled that its earlier order that	In Re: Cognizance for extension of	SC	08.03.2021
		provided for extension of	limitation [Suo Motu Writ		
		limitation period w.e.f.	Petition (Civil) No. 3 of 2020]		
		15.03.2020, has served its purpose and that it should come to an end.			
		and that it should come to an end.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
NO.					Judgement
		The court issued the following			
		directions:-			
		 In calculating the limitation period in any suit, appeal, 			
		application or proceeding, the			
		period from 15.03.2020 till			
		14.03.2021 is to be excluded, and			
		any balance of the limitation			
		period as on 15.03.2020 will start			
		w.e.f. 15.03.2021.			
		ii. If the limitation period would			
		have expired during the 1 year			
		extension period, a limitation			
		period of 90 days will be available			
		from 15.03.2021. If the balance of			
		the limitation period remaining on 15.03.2021 is more than 90 days,			
		then the longer period will apply.			
		then the longer period this apply.			
		iii. The 1 year extension period is			
		also to be excluded when			
		calculating the prescribed periods			
		under sections 23(4) and 29A of the Arbitration and Conciliation			
		Act 1996, section 12A of the			
		Commercial Courts Act 2015 and			
		provisos (b) and (c) of section 138			
		the Negotiable Instruments Act			
		1881 and any other law which			
		prescribe period(s) of limitation			
		for instituting proceedings, outer limits (within which the court or			
		tribunal can condone delay) and			
		termination of proceedings.			
181.		CIRP must be conducted and	Maharashtra Seamless Ltd. Vs.	NCLAT	07.12.2020
		carried on in accordance with the	State Bank of India & Ors. [CA (AT)		
		Code which prescribes timelines.	(Ins.) No. 1039 of 2020]		

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		Although withdrawal of the applications based on the consideration by the CoC and settlement are part of the same process, but whatever emerges			
		should materialise within the prescribed timelines.			
182.		The time period can very well be extended beyond 330 days. It further observed that it will be in the best interest of the CD as well as the stakeholders if the resolution plan is considered, liquidation being the last resort.	IDBI Bank Ltd. Vs. Cyclo Transmissions Ltd. [IA No. 1053 of 2020 in CP(IB) No. 381 of 2018]	NCLT, Mumbai	07.10.2020
183.		The extension of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP rather than going into liquidation of the CD which should only be initiated as a last resort. It approved the extension of the period by 90 days.	Abhilash Lal, RP of Sevenhills Healthcare Pvt. Ltd. [IA No. 137 of 2020 in CP(IB) No. 282/7/HDB/2018]	NCLT, Amravati	06.10.2020
184.		The extension of CIRP period beyond 330 days was allowed to prevent the CD from being pushed into liquidation and a viable resolution plan being approved by the CoC.	Committee of Creditors of Trading Engineers International Ltd. Vs. Trading Engineers International Ltd. through RP [CA (AT) (Ins.) No. 61 of 2021]	NCLAT	02.02.2021
185.		Resolution Professional should file an application to the AA for extension of the period of the CIRP, only if instructed to do so by a resolution passed at a meeting of the CoC by a vote of 75% of the voting shares.	George Vinci Thomas & Ors. Vs. Sasitharan Ramaswamy, Resolution Professional in the matter of India Techs Ltd. & Ors. [IA/218/KOB/2020 & MA/22/KOB/2020 in TIBA/14/KOB/2019]	NCLT, Kochi	12.02.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
NO.					Judgement
	12A	Withdrawal of application admitted	d under section 7, 9 or 10		
186.		Section 12A, of the Code enacted with effect from 06.06.2018 will not come into the picture since the admission of the petition was on 01.06.2018.	Shipra Hotels Ltd. Vs. Value Lines Interiors Pvt. Ltd. [Civil Appeal No. 7405 of 2018]	SC	03.08.2018
187.		At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
188.		Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.	Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018]	SC	14.12.2018
189.		It is the promoter who can settle the matter with creditors and submit such proposal to RP and that he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A.	Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019]	NCLAT	07.08.2019
190.		The exit route prescribed in section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to	Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and other appeals]	SC	22.01.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		applicants invoking sections 7, 9 and 10 of the Code.			Judgement
191.		The application under section 12A having been approved by the CoC with more than 90% of the voting share, it was not open to the AA to reject the same and that too on a ground of ineligibility under section 29A, which is not applicable.	Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. [CA (AT) (Ins.) No. 601 of 2019 and other appeals]	NCLAT	28.08.2019
192.		Regulation 30A of the CIRP Regulations cannot override the substantive provisions of section 12A of the Code, according to which the applicant can only move application for withdrawal before the AA and not by the RP.	Francis John Kattukaran Vs. The Federal Bank Ltd. & Anr. [CA (AT) (Ins.) No. 242 of 2018]	NCLAT	13.11.2018
193.		As CoC has already been constituted, the application for withdrawal can only be filed to the RP and not directly in the court under section 60(5) of the Code read with Rule 11 of NCLT Rules.	A. K. Corporation Vs. Anupam Extraction Ltd. [MA 2746/2019 in CP (IB) 2781/(MB)/2018]	NCLT, Mumbai	14.08.2019
194.		Once the terms of settlement providing a repayment schedule was incorporated in the order, thereby making it an order/decree of the Court, the grant of liberty to the FC to come back in case of breach of settlement terms could only be interpreted to mean that the revival of CIRP would be sought for non-compliance with the terms of settlement.	Himadri Foods Ltd. Vs. Credit Suisse Funds AG [CA (AT) (Ins.) No. 1060 of 2020]	NCLAT	07.01.2021
	14	Moratorium			
195.		A conjoint reading of section 14(1)(a) and section 238 of the Code clearly shows that the Code	Sundaresh Bhat Vs. Assistant Commissioner of State Tax and	NCLT, Mumbai	22.09.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		overrides section 44 of the Gujarat Value Added Tax Act, 2003, as the same is inconsistent with the provisions of the Code and thus the action of the Assistant Commissioner of State Tax directing a payment out of the account of the CD is clearly barred by the provisions of section 14(1)(a).	Anr. [IA No. 1043 of 2020 in CP(IB)No. 490/MB/2018]		
196.		The sale of goods by custom department through e-auction notice was violative of section 14 of the Code.	Ramsarup Industries Ltd. Vs. ICICI Bank Ltd. [CA (IB) No. 116/KB/2018 in CP(IB) No. 349/KB/2017]	NCLT, Kolkata	03.07.2018
197.		'Security Interest' does not include 'Performance Bank Guarantee' and it is not covered by section 14 of the Code.	Indian Overseas Bank Vs. Arvind Kumar [CA (AT) (Ins.) No. 558 of 2020]	NCLAT	28.09.2020
198.		Section 14(1)(d) of the Code prohibits recovery of any property by an owner or lessor in possession of the CD. This prohibition is also applicable to Department of Telecom (DoT). Use of licence / spectrum is akin to "essential goods or services" without which the CD cannot run its telecom business. The AA instructed the DoT not to make any attempt to cancel the CD's licence.	Vijaykumar V. Iyer Vs. Union of India [MA-337/2018 in C.P. (IB)- 298/(MB)/2018 and MA- 336/2018 in C.P. (IB)- 302/(MB)/2018]	NCLT, Mumbai	27.11.2019
199.		The asset in question being owned by a third party but in possession of the RP, that too due to a contractual arrangement, must not be retained but to be returned.	Weather Makers Pvt. Ltd. Vs. Parabolic Drugs Ltd. [CA 206/2019 in CP(IB)-102/CHD/2018]	NCLT, Chandigarh	26.04.2019
200.		Once the counterclaims are adjudicated and the amount to be	SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS	HC, New Delhi	18.07.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, section 14 could be triggered.	(COMM) 470/2016 & CC(COMM) 73/2017]		
201.		Any amount deposited by any person in the account of CD cannot be appropriated by bank towards its own dues, during the period of moratorium.	State Bank of India Vs. Debashish Nanda [CA (AT) (Ins.) No. 49 of 2018]	NCLAT	27.04.2018
202.		Once moratorium is over, no further embargo remains for continuing to hear suits and other proceedings to which the CD is a party.	Sirpur Paper Mills Ltd. Vs. I.K. Merchants Pvt. Ltd. [A.P. No. 550 of 2008]	HC, Calcutta	10.01.2020
203.		The appropriation of Fixed Deposit Receipts (FDRs) was barred by section 14 as it was initiated after the initiation of CIRP. Any withdrawal from the account/FDR by the bank will be regarded as violation of Regulation 19 of the CIRP Regulations and in the absence of such a bar, it will not be possible for RP to verify the claims and the object of moratorium will be defeated.	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)- 378(PB)/2017]	NCLT, New Delhi	25.04.2018
204.		Once the proceedings under the Code had commenced and an order declaring moratorium has been passed by the AA, then if the assets of the CD are alienated during the pendency of the proceedings under the Code, it will seriously jeopardise the interest of all the stakeholders.	Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. & Ors. [Civil Appeal Nos. 8800-8801 of 2019]	SC	18.11.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
NO.					Judgement
205.		Since the moratorium has expired, the appellant may pursue the suit pending before the subordinate court in the light of section 60(6) of the Code.	ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu [CA (AT) (Ins.) No. 655 of 2019]	NCLAT	05.07.2019
206.		Section 14 has created a piquant situation i.e., that the CD undergoing insolvency proceedings can continue to pursue its claims, but the counterclaim would be barred under section 14(1)(a). When such situations arise, the court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed, and the court cannot blindly stay the counterclaim and refer the defendant to the NCLT/RP for filing its claims.	SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC (COMM) 73/2017]	HC, New Delhi	18.07.2019
207.		The mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.	Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan Pvt. Ltd. & Ors. [Civil Appeal No. 16929 of 2017]	SC	23.10.2017
208.		Moratorium will also not affect the power of the HC under Article 226 of the Constitution. However, so far as suit, if filed before any HC under original jurisdiction which is a money suit or suit for recovery, against the CD, such suit cannot proceed after declaration of	Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]	NCLAT	14.09.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		moratorium under section 14 of the Code.			Judgement
209.		The Debts Recovery Appellate Tribunal should have recalled its order so that the IRP/RP could take over the assets of the CD in exercise of its mandate under the Code, during the period of moratorium.	Amira Pure Foods Pvt. Ltd. Vs. Canara Bank & Ors. [W.P.(C) No. 5467/2019]	HC, New Delhi	20.05.2019
210.		The word 'its' used in section 14(1)(c) was interpreted to denote the property owned by the CD, thus the property not owned by CD would not fall within the ambit of moratorium.	Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. [T.C.P. No. 1059/I&BP/NCLT/MB/MAH/2017]	NCLT, Mumbai	03.07.2017
211.		On determination, even if it is found that the CD is liable to pay certain amount, still no recovery can be made during the period of moratorium.	Jharkhand Bijli Vitran Nigam Ltd. Vs. IVRCL Ltd. & Anr. [CA (AT) (Ins.) No. 285 of 2018]	NCLAT	03.08.2018
212.		Moratorium imposed by section 14 is in the interest of the CD itself, thereby preserving its assets during the CIRP.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	sc	25.01.2019
213.		The RP has the right to take control and custody of any asset, though the customs authority is in possession of the same during the period of moratorium.	Commissioner of Customs, (Preventive) West Bengal Vs. Ram Swarup Industries Ltd. & Ors. [CA (AT) (Ins.) No. 563 of 2018]	NCLAT	20.06.2019
214.		The termination of the mining lease with the CD during the moratorium has taken away the interest created in favour of the CD in relation to the mining operations and the CD cannot carry on mining business as a going	Vasudevan Vs. State of Karnataka & Ors. [MA/632/2018 in CP/39/2018]	NCLT, Chennai	03.05.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		concern, which frustrates the			
		object of CIRP.			
215.		Freezing of the bank accounts in	Kitply Industries Ltd. Vs. Assistant	NCLT,	15.11.2018
		the name of CD is a proceeding of	Commissioner of Income Tax	Guwahati	
		quasi-judicial nature and being so,	(TDS) & Anr. [I.A. No. 54/2018 in		
		such a proceeding is a proceeding	C.P. (IB)/02/GB/2018]		
		before any other authority as			
		contemplated in the provision of			
		law, and as such, continuation of			
		the same during the period when the moratorium is in operation is			
		illegal in view of the prohibitions,			
		rendered in section 14(1)(a) of the			
		Code.			
216.		Section 14 of the Code except that	Tayal Cotton Pvt. Ltd. Vs. State of	HC, Bombay	06.08.2018
		it only prohibits a suit or a	, Maharashtra & Ors. [Criminal		
		proceeding of a like nature and	Writ Petition No. 1437of 2017]		
		does not include any criminal			
		proceeding.			
217.		Moratorium will not affect any suit	Canara Bank Vs. Deccan Chronicle	NCLAT	14.09.2017
		or case pending before the SC	Holdings Ltd. [CA (AT) (Ins.) No.		
		under Article 32 of the	147 of 2017]		
		Constitution or where an order is			
		passed under Article 136 of the Constitution.			
218.		<i>'Essential service'</i> is for survival of	ICICI Bank Ltd. Vs. Innoventive	NCLT, Mumbai	23.08.2017
_10.		humankind, but not for making	Industries Ltd. [MA 157 in CP		10.00.2017
		business and earn profits without	01/I&BP/2016]		
		making payment to the services			
		used. When company is using it for			
		making profit, then the company			
		must make payment to the			
		services/goods utilised in			
		manufacturing purpose.			
219.		Essential goods or services,	Dakshin Gujarat VIJ Company Ltd.	NCLAT	03.02.2018
		including electricity, water,	Vs. ABG Shipyard Ltd. & Anr. [CA		
		telecommunication services and	(AT) (Ins.) No. 334 of 2017]		
		information technology services, if			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		they are not direct input to the output produced or supplied by the CD, cannot be terminated, or suspended or interrupted during moratorium period.			
220.		'Profit Petroleum' is not out of the ambit of section 14 of the Code and moratorium is applicable.	Videocon Industries Ltd. Vs. State Bank of India & Ors. [MA 1300/2018 in C.P. (IB)- 02/(MB)/2018]	NCLT, Mumbai	13.03.2019
221.		Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceedings under the Prevention of Money-Laundering Act, 2002.	Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement [CA (AT) (Ins.) No. 493 of 2018]	NCLAT	02.05.2019
222.		Imposition of fine cannot held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction and cannot come within the purview of section 14. Further, no criminal proceeding is covered under section 14 of the Code.	Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors. [CA (AT) (Ins.) No. 306 of 2018]	NCLAT	31.07.2018
223.		Sections 96 and 101, when contrasted with section 14, would show that section 14 cannot possibly apply to a personal guarantor.	State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595, 4533 of 2018]	SC	14.08.2018
224.		'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the CD in respect of 'its' property.	Alpha and Omega Diagnostics (India) Ltd. Vs. Asset Reconstruction Company of India Ltd. & Ors. [CA (AT) (Ins.) No. 116 of 2017]	NCLAT	31.07.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
225.		In terms of section 14 of the Code, all the proceedings pending before any court against the CD automatically comes to halt and cannot be decided.	Haravtar Singh Arora Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 567 of 2018]	NCLAT	20.09.2018
226.		Section 14 of the Code will prevail over section 28A of the Securities and Exchange Board of India Act, 1992, and SEBI cannot recover any amount including any penalty from the CD.	Anju Agarwal Vs. Bombay Stock Exchange & Ors. [CA (AT) (Ins.) No. 734 of 2018]	NCLAT	23.04.2019
227.		The Government of India issued show cause notice to the CD before issuance of the termination letter much prior to initiation of the CIRP. The CD having failed to act in terms of the said show cause notice and the order of cancellation passed by the Government being before declaration of moratorium, it cannot be held to be in violation of section 14(1)(d) of the Code.	Monnet Ispat & Energy Ltd. Vs. Government of India, Ministry of Coal [CA (AT) (Ins.) No. 26 of 2018]	NCLAT	30.11.2018
228.		It is always fit to appoint local professional, instead of airlifting a person from Delhi, which will be taxing the stressed CD and there is every chance of delay in proceeding.	Sojitz India Pvt. Ltd. Vs. Oren Hydrocarbons Pvt. Ltd. [CP/1182/IB/2018]	NCLT, Chennai	12.02.2019
229.		After admission of application under section 7 of the Code, once moratorium is declared, it is neither open to any person including FCs and the appellant bank to recover any amount from the account of the CD, nor it can appropriate any amount towards its own dues.	Indian Overseas Bank Vs. Dinkar T. Venkatsubramaniam [CA (AT) (Ins.) No. 267 of 2017]	NCLAT	15.11.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
230.		It is true that guarantor's liability is co-extensive with that of principal borrower. But it does not mean that the insolvency application can be filed against the principal borrower and the corporate guarantor simultaneously. Another insolvency proceeding against the CD is barred on account of moratorium order passed under section 14(1)(a) of Code against the principal borrower.	ICICI Bank Ltd. Vs. Vista Steel Pvt. Ltd. [CP (IB) No. 552/KB/2017]	NCLT, Kolkata	15.12.2017
231.		During the moratorium period, a guarantee cannot be invoked.	RBLBankLtd.Vs.MBLInfrastructuresLtd.[C.A. (I.B.) No.543/2017arisingoutofC.P(IB)/170/KB/2017)]	NCLT, Kolkata	18.12.2017
232.		Once moratorium is declared in a CIRP, adjustment of fixed deposits of CD by the appellant against an outstanding loan of CD, cannot be maintained. The plea of lack of knowledge of initiation of CIRP is not relevant.	UCO Bank Vs. G. Ramachandran [CA (AT) (Ins.) No. 761 of 2020 with IA No. 2038 of 2020]	NCLAT	03.11.2020
233.		Once the moratorium is declared, it is not open to any person, including FCs, to recover any amount from the account of the CD nor can it appropriate any amount towards its own dues. It held the actions of the bank to be in violation of section 14 of the Code and directed it to reverse the amount along with any interest accrued as per the nature of the deposit.	Alliance Broadband Services Pvt. Ltd. Vs. Manthan Broadband Service Pvt. Ltd. [IA No. 853/KB/2020 in CP (IB) No. 1634/KB/2018]	NCLT, Kolkata	10.12.2020
234.		The bank guarantee can be invoked even during the period of	Bharat Aluminium Co. Ltd. Vs. J.P Engineers Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 759 of 2020]	NCLAT	26.02.2021

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		moratorium in view of section			Judgement
		14(3)(b) of the Code.			
235.		On the issue as to whether institution or continuation of a	P. Mohanraj & Ors. Vs. Shah Brothers Ispat Pvt. Ltd. [Civil	SC	01.03.2021
		proceeding under section 138 of	Appeal No. 10355 of 2018 with		
		the Negotiable Instruments Act, 1881 (NI Act) can be said to be	other appeals]		
		covered under moratorium, the SC			
		held as under:			
		i. A quasi-criminal proceeding			
		which would result in the assets of the CD being depleted as a result			
		of having to pay compensation			
		which can amount to twice the			
		amount of the cheque that has			
		bounced would directly impact the CIRP in the same manner as the			
		institution, continuation, or			
		execution of a decree in such suit			
		in a civil court for the amount of			
		debt or other liability. Judged from			
		the point of view of this objective, it is impossible to discern any			
		difference between the impact of			
		a suit and a section 138			
		proceeding, insofar as the CD is			
		concerned, on it getting the			
		necessary breathing space to get back on its feet during the CIRP.			
		back of its feet during the CIKF.			
		ii. Section 14(1)(a) refers to			
		monetary liabilities of the CD and			
		section 14(1)(b) refers to the CD's			
		assets, and together, these two clauses form a scheme which			
		shields the CD from pecuniary			
		attacks against it during the			
		moratorium period so that the CD			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		gets breathing space to continue as a going concern in order to ultimately rehabilitate itself. Any crack in this shield is bound to have adverse consequences. iii. A moratorium does not extinguish any liability, civil or criminal, but only casts a shadow on proceedings already initiated and on proceedings to be initiated, and such shadow is lifted when the moratorium period comes to an end.			
		iv. A section 138 proceeding can be said to be a "civil sheep" in a "criminal wolf's" clothing, as it is the interest of the victim that is sought to be protected, the larger interest of the State being subsumed in the victim alone moving a court in cheque bouncing cases.			
		 v. A quasi-criminal proceeding contained in Chapter XVII of the NI Act would, given the object and context of section 14 of the Code, amount to a "proceeding" within the meaning of section 14(1)(a) and therefore, the moratorium attaches to such proceeding. vi. Moratorium would apply only to the CD, and the natural persons mentioned in section 141 of the NI 			
		vi. Moratorium would apply only to the CD, and the natural persons			

SI. No.	Section	Dictum liable under Chapter XVII of the NI	Citation	Forum	Date of Order/ Judgement
236.		Act. On deferment of payment of loan as per the notification of RBI dated 27.03.2020, the SC held, that there shall not be any charge of interest on interest/compound interest/ penal interest for the period during the loan moratorium and any amount already recovered under the same head, shall be refunded to the concerned borrowers and to be given credit/adjusted in the next	Small Scale Industrial Manufactures Association (Regd.) Vs. Union of India and Ors. [Writ Petition (C) No. 476 of 2020]	SC	23.03.2021
	16	instalment of the loan account. Appointment and tenure of IRP			
237.		An ex-employee of the FC cannot be appointed as an IRP.	State Bank of India Vs. Metenere Ltd. [CA (AT) (Ins.) No. 76 of 2020]	NCLAT	22.05.2020
238.		Section 16 of the Code visualises appointment of an IRP to manage the affairs of the CD. Such appointment is to be made by the AA.	Bank of New York Mellon Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017]	SC	21.02.2017
239.		The appointment and tenure of IRP is prescribed under section 16 of the Code.	Dharmendra Kumar Vs. IBBI & Ors. [CA (AT) (Ins.) No. 313 of 2018]	NCLAT	24.08.2018
240.		An IP must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignment.	IDBI Bank Ltd. Vs. Lanco Infratech Ltd. [C.P. (IB) No. 111/7/HDB/2017]	NCLT, Hyderabad	07.08.2017
241.		Once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the CD.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
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242.		IBBI vide its letter dated	Innovsource Pvt. Ltd. Vs Getit	NCLT, New	08.01.2018
		01.01.2018, has recommended a	Grocery Pvt. Ltd. [IB-	Delhi	
		panel of IPs for appointment as	295(PB)/2017]		
		IRPs in compliance with section			
		16(3)(a) of the Code to cut delay.			
		The list of recommended IP			
		provides instant solution to the AA			
		to pick up the name and make			
		appointment. It helps in meeting			
		the timeline given in the Code and helps unnecessary time wasted,			
		first by asking the IBBI to			
		recommend the name and then			
		appointing such IRP by AA.			
243.		It was clarified that IRP is acting as	Asset Reconstruction Company	NCLT, Mumbai	02.01.2019
		a court officer and any hindrance	(India) Pvt. Ltd. Vs. Shivam		
		in the work of CIRP will amount to	Water Treaters Pvt. Ltd. [C.P. No.		
		contempt of court.	(IB) 1882 (MB)/2018]		
	17	Management of affairs of CD by IRF)		
244.		To ensure that the CD remains a	Subasri Realty Pvt. Ltd. Vs. N.	NCLAT	22.02.2018
		going concern, all the	Subramanian & Anr. [CA (AT)		
		directors/employees are required	(Ins.) No. 290 of 2017]		
		to function and assist the RP who			
		manages the affairs of the CD			
		during moratorium. If an officer or			
		employee had the power to sign a			
		cheque on behalf of the CD prior to			
		the order of moratorium, such			
		power does not stand suspended			
		on the suspension of the Board of Directors nor can be taken away by			
		the RP.			
245.		Once CIRP has commenced with	State Bank of India Vs. Essar	NCLT,	02.08.2017
		the appointment of IRP, no doubt	Steel India Ltd. [C.P. (I.B) No.	Ahmedabad	,
		the Board of Directors would be	40/7/NCLT/AHM/2017)]		
		suspended. That does not mean			
		the entire machinery of the CD is			
		suspended. Even after			
		appointment of IRP, all the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		employees of the CD, top to bottom, would continue to function under the control of IRP instead of the Board of Directors.			
246.		IRP has not vested with any specific power to sue any person on behalf of the CD. However, in case of such difficulty, it is always open to IRP to bring to the notice of the AA for appropriate order.	Steel Konnect (India) Pvt. Ltd. Vs. Hero Fincorp Ltd. [CA (AT) (Ins.) No. 51 of 2017]	NCLAT	29.08.2017
247.		RP is required to act in terms of section 17(2)(e) of the Code for complying with the requirements under SEBI and the Regulations framed thereunder as well as the guidelines.	Bohar Singh Dhillon Vs. Rohit Sehgal (IRP) & Ors. [CA (AT) (Ins.) No. 665 of 2018]	NCLAT	09.05.2019
	18	Duties of IRP			
248.		It is the duty of the IRP to take control and custody of any asset over which the CD has ownership rights as recorded in the balance sheet of the CD.	Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai & Ors. [CA (AT) (Ins.) No. 719 of 2018]	NCLAT	14.05.2019
249.		The RP will come into picture after IRP having exercised his duties under section 18, so that IRP will hand over the custody of the assets as well as other records that have already been taken into custody, to the RP.	Rajendra K. Bhutia Vs. Maharashtra Housing and Area Development Authority [MA 96/2018 in C.P. No. 1061/I&BC/2017]	NCLT, Mumbai	02.04.2018
250.		In terms of section 21(1), RP is only supposed to collate the claims which implies comparison with the record and verification. Unlike a liquidator who is empowered to admit or reject a claim under section 40 of the Code against which an appeal lies to the AA, the RP is not vested with any	Avil Menezes, Resolution Professional of AMW Auto Component Ltd. Vs. Shah Coal Pvt. Ltd. [CA (AT) (Ins.) No. 63 of 2021]	NCLAT	03.02.2021

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
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		adjudicatory powers. All actions			
		taken by RP are subject to control			
		of the AA.			
	19	Personnel to extend co-operation t	o IRP		
251.		Section 19 of the Code latently and	Shailesh Chawla & Anr. Vs. Vinod	NCLAT	23.09.2020
		patently imposes an obligation on	Kumar Mahajan, RP & Ors. [CA		
		the personnel and promoters of	(AT) (Ins.) No. 571 of 2020 and		
		the CD to extend all assistance and	another appeal]		
		cooperation which the IRP will			
		require in running / managing the			
		affairs of the CD.			
252.		All the personnel connected with	Bank of India Vs. Tirupati	NCLT, New	03.07.2017
		the CD, its promoters or any other	Infraprojects Pvt. Ltd. [CP No. IB-	Delhi	
		person associated with the	104(PB)/2017]		
		management of the CD are under			
		legal obligation under section 19			
		of the Code to extend every			
		assistance and cooperation and in			
		case there is any violation, the IRP			
		would be at liberty to make			
		appropriate application to the AA			
		with a prayer for passing an			
		appropriate order.			
253.		Any interference in RP's discharge	Punjab National Bank Vs.	NCLT, Kolkata	22.12.2017
		of duty/work, action shall be	Divyajyoti Sponge Iron Pvt. Ltd.		
		initiated against the CD and it will	[C.P. (IB) No.363/KB/17)]		
		be presumed that the CD is not			
		obeying the order of the Court. It			
		is expected that CD should fully			
		cooperate with the RP.			
	20	Management of operations of corp	orate debtor as going concern		
254.		Section 20(2)(e) gives power to the	Tuf Metallurgical Pvt. Ltd. Vs.	NCLAT	03.02.2021
		IRP (subsequently RP) to take all	Impex Metal & Ferro Alloys Ltd.		
		actions as are necessary to keep	& Ors. [CA (AT) (Ins.) No. 190 of		
		the CD as a going concern. In such	2020]		
		a process of managing the			
		business operations of the CD, if			
		advance payments for supply of			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		goods is received, it cannot be treated as raising an interim finance. It is an advance for payment of goods which the CD as a going concern may be manufacturing. Such amount received as an advance payment for the supply of goods during the CIRP would have to be treated as CIRP cost.			
	21	Committee of Creditors			
255.		It is the settled law of the land that CoC enjoys primacy in the matter of approval or rejection of resolution plan/settlement proposal and the AA as well as the appellate tribunal would be exceeding its jurisdiction in approving or rejecting such plan/proposal which is essentially based on the commercial wisdom of the CoC.	M.P. Agarwal Vs. Shri Lakshmi Cotsyn Ltd. & Anr. [CA (AT) (Ins.) No. 620 of 2020]	NCLAT	27.07.2020
256.		The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties are not supposed to decide the manner of distribution. The <i>inter se</i> distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.	Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]	NCLAT	04.07.2019
257.		CoC is the fit person to take its own business decision and no reason has been found to disturb or sit on the decision of the CoC taken on by majority vote share.	State Bank of India Vs. Orissa Manganese & Minerals Ltd. [CA (IB) Nos. 402 and others in CP (IB) No. 371/KB/2017]	NCLT, Kolkata	22.06.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
258.		The CoC is required to evaluate the	Swiss Ribbons Pvt. Ltd. &Anr. Vs.	SC	25.01.2019
		resolution plan on the basis of	Union of India & Ors. [WP (Civil)		
		feasibility and viability.	Nos. 99, 100, 115, 459, 598, 775,		
			822, 849, and 1221 of 2018, SLP		
			(Civil) No. 28623 of 2018 and WP		
			(Civil) 37 of 2019]		
259.		The CoC has no absolute power to	Rama Subramaniam Vs. Sixth	NCLT, Mumbai	13.03.2019
		change the IRP/RP at their whims	Dimension Projects Solutions		
		and fancies without any valid or	Ltd. [M.A. No. 1626/2018 in C.P.		
		tenable reasons. The change of RP	No. 587/I&BP/2018]		
		must be			
		rational/tenable/reasonable and			
		not at the whims and fancies of the			
		CoC.			
260.		All members of the CoC are bound	Sai Regency Power Corporation	NCLT, Chennai	21.08.2019
		by the resolution approved by it	Pvt. Ltd. Vs. CoC of Sai Regency		
		with requisite majority.	Power Corporation Pvt. Ltd.		
			[MA/872/2019 in IBA/92/2019]		
261.		The decision of CoC taken by	IFCI Ltd. Vs. Era Housing &	NCLT, New	26.04.2019
		requisite majority cannot be	Developers (India) Ltd. [(IB)-	Delhi	
		questioned by non-applicant	489(PB)/2017]		
		respondent and no one is			
		permitted to strangulate the CIRP			
		by refusing to contribute their			
262		share of expense.	Accel December 11 - C	NCIT	26.02.2010
262.		All decisions of COC shall be taken	Asset Reconstruction Company	NCLT,	26.02.2019
		by a vote of not less than 51% of	(India) Ltd. (ARCIL) Vs.	Hyderabad	
		voting share of FCs. It is just like a	Koteswara Rao Karuchola and		
		general provision that all matters other than those referred to in	Anr. [IA No. 344 of 2018 in CP (IB)		
			No. 219/7/HDB/2018]		
		section 28 of the Code require to			
		be approved by a voting of not less			
263.		than 51% of voting share of FCs.	CDI Exports & Mfg Dut 1td Va		07.06.2018
203.		In a number of cases, it has now been seen that members of the	SBJ Exports & Mfg. Pvt. Ltd. Vs. BCC Fuba India Ltd. [CP-	NCLT, New Delhi	07.06.2018
		CoC are nominated by FCs like	659/2016]	Deim	
		Banks without conferring upon	055/2010]		
		- · ·			
		them the authority to take			

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		decision on the spot which acts as a block in the time bound process contemplated by the Code. Suchlike speed brakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIRP.			
264.		The FCs/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained.	Jindal Saxena Financial Services Pvt. Ltd. Vs. Mayfair Capital Pvt. Ltd. [C.A. No. 523(PB)/2018 in C.P. No. (IB)-84(PB)/2017)]	NCLT, New Delhi	04.07.2018
265.		It is time to recognise the OC's voice in the CoC for payment of minimum amount payable to them as required under the Code.	Bank of Baroda and Binani Cements Limited & Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]	NCLT, Kolkata	04.05.2018
266.		In case of deadlock in voting share in the appointment of RP under section 22 of the Code, preference can be given to the decision taken by highest percentage of the votes in the COC.	Nikhil Mehta & Sons (HUF) & Ors. Vs. AMR Infrastructure Ltd. [CA No. 811(PB)/2018 in (IB)- 02(PB) /2017]	NCLT, New Delhi	29.09.2018
267.		The CoC is also a creature of statute, and, can be termed as the instrumentality of the State, hence, they are under statutory obligation to follow the basic principles of administrative law. The instrumentality of the State has to act in transparent and fair manner and not to take arbitrary decision or to adopt discriminatory practice.	Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]	NCLT, Ahmedabad	19.04.2018

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No.					Order/
260					Judgement
268.		Only the members of the CoC who attend the meeting directly or	Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors. [CA	NCLAT	04.02.2019
		through video conferencing, can	(AT) (Ins.) No. 198 of 2018]		
		exercise its voting powers after	(, ()		
		considering the other			
		requirements as may be specified			
		by the IBBI. Those members of the			
		CoC who are absent, their voting shares cannot be counted.			
269.		The CoC cannot take an adverse	Bank of Baroda and Binani	NCLT, Kolkata	04.05.2018
205.		decision as against the prospective	Cements Ltd.& Ors. Vs.	Nell', Koikata	04.05.2018
		bidding plan submitted more so by	Vijaykumar V. Iyer [CA (IB) No.		
		a leading company who is capable	201/KB/18 and other CAs/IAs in		
		of effectively taking over the CD	C.P.(IB) No. 359/KB/2017]		
		without giving a reasonable			
		opportunity of being heard and the same amounts to being unjust			
		and arbitrary.			
270.		It is absurd to put the employees	Anil N. Surwade & Ors. Vs.	NCLAT	03.12.2020
		of CD at par with the erstwhile	Prashant Jain, RP, Sejal Glass Ltd.		
		board of directors seeking	[CA (AT) (Ins.) No. 1006 of 2020]		
		information regarding resolution			
		plan and proceedings before the CoC. Once their claims have been			
		admitted, no role is ascribed to			
		them in the deliberation of the			
		CoC.			
271.		The CoC has no role in deciding or	Rajnish Jain Vs. Manoj Kumar	NCLAT	18.12.2020
		changing the status of a creditor	Singh, IRP & Ors. [CA (AT) (Ins.)		
		either as FC or OC and such decision of CoC can never be	No. 519 of 2020]		
		treated as an exercise under its			
		commercial wisdom.			
272.		AA had no power to impose RP of	Prakash Shanker Mishra & Ors.	NCLAT	13.01.2021
		its choice. Even for Authorised	Vs. Ashok Kriplani & Anr. [CA		
		Representative, the decision of the	(AT) (Ins.) No. 34 of 2020 and		
		majority is to be respected.	another appeal]		

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273.		The SC held: (a) The collusive	Phoenix Arc Pvt. Ltd. Vs. Spade	SC	Judgement 01.02.2021
		commercial arrangements	Financial Services Ltd. & Ors.		01.01.1011
		between FCs and the CD would not	[Civil Appeal No. 2842 of 2020		
		constitute a 'financial debt'; (b)	with 3063 of 2020]		
		The objects and purposes of the			
		Code are best served when the			
		CIRP is driven by external			
		creditors, so as to ensure that the			
		CoC is not sabotaged by related			
		parties of the CD. The purpose of			
		excluding a related party of a CD			
		from the CoC is to obviate conflicts			
		of interest; (c) Exclusion under the			
		first proviso to section 21(2) is			
		related not to the debt itself but to			
		the relationship existing between			
		a related party FC and the CD.; and			
		(d) The FC, who <i>in praesenti</i> is not			
		a related party, would not be			
		debarred from being a member of			
		the CoC. However, in case where			
		the related party FC divests itself			
		of its shareholding or ceases to			
		become a related party in a business capacity with the sole			
		intention of participating in the			
		CoC and sabotage the CIRP, it			
		would be in keeping with the			
		object and purpose of the first			
		proviso to section 21(2), to debar			
		the former related party creditor.			
274.		The AA reiterated that they have	Sunit Jagdishchandra Shah, RP	NCLT,	18.02.2021
		no power to interfere in the	for Sungracia Tiles Pvt. Ltd. Vs.	Ahmedabad	
		commercial wisdom of the CoC,	Sungracia Tiles Pvt. Ltd. and Ors.		
		until and unless there is gross	[IA 678 of 2020 in C.P. (IB) No.		
		violation of principle of law.	750/NCLT/AHM/2019]		

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	22	Appointment of RP			
275.		When there is a conflict and no consensus is reached in the CoC where FCs comprising of financial institutions and non-financial institutions by the majority of voting shares to appoint the IRP/RP, proposed by the applicant under section 9 of the Code, it is expedient to appoint an independent IRP/RP to break stalemate between the FCs.	Allahabad Bank Vs. Anil Kumar [IA No. 691 of 2019 and other IAs in C.P. (IB) 397 of 2018]	NCLT, Ahmedabad	28.07.2020
276.		The decision of appointment of IRP as RP or replacement of IRP by another RP falls within the ambit of section 22 of the Code and is a decision based on commercial wisdom of CoC which is not amenable to judicial review. When the CoC has passed the resolution with the requisite majority, it is not proper to say that the legal rights of IRP have been infringed.	Committee of Creditors of LEEL Electricals Ltd. Through State Bank of India Vs. Leel Electricals Ltd. through its IRP, Arvind Mittal [CA (AT) (Ins.) No. 1100 of 2020]	NCLAT	21.12.2020
277.		The IRP has no <i>locus standi</i> to maintain an appeal against the decision of the CoC with a 100% majority to replace him with another RP. The outgoing IRP cannot claim invasion of any of his legal rights under the Code as he is not a stakeholder.	Ranjeet Kumar Verma Vs. Committee of Creditors of Straight Edge Contract Pvt. Ltd. through Resolution Professional [CA (AT) (Ins.) No. 1129 of 2020]	NCLAT	04.01.2021
	24	Meeting of committee of creditors			
278.		A combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors of the CD being vitally interested in resolution plans that may be	Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018]	SC	31.01.2019

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		discussed at meetings of the CoC, must be given a copy of such plans as part of documents that have to be furnished along with the notice of such meetings.			
279.		If the claim of OCs, on verification is found to be less than 10%, the OCs have no right to claim representation in the meeting of the CoC.	Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Ins.) No. 501 of 2018]	NCLAT	12.12.2018
280.	25	Duties of RP The goods lying in the form of raw material in the custody of CD for processing is under the contract of bailment preventing the RP from withholding the same. The RP was directed to handover the goods of the applicant with the liberty to proceed against the applicant under section 25(2) to recover any sum, if due.	KEC International Ltd. Vs. Bhuvan Madan & Anr. [IA No.139 of 2019 in CP (IB) No. 137/7/NCLT/AHM/2018]	NCLT, Ahmedabad	04.09.2020
281.		The act of RP to accept the resolution plan after opening of other bid cannot be justified by any means and is a blatant misuse of the authority invested in the RP to conduct CIRP. It was further observed that the material irregularity in exercise of powers by the RP, even with the approval of the CoC in the conduct of CIRP, cannot be treated as an exercise of commercial wisdom.	Kotak Investment Advisors Ltd. Vs. Krishna Chamadia & Ors. [CA (AT) (Ins.) No. 344-345 of 2020]	NCLAT	05.08.2020
282.		While making physical verification of debtors appearing in the records of the CD, the RP found that some of them are not even	Union Bank of India Vs. Paramshakti Steel Ltd. [MA No. 243/2018 in C.P. No. (IB) 727 (MB)/2017]	NCLT, Mumbai	12.04.2018

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		aware of the CD. The AA suggested the RP to initiate all steps available			
		under the Code to proceed against			
		the promoters/directors of the CD.			
283.		It is pertinent to mention that RP is	State Bank of India Vs. Jet Airways	NCLT, Mumbai	25.09.2019
		duty bound to maintain CD as	(India) Ltd. [MA 2955/2019 in		
		going concern.	C.P.(IB)-2205/(MB)/2019]		
284.		1. The RP has administrative	Swiss Ribbons Pvt. Ltd. & Anr. Vs.	SC	25.01.2019
		powers as opposed to quasi-	Union of India & Ors. [WP (Civil)		
		judicial powers.	Nos. 99, 100, 115, 459, 598, 775,		
		2. The RP is really a facilitator of	822, 849, and 1221 of 2018, SLP		
		the resolution process, whose administrative functions are	(Civil) No. 28623 of 2018 and WP		
		overseen by the CoC and by the	(Civil) 37 of 2019]		
		AA. Under the CIRP Regulations,			
		the RP has to vet and verify claims			
		made, and ultimately, determine			
		the amount of each claim.			
285.		The action or rather inaction by	BMW India Financial Services Pvt.	NCLT, Mumbai	16.10.2019
		the RP in not taking a decision on	Ltd. Vs. SK Wheels Pvt. Ltd. [MA		
		the claim is his abuse of the power	No. 2319/2019 in CP(IB) 4301/		
		under the Code, and contrary to	2018]		
286.		justice and public policy. The RP cannot go into	Annik Consta Ma Maranak Consta (CA	NCLAT	20.12.2019
280.		The RP cannot go into investigations and enquiries	Amit Gupta Vs. Yogesh Gupta [CA (AT) (Ins) No. 903 of 2019]	NCLAT	20.12.2019
		whether or not a CD is an MSME,	(AT) (IIIS) NO. 505 01 2015]		
		and the AA is also not expected to			
		make such investigations,			
		enquiries on such evidence or give			
		findings on such issues.			
287.		Whether a person is a secured or	Tourism Finance Corporation of	NCLAT	19.12.2019
		unsecured creditor is a question of	India Ltd. Vs. Rainbow Papers Ltd.		
		fact normally determined by the	& Ors. [CA (AT) (Ins.) No. 354 of		
		RP or the CoC.	2019 and other appeals]		
288.		RP has no jurisdiction to	S. Rajendran Vs. Jonathan	NCLAT	01.10.2019
		determine a claim. He can only	Mouralidarane [CA (AT) (Ins.) No.		
		collate it, based on evidence and	1018 of 2019]		

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		the record of the CD, or as filed by	·		
		the FC.			
289.		After the constitution of the CoC,	Asset Reconstruction Company (I)	NCLAT	18.11.2019
		without its permission, the RP was	Ltd. (ARCIL) Vs. Koteswara Rao		
		not competent to entertain more	Karuchola& Ors. [CA (AT) (Ins.)		
		applications after three months to	No. 633 of 2018]		
		include one or other person as FC.			
290.		The very object of the Code is to	Sunrise Polyfilms Pvt. Ltd. Vs.	NCLT,	04.05.2018
		revive a company under CIRP and	Punjab National Bank [Inv P.5 of	Ahmedabad	
		not to liquidate it. In the instant	2018 in IA 27 of 2018 in C.P. (I.B)		
		case, it is clear that the RP has	No. 89/7/NCLT/AHM/2017]		
		omitted to perform his statutory			
		duties. It is amply clear that the RP			
		has not invited prospective			
		resolution applicants as per			
		section 25 of the Code. Therefore,			
		the RP was directed to act as per			
		section 25 of the Code.			
291.		The nature of duties as assigned to	Numetal Ltd. Vs. Satish Kumar	NCLT,	19.04.2018
		the RP is/are similar to public	Gupta & Anr. [I.A. Nos. 98 & other	Ahmedabad	
		servant because he is appointee of	IAs in CP (IB) No. 40 of 2017]		
202		the Court.	Danie Diagosti Infrastructura Dit	NCLAT	10 10 2020
292.		RP had acted against the mandate	Panna Pragati Infrastructure Pvt. Ltd. & Anr. Vs. Amit Pareek & Ors.	NCLAT	19.10.2020
		of provisions contained in sections $2F(2)$ and $2Q(2)$ of the Code by path			
		25(2) and 30(3) of the Code by not placing the revised resolution plan	[CA (AT) (Ins.) No. 515 of 2020 and another appeal]		
		before the CoC for consideration.			
		This was also contrary to the			
		objective of maximisation of value			
		of assets of CD.			
293.		RP should not be bombarded with	Subrata Monindranath Maity	NCLT, Chennai	12.01.2021
200.		criminal prosecution and police	(Bhatia Coke and Energy Ltd.) Vs.	itter, enemia	12:01:2021
		investigation, because it would	Surender Singh Bhatia & 4 Ors.		
		prevent the RP from conducting	[IA/05/2021 in IBA/307/2019]		
		CIRP without fear and favour. AA			
		while clarifying that it is not			
		passing any orders on the merits of			
		the FIRs filed against RP by the			
		the FIRS filed against RP by the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		erstwhile directors of the CD, directed the police to give adequate protection to the RP along with his team. It further permitted the police to proceed as per the Code of Criminal Procedure, 1973 but directed that no arrest shall be made until the disposal of the application.			
294.		The SC was appalled with the developments leading to arrest of the IRP, who was working pursuant to the order passed by the Court and entrusted with the functioning of the CD. It observed that the police official dealing with the case is not familiar with the provision of privilege of IRP appointed by the Court in terms of section 233 of the Code. While directing immediate release of the IRP, the SC directed the investigation officer not to take any coercive action against the IRP.	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No(s). 3395/2020]	SC	02.03.2021
295.		Allowing the advocate/chartered accountant/company secretary of the CD to attend CoC meetings would serve no purpose. The CD itself is sufficient to provide any of the documents/papers/details sought by the RP during the proceedings. Further, it is the discretion of the RP to appoint accountants, legal and other professionals following the due process as specified by the IBBI under section 25(2)(d) of the Code	Propyl Packaging Ltd. Vs. George Varkey, RP of Propyl Packaging Ltd. [M.A. No. 162/KOB/2020 in IBA No.52/KOB/2019]	NCLT, Kochi	21.01.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		and he is not permitted to disclose any information pertaining to the CIRP to any third parties including an advocate/chartered accountant/company secretary.			
	27	Replacement of RP by CoC			
296.		CoC is not required to record any reason or ground for replacing of the RP, which may otherwise call for proceedings against such RP. The CoC having decided to remove the RP with 88% voting share, it was not open to the AA to interfere with such decision, till it is shown that the decision of the CoC is perverse or without jurisdiction.	Punjab National Bank Vs. Kiran Shah [CA (AT) (Ins.) No. 749 of 2019]	NCLAT	06.08.2019
297.		The proposed RP cannot be regarded as independent umpire to conduct CIRP as required by well settled practice.	Mussadi Lal Kishan Lal Vs. Ram Dev Int. Ltd. [(IB)-178 (PB)/2017]	NCLT, New Delhi	15.05.2018
298.		The AA is also empowered to remove the RP, apart from the CoC, but it should be for the reasons and in the manner as provided under the relevant provisions.	Devendra Padamchand Jain Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 177 of 2017]	NCLAT	31.01.2018
299.		The RP appealed against his replacement in a CIRP. While dismissing the appeal, it was observed that commercial wisdom of the CoC covers matters including replacement of the RP and it is neither under the limited scope of judicial review nor it is justiciable.	Naveen Kumar Jain Vs. Committee of Creditors of K.D.K Enterprises Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 882 of 2020]	NCLAT	03.11.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	29A	Persons not eligible to be resolution			
300.		Section 29A or section 31 would not provide a shield against the operation of section 14(3)(b) of the Code and that CD/Promoter would not come under the immunity blanket of section 14 as the same is contrary to the law governing CIRP and RBI guidelines.	Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr. [I.A. No. GA 1 of 2020 with (Old G.A. 1062 of 2020) with W.P.O 236 of 2020]	HC, Calcutta	15.09.2020
301.		Since the application was admitted prior to the promulgation of Ordinance bringing section 29A into force, the resolution plan would be eligible for due adjudication.	Wig Associates Pvt. Ltd. [M.A. No. 435 of 2018 in C.P. No. 1214/I&BC/NCLT/MB/MAH/201 7]	NCLT, Mumbai	04.06.2018
302.		The NCLAT held that if it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a person who is ineligible in terms of section 29A, it is always open to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.	State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]	NCLAT	18.11.2019
303.		The certificate issued by the Ministry of MSME raises no objection to the fact that the CD is an MSME. Hence, clauses (c) and (h) of section 29A are not applicable to the CD.	K. Periyasamy & 1 another Vs. J. Manivannan [MA/347/2019 in CP/422/IB/2018]	NCLT, Chennai	01.05.2019
304.		Promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for taking back the immovable and movable properties or actionable claims of the CD.	Jindal Steel and Power Ltd. Vs. Arun Kumar Jagatramka & Anr. [CA (AT) No. 221 of 2018]	NCLAT	24.10.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
305.		The intention of the Legislature shows that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of the CoC to regain control of the CD and entrepreneurship by filing resolution plan, which is viable, feasible and fulfils other criteria as laid down by the IBBI.	Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors. [CA (AT) (Ins.) No. 203 of 2019]	NCLAT	04.07.2019
306.		The promoters/employees of the CD without the knowledge of RP had secured the registration certificate under the MSME Act to overcome the bar under section 29A of the Code and submitted their resolution plan. The same was not approved by the CoC although no other resolution plan was submitted and that the AA's order of liquidation of the CD does not have any legal flaw.	T. Johnson Vs. St. John Freight Systems Ltd. & Anr. [CA (AT) (Ins.) No. 1402 of 2019]	NCLAT	04.03.2020
307.		Section 29A is a <i>de facto</i> as opposed to a <i>de jure</i> position of persons mentioned therein. This is a typical see through provision so that one can see persons who are actually in control, whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to pierce the corporate veil to find out as to who are the real individuals or entities who are acting jointly or in concert for submission of a resolution plan.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]	SC	04.10.2018

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
308.		The defaulters disqualified under Section 29A should not get any benefit under the Code. This is a clear message conveyed through section 29A. A defaulter must not be benefitted by entering into those very assets through side doors, otherwise not permitted to enter from the front doors, for e.g. by submission of a resolution plan.	SBI Global Factors Ltd. Vs. Sanaa Syntex Pvt. Ltd. [MA 1123/2018 in CP No. 172/ IBC/NCLT/MB/MAH/2017]	NCLT, Mumbai	08.04.2019
309.		Constitutional validity of section 29A was upheld.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
310.		Upholding the constitutional validity of regulation 2B of the Liquidation Process Regulations, the SC held that prohibition in section 29A and section 35(1)(f) of the Code must also attach to a scheme of compromise or arrangement under section 230 of the Companies Act, 2013 (scheme), where a company is undergoing liquidation under the Code. Even in the absence of said regulation, a person ineligible under section 29A read with section 35(1)(f) is not permitted to propose a scheme for revival of a company undergoing liquidation under the Code. In case of a company undergoing liquidation pursuant to the provisions of Chapter III of the Code, a scheme is a facet of the liquidation	Arun Kumar Jagatramka Vs. Jindal Steel and Power Ltd. & Anr. [Civil Appeal No. 9664 of 2019 with other apeeals]	SC	15.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of
NO.					Order/
		process. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company in liquidation or participating in the sale of the corporate debtor as a 'going concern', are somehow permitted to propose a scheme. The same rationale which permeates the resolution process under Chapter II (by virtue of the provisions of section 29A) permeates the liquidation process			Judgement
		under Chapter III (by virtue of the provisions of section 35(1)(f)).			
	30	Submission of Resolution Plan			
311.		The AA, in law cannot enter into the arena of majority decision of the CoC other than the grounds mentioned in section 32(a) to (e) of the Code. After due deliberations, when the RP had accepted the conditions of the resolution plan, especially keeping in mind the ingredients of section 25(2)(h) of the Code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of plan, then it is not open to the resolution applicant to take a topsy turvy stance and is not to be allowed to withdraw the approved resolution plan.	CoC of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr. [CA (AT) (Ins.) No. 203 of 2020]	NCLAT	29.07.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
312.		The successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted and that all claims must be submitted to and decided by the RP, so that a prospective resolution applicant knows exactly, what has to be paid, in order that it may then take over and run the business of the CD.	Shree Sidhivinayak Cotspin Pvt. Ltd. & Anr. Vs. RP of Marurti Cotex Ltd. &Anr. [CA (AT) (Ins.) No. 694 of 2020]	NCLAT	20.08.2020
313.		The restructuring plan projected as a resolution plan approved by the CoC could not be termed as a resolution plan within the ambit of section 30 of the Code.	Bank of Baroda Vs. Sisir Kumar Appikatla Resolution & Ors. [CA (AT) (Ins.) No. 579 of 2020]	NCLAT	20.07.2020
314.		The RP, CoC and successful resolution applicant already took note of the facts and yet took a conscious decision to go ahead with the resolution plan, as such it cannot be stated that the question of viability and feasibility was not examined in the proper perspective.	The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay & Ors. [Civil Appeal Nos. 2955 of 2020 and 2902 of 2020]	SC	04.09.2020
315.		No FC, including a secured creditor, can dissent on the ground that if it dissents against the resolution plan, in spite of plan being feasible and viable and in accordance with section 30(2), just to get more amount than the other secured creditor, can take advantage of the amended section 30(2)(b)(ii).	DBS Bank Ltd., Singapore Vs. Shailendra Ajmera & Anr. [CA (AT) (Ins.) No. 788 of 2019]	NCLAT	18.11.2019
316.		The NCLAT concurred with the observation of the AA that resolution plan should be planned	Superna Dhawan & Anr. Vs. Bharti Defence and	NCLAT	14.05.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		for insolvency resolution of the CD as a going concern and not for addition of value with intent to sell the CD. The purpose to take up the company with the intent to sell the CD is against the basic object of the Code.	Infrastructure Ltd. & Ors. [CA (AT) (Ins.) No. 195 of 2019]		Judgement
317.		In case where all creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31 is required to be expedited on the basis of plan if prepared. In such case, the AA, without waiting for 180 days of resolution process, may approve resolution plan under section 31, after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount.	Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017]	NCLAT	18.08.2017
318.		Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 -9405 of 2018 and other appeals]	SC	04.10.2018
319.		Resolution plan which relates to the closure of the CD/corporate applicant being against the scope and the intent of the Code is in violation of section 30(2)(e) of the Code.	Industrial Services Vs. Burn Standard Company Ltd. & Anr. [CA (AT) (Ins.) No. 141 of 2018 and other appeals]	NCLAT	13.05.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
320.		If goods have been supplied during the CIRP period to keep the CD as going concern, it is the duty of the RP to include the costs on such goods in the CIRP cost. If it is not included, the resolution plan in question can be held to be in violation of section 30(2)(a) of the Code.	Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]	NCLAT	24.04.2019
321.		While scrutinising the resolution plan under section 30(2), the RP cannot hold or decide as to who is ineligible under section 29A. Neither section 30(2) nor any other provision in the Code confers such power on the RP to scrutinise the eligibility of resolution applicants.	Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. [I.A. No. 594 of 2018 in CA (AT) (Ins.) No. 188 of 2018]	NCLAT	15.05.2018
322.		Section 30(2) nowhere provides that each FC must get proportionately equivalent share with other FCs. The only condition for approving the resolution plan by the CoC is by voting share of 75% as per the requirements of section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018).	Rave Scans Pvt. Ltd. [(IB)-01(PB)- 2017]	NCLT, New Delhi	17.10.2018
323.		The RP ought to follow provision of section 29A (c) read with section 30 (4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible.	Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]	NCLT, Ahmedabad	19.04.2018
324.		Primacy is given in the process to commercial decisions. The success of the process is contingent upon the competence of the IRP and the CoC.	Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]	SC	09.08.2018

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
325.		Even though amended sub section (4) of section 30 came into force from 06.06.2018, it is applicable to all resolution plans which were not approved by the CoC or by the AA.	SICOM Ltd. Vs. Alok Employees Benefit and Welfare Trust & Ors. [CA (AT) (Ins.) No. 344 of 2018]	NCLAT	Judgement 29.11.2018
326.		The CoC is empowered under section 30(4) of the Code to independently consider the question of eligibility of all applicants under section 29A.	State Bank of India Vs. Electrosteel Steels Ltd. [CA (IB) No. 202-203/KB/2018 in CP (IB) No. 361/KB/2017]	NCLT, Kolkata	20.03.2018
327.		The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
328.		The word 'may' in section 30(4) is ascribable to the discretion of the CoC to approve the resolution plan or not to approve the same.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]	SC	05.02.2019
329.		All OCs are ranked equal. Therefore, resolution plan should not create classes of OCs and treat them differently.	J.R. Agro Industries P Ltd. Vs. Swadisht Oils P Ltd. [CA No. 59 of 2018 in CP No. (IB) 13/ALD/2017]	NCLT, Allahabad	24.07.2018
330.		Whenever, a resolution applicant's plan is under consideration of CoC and that plan is not at all placed before the AA for approval, and if another resolution applicant comes forward making an offer before the CIRP duration expires, and that it satisfies all the stakeholders of the CD, then there	Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Mr. Vijay Kumar V. Iyer, [CA (IB) NO.201/KB/2018 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]	NCLT, Kolkata	04.05.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		is nothing in the Code or Regulations to prevent the CoC from considering a revised offer of the other applicant.			Judgement
331.		Once the resolution plan has been approved by the CoC, the AA ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself.	Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and another appeal]	SC	22.01.2020
	31	Approval of Resolution Plan			
332.		Once the resolution plan is approved under section 31 of the Code, all the assets and benefits of the contracts of the CD stands unconditionally transferred and assigned and vested in the successful resolution applicant free from all encumbrances. All persons including Central and State Governments as well as the Local Authorities are bound by the said Order.	Shri Dutt India Pvt. Ltd Vs. Office of the Sugar Commissioner [I.A. No. 1055 of 2020 in C.P. (IB) No. 2956 of 2018]	NCLT, Mumbai	21.09.2020
333.		A resolution applicant whose resolution plan stands approved by CoC, cannot be permitted to alter his position to the detriment of various stake holders after pushing out all potential rivals during the bidding process, and the same fraught with disastrous consequences for the CD which may be pushed into liquidation, as the CIRP period may by then be over thereby setting at naught all possibilities of insolvency resolution and protection of a CD, more so, when it is a going concern.	Kundan Care Products Ltd. Vs. Amit Gupta and Ors. [CA (AT) (Ins.) No. 653 of 2020]	NCLAT	30.09.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
334.		Where the AA has approved a resolution plan that provides for taking over the shares of the promoters, it is not required to comply with the provisions of sections 56 and 57 of the Companies Act, 2013. The same can be completed at the stage of implementation of the resolution plan.	Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]	NCLAT	24.04.2019
335.		The proviso to sub-section 31(4) of Code which relates to obtaining the approval from the CCI under the Competition Act, 2002, prior to the approval of such resolution plan by the CoC, is directory and not mandatory.	Arcelormittal India Pvt. Ltd. Vs. Abhijit Guhathakurta & Ors. [CA (AT) (Ins.) No. 524 of 2019]	NCLAT	16.12.2019
336.		The FCs and OCs whose claims have been decided by the AA or the NCLAT, such decision being final is binding on all such FCs and OCs in terms of section 31 of the Code. Their total claims stand satisfied and, therefore, they cannot avail any remedy under section 60(6) of the Code.	Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]	NCLAT	04.07.2019
337.		The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting FCs. The discretion of the AA is circumscribed by section 31 to scrutiny of resolution plan 'as approved' by the requisite percent of voting share of FCs.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]	SC	05.02.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
338.		The resolution applicant is bound by the mandate under section 30(2)(f) and shall ensure that the resolution plan shall not be against any of the provisions of the existing law.	MSTC Ltd. Vs. Adhunik Metalliks Ltd. & Ors. [CA (AT) (Ins.) No. 519 of 2018 and another appeal]	NCLAT	15.03.2019
339.		Even though the CoC may approve a resolution plan with not less than 75% of the voting share, a discretion is given to the AA to approve the resolution plan.	K. Sashidhar Vs. Kamineni Steel & Power India Pvt. Ltd. & Ors. [CP (IB) No. 11/10/HDB/2017]	NCLT, Hyderabad	27.11.2017
340.		A resolution by CoC with less than 75% voting share in CoC is <i>non est</i> in law.	ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 557/2017 & other MAs in IA 72/2017 in C.P 01/I&BP/2016]	NCLT, Mumbai	08.12.2017
341.		The AA is not expected to substitute its view with commercial wisdom of the RP and COC nor should it deal with technical complexity and merits of resolution plan unless it is found contrary to express provision of law and goes against the public interest. This observation finds support from the UNCITRAL Legislative Guide, which recommends for similar approach to be taken by a court.	JEKPL Pvt. Ltd. [CA No. 223/2017 in CP No. 24/ALD/2017]	NCLT, Allahabad	15.12.2017
342.		Either by principle or by jurisdictional aspect, the AA cannot say that 180/270 days' period as procedural, therefore, it has no jurisdiction to trespass into the domain set out for the CoC except to the extent mentioned in section 31 of the Code.	Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No. 43/I&BP/2017]	NCLT, Mumbai	20.02.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
343.		 i. The RA after taking over the CD is entitled to exercise its right over its subsidiary company. Appellant's objection regarding the inclusion of the subsidiary company of the CD in the resolution plan is not sustainable. ii. An approved resolution plan can deal with the related party claim and extinguish the same which will ensure that the successful resolution applicant can take over the CD on clean slate. iii. The amendment to regulation 38(1) of CIRP Regulations which mandated priority in payment to dissenting FCs. This amendment came into effect on November 27, 2019, i.e., post the approval of resolution plan by the erstwhile CoC of the CD. 	Facor Alloys Ltd. and Anr. Vs. Bhuvan Madan & Ors. [CA (AT) (Ins.) No. 340 of 2020]	NCLAT	Judgement 25.11.2020
		iv. The approved resolution plan is not discriminatory as it does not give differential treatment among the same class of FCs merely based on assenting or dissenting FCs.			
344.		The law does not enjoin any right or power to challenge the commercial wisdom of the CoC regarding approval of the resolution plan which is undergoing implementation.	Singh Raj Singh Vs. SRS Meditech Ltd. & Ors. [CA (AT) (Ins.) No. 522 of 2020]	NCLAT	07.10.2020
345.		Though it is in the realm of the CoC to approve or reject a plan and of the liquidator to determine the value of the assets, such huge	Oriental Bank of Commerce Vs. Lotus Auto Engineering Ltd. & Ors. [IB-31(PB)/2018]	NCLT, New Delhi	15.12.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		variations in values call for enquiry. Considering the fact that the CoC failed to approve a resolution plan valued double the liquidation value and the Liquidator set very low reserve price, the AA directed IBBI to enquire into as to why valuation has become so low after liquidation is ordered and the FCs to enquire as to whether its representatives acted to maximise the value of the CD.			
346.		To assert that there is any scope for negotiations and discussions after the approval of the resolution plan by the CoC, would be plainly contrary to the terms of the Code.	Committee of Creditors of AMTEK Auto Limited through Corporation Bank Vs. Dinkar T Venkatasubramanian & Ors. [I.A. No. 58156 of 2020 in Civil Appeal No. 6707 of 2019 and another petition]	sc	23.02.2021
347.		 i. The commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the Code. ii. There is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. The opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. 	Kalpraj Dharamshi & Anr. Vs. Kotak Investment Advisors Ltd. & Anr. [Civil Appeal Nos. 2943-2944 of 2020]	SC	10.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
		 iii. The legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the AA and that the decision of CoC's 'commercial wisdom' is made non justiciable. iv. Appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same v. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as 			Order/ Judgement
348.		 Excepting the initial scope as provided under Sections 30 and 31 of the Code. i. The role of CoC is akin to that of a protagonist, giving finality to the process (subject to approval by the AA), who takes the key decisions in its commercial wisdom and the consequences thereof. The power of judicial review in section 31 of the Code is not akin to the power of a superior authority to deal with the merits of the decision of any inferior or subordinate authority. The AA has limited jurisdiction in the matter of approval of a resolution plan, which is well defined and circumscribed by sections 30(2) and 31 read with 	Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors. [Civil Appeal No. 3395 of 2020 and other appeals]	SC	24.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
NO.					Judgement
		the parameters delineated by the			
		SC in its various judgments. Within			
		its limited jurisdiction, if the AA finds any shortcoming in the			
		resolution plan vis-à-vis the			
		specified parameters, it would			
		only send the resolution plan back			
		to the CoC for re-submission after			
		satisfying the parameters			
		delineated by Code and exposited by the SC.			
		by the Sc.			
		ii. The process of simultaneous			
		voting over two plans for electing			
		one of them cannot be faulted.			
		The legislature itself has made the			
		position clear by way of a later amendment with effect from			
		August 7, 2020, by specifically			
		making stipulations for			
		simultaneous voting over more			
		than one resolution plan by the			
		CoC, particularly with amendment of sub-regulation (3) of regulation			
		39 of CIRP Regulations and			
		insertion of sub-regulations (3A)			
		and (3B) thereto.			
		iii. The dissenting financial creditor			
		is entitled to receive the amount payable in monetary terms and			
		not in any other term. It cannot be			
		forced to remain attached to the			
		CD by way of equities or securities.			
		iv. The homebuyers as a class			
		having assented to the resolution			
		plan of the resolution applicant,			
		any individual homebuyer or any			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
140.					Judgement
		association of homebuyers cannot			
		maintain a challenge to the			
		resolution plan and cannot be			
		treated as a dissenting FC or an			
		aggrieved person.			
349.		A successful resolution applicant	Seroco Lighting Industries Pvt.	NCLAT	10.12.2020
		cannot be permitted to withdraw	Ltd. Vs. Ravi Kapoor, RP for Arya		
		the approved resolution plan,	Filaments Pvt. Ltd. & Ors. [CA (AT)		
		coupled with the fact in the instant	(Ins.) No. 1054 of 2020]		
		case being the sole RA in the CIRP,			
		which is an MSME and having			
		knowledge of the financial health of the CD as a promoter or as a			
		connected person cannot be			
		permitted to seek revision of the			
		approved plan, on the ground			
		which would not be a material			
		irregularity within the ambit of			
		section 61(3) of the Code.			
	32A	Liability for prior offences, etc.			
350.		Considering the object behind the	SBER Bank Vs. Varrsana Ispat Ltd.	NCLT,	22.07.2020
		introduction of section 32A, the	[C.P. (IB) No. 543/KB/2017]	Kolkata	
		section is also applicable to the CD			
		undergoing liquidation as well,			
		and the liquidator can file an			
		application under the same.			
351.		CD would not be liable for any	Tata Steel BSL Ltd. & Anr. Vs.	HC, New Delhi	16.03.2020
		offence committed prior to	Union of India & Anr. [W.P. (CRL)		
		commencement of the CIRP.	3037/2019 & CRL.M.A.		
			39126/2019]		
352.		Section 32A (2) of the Code will not	Raj Kumar Ralhan Vs. Deputy	NCLT,	06.05.2020
		apply to the provisional	Director, ED and Ors. [IA No. 54	Hyderabad	
		attachment order under the	of 2020 in CP (IB) No.		
		PMLA.	43/07/HDB/2018]		
353.		The ED/other investigating	JSW Steel Ltd. Vs. Mahender	NCLAT	17.02.2020
		agencies do not have the powers	Kumar Khandelwal & Ors. [CA		
		to attach assets of a CD, once a			

SI. No.	Section	Dictum resolution plan stands approved and the criminal investigations against the CD stands abated.	Citation (AT) (Ins.) No. 957 of 2019 and other appeals]	Forum	Date of Order/ Judgement
354.		The extinguishment of the criminal liability of the CD is apparently important to the new management to make a clean break with the past and start on a clean slate. The provision is carefully thought out. It is not as if the wrongdoers are allowed to get away. They remain liable.	Manish Kumar Vs. Union of India & Anr., [Writ Petition (C) No.26 of 2020 with other writ petitions]	SC	19.01.2021
	33	Initiation of Liquidation	· · · · ·		
355.		The CoC unanimously decided to send the CD into liquidation for want of resolution plans. Once the application under section 33 was moved it was left with no option but to order liquidation.	Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr. [CA (AT) (Ins.) No. 683 of 2020]	NCLAT	14.08.2020
356.		Liquidation was ordered by the AA as a last option since there was no response from any viable prospective resolution applicant, despite an extension of time period.	Siva Rama Krishna Prasad Vs. S Rajendran & Ors. [CA (AT) (Ins.) No. 751 of 2020 and another appeal]	NCLAT	04.09.2020
357.		The decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the <i>Explanation</i> to sub- clause (2) of section 33 of the Code which is based on the commercial wisdom and is non-justiciable given the law laid by the SC in case of <i>K. Sashidhar vs. Indian Overseas</i> <i>Bank.</i>	Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 194 of 2020]	NCLAT	10.08.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
358.		In the event of liquidation, the amount to be paid to the Central Government or the State Government against the operational debt should not be less than an amount to be paid to the OC.	RMS Employees Welfare Trust Vs. Anil Goel [CA (AT) (Ins.) No. 699 of 2018]	NCLAT	Judgement 30.05.2019
359.		After completion of CIRP period, ordering liquidation, will not have any bearing on PMLA proceedings.	Nathella Sampath Jewelry Pvt. Ltd. [MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018]	NCLT, Chennai	03.01.2020
360.		The AA directed liquidation of the CD without admission and appointment of IRP.	GNB Technologies (India) Pvt. Ltd. [C.P. (IB) No. 167/BB/2019]	NCLT, Bengaluru	08.11.2019
361.		The CoC has no role to play after the order of liquidation. They are mere claimants, whose matters are to be determined by the liquidator. They cannot move an application for removal of the liquidator.	Punjab National Bank Vs. Mr. Kiran Shah [CA (AT) (Ins.) No. 102 of 2020]	NCLAT	21.01.2020
362.		During the liquidation process, it is necessary to take steps for revival and continuance of the CD by protecting it from its management and from a death by liquidation.	Y. Shivram Prasad Vs. S. Dhanapal& Ors. [CA (AT) (Ins.) No. 224 of 2018 and another appeal]	NCLAT	27.02.2019
363.		An appeal against a liquidation order passed under section 33 may be filed on the grounds of material irregularity or fraud committed in relation to liquidation order. The Code is not for initiating proceedings for prevention of oppression and mismanagement but is armed with provisions for initiation of actions against wrong doers/illegal transactions, etc.	Ratna Singh and Anr. Vs. Theme Export Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 917 of 2020]	NCLAT	18.11.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.	Section	Dictum	Charlon	i orum	Order/
					Judgement
364.		The moratorium under section 14	Bhavarlal Mangilal Jain & Anr.	NCLT,	26.11.2020
		of the Code comes to an end on	Vs. Metal Link Alloys Ltd. & Ors.	Ahmedabad	
		passing of the order of liquidation.	[IA 361 of 2018 in CP(IB) 67 of		
		As per section 33(5) of the Code,	2017]		
		the legal proceedings can be	1		
		continued against the CD during			
		liquidation.			
365.		i. Section 279 of the Companies	Chennai Metro Rail Ltd. Vs.	HC, Madras	15.10.2020
		Act, 2013 applies only in cases of	Lanco Infratech Ltd.		1011012020
		winding up under the Companies	(Represented by the Liquidator)		
		Act, 2013 and not the Code;	& Ors. [Application No. 2826 of		
			2019]		
		ii. Section 279 of the Act deals with	,		
		both pending suits and institution			
		of new suits, while section 33(5) of			
		the Code deals with new			
		proceedings; and			
		iii. Section 33(5) of the Code			
		overrides section 279 of Act, by			
		virtue of section 238 and by the			
		principle 'special law overrides			
		general law'.			
	34	Appointment of Liquidator and fee	to be paid		
366.		AA was well within its jurisdiction	Sandeep Kumar Gupta Vs.	NCLAT	28.02.2018
		to engage another person as RP or	Stewarts & Lloyds of India Ltd. &		
		Liquidator as the performance of	Anr. [CA (AT) (Ins.) No. 263 of		
		the previous RP was	2017 and another appeal]		
		unsatisfactory.			
367.		Interest of FCs as well as other	Vijay Kumar Singh Vs. Anil Kumar	NCLAT	09.11.2020
		creditors will remain even during	& Ors. [CA (AT) (Ins.) No. 391 of		
		liquidation proceedings.	2020]		
		Accordingly, AA should have			
		considered appointing any other IP			
		as liquidator when it was evident			
		that the CIRP has not been			
		conducted in a way desired, before			
		passing the liquidation order.			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
	25	Demonstrand Duties of Linuidates			Judgement
368.	35	Powers and Duties of Liquidator The liquidator is duty bound to	Nicco Corporation Ltd. in	NCLT,	24.11.2017
506.		exercise his powers under the	Liquidation [C.A. (IB) No.	Kolkata	24.11.2017
		Code and does not require the	487/KB/2017 connected to C.P.	Konkutu	
		prior permission of AA for every	No. 03/2017]		
		action to be performed under the			
		Code.			
369.		Liquidator has a duty under	Reliance India Power Fund Vs. Raj	NCLAT	24.02.2020
		section 35(1)(k) of the Code but	Kumar Ralhan [CA (AT) (Ins.) No.		
		the FC has no right to force the liquidator to take part in the	318 of 2020		
		arbitration proceedings. The duty			
		of the liquidator would include a			
		conscious decision not to take part			
		in the proceedings.			
370.		Liquidator is only an additional	Rasiklal S. Mardia Vs. Amar Dye	NCLAT	08.04.2019
		person and not exclusive person	Chem Ltd. & Ors. [CA (AT) No. 337		
		who can move an application	of 2018]		
		under section 391 of the Companies Act, 1956, when the			
		company is in liquidation.			
371.		The liquidator is duty bound to	B.R. Traders Vs.	NCLAT	13.11.2019
		make every endeavour to protect	Venkataramanarao Nagarajan &		
		and preserve the value of the	Ors. [CA (AT) (Ins.) No. 189 of 2019		
		property of the CD and manage	and other appeals]		
		the operations as a going concern.			
372.		The liquidator has been endowed	IFCI Ltd. & Ors. Vs. BS Ltd. (in	NCLT,	07.01.2021
		with very wide powers as a quasi-	liquidation) IA No. 1148/2020 in	Hyderabad	
		judicial functionary under the	CP(IB) No. 278/7/HDB/2018]		
		Code. Section 35(2) empowers the			
		liquidator to consult any of the stakeholders entitled to a			
		stakeholders entitled to a distribution of proceeds under			
		section 53, but the proviso makes			
		it amply clear that such			
		consultation is not binding on the			
		liquidator.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
	36	Liquidation estate		•	
373.		Provident fund dues, pension funds dues and gratuity fund dues are not treated as a part of the liquidation estate.	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)-2017]	NCLT, New Delhi	19.03.2019
374.		All sums due to any workman or employees from the provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.	Savan Godiwala Vs. Apalla Siva Kumar [CA (AT) (Ins.) No. 1229 of 2019]	NCLAT	11.02.2020
375.		Due to the workmen or employees viz., provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.	State Bank of India Vs. Moser Baer Karamchari Union and Anr. [CA (AT) (Ins.) No. 396 of 2019	NCLAT	19.08.2019
376.		The order of attachment by the tax authorities constituting an encumbrance on the property, does not have the effect of taking it out of the purview of section 36(3)(b) of the Code.	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) IT Dept. Hyderabad [Writ Petition No. 8560 of 2018]	HC, Hyderabad	26.07.2018
377.		Dues payable under sub-section 7A, 7Q and 14B of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 (EPF & MP Act, 1952) are statutory dues and not claims that can be submitted to the liquidator. Section 53 of the Code is not applicable to the recovery of dues which do not form part of the liquidation estate under the Code, by virtue of section 36(4)(a)(iii).	V-Con Integrated Solutions Pvt. Ltd. Vs. Acharya Techno Solutions (India) Pvt. Ltd. & Anr. [I.A/176/KOB/2020 in MA/05/KOB/2020 in TIBA/01/KOB/2019]	NCLT, Kochi	18.02.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		Further, the Employee's Provident			_
		Fund Organization (EPFO) has got			
		first charge over the Assets of the			
		defaulter and its priority of payment over other debts is as per			
		Section 11 of the EPF & MP Act,			
		1952.			
	37	Powers of Liquidator to access info	rmation		
378.		The liquidator has to perform his	Hema Manoj Shah Vs.	NCLT,	17.07.2019
		duties as the officer of the court	Gaurav Dave & Ors.	Mumbai	
		and he should never be afraid of	[IA 2511/2019, MA 2400/		
		false complaints.	2019, MA 876/2019, in MA 1082/2019, MA 2314/2019		
			CP (IB)-1882 (MB)/		
			2018]		
	42	Appeal against the decision of Liqui	dator		
379.		It is almost impracticable for the	Bank of India Vs. V. Mahesh &	NCLT,	03.09.2020
		liquidator to follow the principles	Anr. [IA/497/2020 in	Chennai	
		of natural justice before admitting	MA/289/2018 in		
		or rejecting a claim because he cannot be selective in his approach	TCP/10/IB/2017 and IA/115/2020 in MA/289/2018 in		
		and if the same is applied	TCP/10/IB/2017]		
		universally, it will make the			
		timeline under the Code haywire			
		and defeat the provisions of Code.			
380.		The AA allowed a creditor to file	Asmi Enterprises Vs. Yog	NCLT,	10.04.2019
		claim before the conclusion of liquidation but after the due date	Industries Ltd. [MA1098/2018 in CP	Mumbai	
		of submission of claims and	CP No.82/IBC/NCLT/MB/MAH/201		
		condoned the delay on the ground	7]		
		that if the claim is admitted, no			
		prejudice would be caused.			
	42 44				
	43, 44	Preferential transactions and releva	ant time, Order in case of preferenti	ai transactions	

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
381.		The mortgage of land of the CD in favour of a creditor amounts to transfer of interest in the property of the CD for the benefit of the creditor, and putting it in a beneficial position <i>vis-à-vis</i> other creditors, is a preferential transaction.	Anuj Jain Vs. Manoj Gaur & Ors. [CA No. 26/2018 in CP No. (IB)77/ALD/2017]	NCLT, Allahabad	16.05.2018
382.		Section 43 of the Code is applicable during the pendency of resolution process or liquidation proceedings, if there are genuine, reasonable grievances relating to preferential transactions at a relevant time. A liquidator by filing an application can seek one or other order from the AA as per section 44 of the Code.	K.L. Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. & Ors. [CA (AT) (Ins.) No. 277 of 2019]	NCLAT	20.02.2020
383.		To invoke section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from CD to a creditor, (2) and it must be for the benefit of such creditors in preference to the other creditors of the CD in the event of a distribution of assets being made in accordance with section 53 of the Code.	S. V. Ramkumar Vs. Orchid Health Care Pvt. Ltd. & Ors. [MA/86/2018 in CP/540/IB/CB/2017]	NCLT, Chennai	04.07.2019
384.		(a) Preferential Transactions: A CD shall be deemed to have given a preference at a relevant time if: (i) there is a transfer of property or the interest thereof of the CD for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of	Anuj Jain Vs. Axis Bank Ltd. & Ors. [Civil Appeal Nos. 8512-8527 of 2019 with other appeals]	SC	26.02.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		putting such creditor or surety or			Jugeniene
		guarantor in a beneficial position			
		than it would have been in the			
		event of distribution of assets in			
		accordance with section 53 of the			
		Code; and (iii) preference is given, either during the period of two			
		years/one year preceding the ICD			
		when the beneficiary is a			
		related/an unrelated party.			
		However, such deemed			
		preference may not be an			
		offending preference, if it falls into			
		any or both exclusions provided by			
		section 43(3).			
		Section 43(3)(a) exempts transfers			
		made in ordinary course of business of the CD or the			
		transferee. This calls for purposive			
		interpretation. The expression			
		'or', appearing as disjunctive			
		between the expressions			
		'corporate debtor' and			
		'transferee', ought to be read as			
		'and'. Therefore, a preference			
		shall not include the transfer made			
		in the ordinary course of the business of the CD and the			
		transferee.			
		(b) Duties and responsibilities of			
		RP: The RP shall –			
		(i) sift through all transactions			
		relating to the property/interest of			
		the CD backwards from the ICD			
		and up to the preceding two years;			
		(ii) identify persons involved in the			
		transactions and put them in two			
		categories: (1) related party under			
		section 5(24) and (2) remaining			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		persons;			
		(iii) identify which of the said			
		transactions of preceding two			
		years, the beneficiary is a related			
		party of the CD and in which the			
		beneficiary is not a related party.			
		The sub-set relating to unrelated			
		parties shall be trimmed to include			
		only the transactions preceding			
		one year from the ICD;			
		(iv) examine every transaction in			
		each of these sub-sets to find out			
		whether (1) the transaction is of			
		transfer of property of the CD or its			
		interest in it; and (2) beneficiary involved in the transaction stands			
		in the capacity of			
		creditor/surety/guarantor;			
		(v) scrutinise the shortlisted			
		transactions to find, if the transfer			
		is for or on account of antecedent			
		financial debt/operational			
		debt/other liability of the CD;			
		(vi) examine the scanned and			
		scrutinised transactions to find, if			
		the transfer has the effect of			
		putting such			
		creditor/surety/guarantor in			
		beneficial position, then it would			
		have been in the event of			
		distribution of assets under			
		section 53. If answer is in the			
		affirmative, the transaction shall			
		be deemed to be of preferential,			
		provided it does not fall within the			
		exclusion under section 43(3); and then			
		then (vii) apply to the AA for			
		necessary orders, after carrying			
		necessary orders, after carrying			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		out the aforesaid volumetric and gravimetric analysis of the transactions. (c) Undervalued and fraudulent transactions: As the transactions are held as preferential, it is not necessary to examine whether these are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time, while undervalued transaction requires different enquiry under sections 45 and 46 where the AA is required to examine the intent, if such transactions were to defraud the creditors. The AA needs to examine the aspect of preferential, undervalued and fraudulent separately and distinctively.			
385.		In the context of CIRP, it was observed that: i. Avoidance applications cannot survive beyond the conclusion of the CIRP. It is meant to give benefit to the creditors of the CD and not to the CD in its new avatar, after the approval of the resolution plan. ii. The NCLT has the jurisdiction to deal with all applications and	Venus Recruiters Pvt. Ltd. Vs. Union of India & Ors. [W.P. (C) 8705/2019 & CM APPL. 36026/2019]	HC, New Delhi	26.11.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		petitions 'in relation to insolvency			Judgement
		resolution and liquidation for			
		corporate persons'. After the			
		approval of the resolution plan			
		and the new management has			
		taken over the CD, no proceedings remain pending before the NCLT,			
		except issues relating to the			
		resolution plan itself, as permitted			
		under section 60. It has no			
		jurisdiction to entertain and			
		decide avoidance applications, in			
		respect of a CD which is now under a new management unless			
		provision is made in the final			
		resolution plan.			
		iii. The RP cannot continue to act			
		on behalf of the CD under the title			
		of `Former RP', once the plan is approved and the new			
		management takes over. His			
		continuation beyond the closure			
		of the CIRP would in effect mean			
		an interference in the conduct and			
		management of the company.			
		iv. The successful resolution			
		applicant cannot file an avoidance			
		application, as it is neither for the			
		benefit of the resolution applicant			
		nor for the CD after the resolution			
		is complete.			
		v. Section 26 of the Code cannot			
		be read in a manner to mean that			
		an application for avoidance of			
		transactions under section 25(2)(j)			
		can survive after the CIRP. Once			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		the CIRP process itself comes to an			
		end, an application for avoidance			
		of transactions cannot be			
		adjudicated. If the CoC or the RP			
		are of the view that there are any			
		transactions which are			
		objectionable in nature, the order			
		in respect thereof would have to			
		be passed prior to the approval of			
		the resolution plan.			
386.		Allegations of preferential	Mohan Lal Jain, in the capacity of	NCLAT	16.12.2020
		transaction as also fraudulent	Liquidator of Kaliber Associates		
		trading/wrongful trading carried	Pvt. Ltd. Vs. Lalit Modi & Ors. [CA		
		on by the CD during the insolvency	(AT) (Ins.) No. 944 of 2020]		
		resolution can be inquired into by			
		the AA.			
387.		The RP is duty bound to file the	Suraj Fabrics Industries Ltd. &	NCLT, Kolkata	18.02.2021
		application for preferential	Anr. Vs. Bipin Kumar Vohra &		
		transaction within time and also	Ors. [IA (IB) No. 750/KB/2020 in		
		seek for urgent hearing of the	CP (IB) No. 1635/KB/2018]		
		application before the plan is			
		approved. Once the resolution			
		plan is approved, the CD is			
		managed by a new management			
		and the RP becomes functus			
		officio. An application for			
		avoidance of preferential			
		transaction cannot be carried on			
		by the RP on behalf of the CD.			
	45, 46		ions, Relevant period for avoidable t		
388.		The transactions as has been	Axis Bank Ltd. Vs. Anuj Jain [CA	NCLAT	01.08.2019
		made i.e. mortgage(s) in favour	(AT) (Ins.) No. 243 of 2018 with		
		of the appellants as and when	other CAs]		
		made against the amount payable			
		by Jaiprakash Associates Limited,			
		the amount is not payable by the			
		CD. Therefore, clause (a) of sub-			
		section (2) of section 45 is not			
		attracted. For the same reason,			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		clause (b) of sub-section (2) of			
		section 43 or section 45 cannot be			
		made applicable with regard to			
		transaction in question which are			
		not related to any payment due			
		from the CD.			
	52	Secured creditor in liquidation proc	ceedings	•	•
389.		If one or more secured creditors	JM Financial Asset	NCLAT	11.12.2019
		have not relinguished the security	Reconstruction Company Ltd. Vs.		
		interest and have opted to realise	Finquest Financial Solutions Pvt.		
		their security interest against the	Ltd. and Ors. [CA (AT) (Ins.) No.		
		same asset in terms of section	593 of 2019]		
		52(1)(b) read with section 52(2)	-		
		and (3), the liquidator will act in			
		terms of section 52(3) and find out			
		as to who has the first charge			
		(security interest). If any dispute is			
		pending as to the question of who			
		has the first charge, the liquidator			
		may inform the same to parties			
		and proceed as per section 52(3).			
390.		If it comes to the notice of the	State Bank of India Vs. Anuj	NCLAT	18.11.2019
		liquidator that a secured creditor	Bajpai [CA (AT) (Ins.) No. 509 of		
		intends to sell the assets to a	2019]		
		'person' who is ineligible in terms	-		
		of section 29A, it is always open to			
		him to reject the application under			
		section 52(1)(b) read with section			
		52(2) and (3) of the Code.			
391.		Even during liquidation process,	B.R. Traders Vs.	NCLAT	13.11.2019
		the liquidator is to ensure that CD	Venkataramanarao Nagarajan &		
		remains a going concern. If no	Ors. [CA (AT) (Ins.) No. 189 of		
		arrangement or scheme framed	2019 with other CAs]		
		under sections 230 to 232 of the	-		
		Companies Act, 2013 becomes			
		possible or the CD is not sold in its			
		totality along with the employees			
		and there is no option but to sell			
		the assets of the CD and to			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		distribute the same amongst the			
		creditors in terms of section 53			
		read with section 52 of the Code,			
		the liquidator may be asked to			
		return the third party assets.			
392.		If the liquidator concludes that the	In the matter of Clutch Auto Ltd.	NCLT, New	06.01.2020
		claimants have security interest	[CA-1432(PB)/2019 & CA-	Delhi	
		over the assets of the CD, he shall	1433(PB)/2019 in (IB)-		
		permit the creditors to utilise their	15(PB)/2017]		
		rights under section 52 of the			
		Code. Application seeking			
		directions from AA against such			
		creditors to compel them to			
		relinquish security interest, is not			
		supported by the Code.			
393.		Section 52(4) of the Code releases	Anuj Bajpai Vs. State Bank of	NCLT,	08.04.2019
		the secured creditor from the	India [MA 1123/2018 in CP No.	Mumbai	
		clutches of the Code and gives	172/IBC/NCLT/MB/MAH/2017]		
		liberty to recover its security			
		interest as per any other law which			
		may be applicable. Once the			
		secured creditor is out of			
		liquidation under section 52(1)(b)			
		of the Code, it is relieved from all			
		the clutches of the Code or the			
		liquidation process. To move			
		under the Securitisation and			
		Reconstruction of Financial Assets			
		and Enforcement of Securities			
		Interest Act, 2002 or any other Act,			
		to sell the assets to any party, is all			
		the prerogative of the secured			
		creditor because his rights are			
		given a specific protection under			
		the Code. However, it has to be			
		kept in mind that the intent of the			
		Code cannot be hampered by			
		allowing the promoters/directors			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		a backdoor entry in the liquidation			Judgement
		process.			
394.		Only the first charge	Finquest Financial Solutions Pvt.	NCLT,	10.05.2019
		holder/secured creditor with the first <i>pari-passu</i> charge can stay	Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in	Mumbai	
		outside the liquidation process	CP No. 382/IB/MB/MAH/2018]		
		and realise his security interest in			
		the manner provided under			
207		section 52(1)(b).			26.07.004.0
395.		Income-tax Department does not enjoy the status of a secured	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) &	HC, Hyderabad	26.07.2018
		creditor, on par with a secured	Ors. [Writ Petition No. 8560 of		
		creditor covered by a mortgage or	2018]		
		other security interest, who can	-		
		avail the provisions of section 52 of			
		the Code. At best, it can only claim			
		a charge under the attachment order, in terms of section 281 of			
		the Income-tax Act, 1961.			
396.		Under section 52(3)(a) of the Code	Volkswagen Finance Pvt. Ltd. Vs.	NCLAT	19.10.2020
		before any security interest is	Shree Balaji Printopack Pvt. Ltd.		
		sought to be realised by the	& Anr. [CA (AT) (Ins.) No. 02 of		
		secured creditor under this	2020]		
		section, the Liquidator shall verify			
		such security interest and permit the secured creditors to realise			
		only such security interest, the			
		existence of which may be proved			
		either by the records of such			
		security interest maintained by an			
		IU or by such other means as may			
	53	be specified by IBBI. Distribution of assets			
397.	55	Upon realisation of the liquidation	Shree Ram Lime Products Pvt. Ltd.	NCLT,	22.10.2019
		estate of the CD, it has to be	Vs. Gee Ispat Pvt. Ltd. [CA-	New Delhi	
		distributed in accordance with the	666/2019 in (IB)-250(ND)/2017]		
		waterfall mechanism under			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		section 53 of the Code. The dues towards the Government, be it tax on income or sale of properties, would qualify as 'operational debt' and has to be dealt with accordingly. Further, the applicability of section 178 or 194IA of the Income-tax Act, 1961 will not have an overriding effect over section 53 of the Code, and the capital gains shall not be taken into consideration as the liquidation cost.			
398.		Section 45 and 46 of the Income- tax Act, 1961 will not have an overriding effect on the waterfall mechanism provided under section 53 of the Code, which is a complete Code in itself and thus capital gains shall not be taken into consideration as the liquidation cost.	LML Ltd. Vs. Office of Commissioner of Income Tax, Mumbai [CA No. 389 of 2019 in CP(IB) No. 55/ALD/2017]	NCLT, Allahabad	31.08.2020
399.		Section 53 of the Code will not be followed for distribution in the case as it would cause injustice to shareholders who have invested public money in Infrastructure Leasing & Financial Services Ltd. and its group companies and therefore the <i>pro-rata</i> distribution as proposed by the Central Government was accepted.	Union of India Vs. Infrastructure Leasing & Financial Services Ltd. & Ors. [CA (AT) No. 346 of 2018with I.A. Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182, 185 of 2020 with other appeals]	NCLAT	12.03.2020
400.		There is an intelligible differentia between the financial debts and operational debts, which are unsecured, which has direct relation to the object sought to be achieved by the Code. It can be seen that unsecured debts are of	Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		various kinds and as long as there			
		is some legitimate interests sought			
		to be protected, having relation to			
		the object sought to be achieved			
		by the statute in question, Article			
		14 of the Constitution does not get			
		infracted. Accordingly, validity of section 53 was upheld.			
401.		Section 53, including <i>Explanation</i>	Binani Industries Ltd. Vs. Bank of	NCLAT	14.11.2018
		given therein cannot be relied	Baroda &Anr. [CA (AT) (Ins.) No.		1
		upon while approving the	82,123, 188,216 & 234 of 2018]		
		resolution plan. However, that	· · · ·		
		does not mean that a			
		discriminatory plan can be placed			
		and can get through on one or			
		other ground, which is against the			
		basic object of maximization of the			
		assets of the CD on one hand and			
		for balancing the stakeholders on the other.			
402.		Any shortfall in gratuity must be	Autonix Lighting Industries Pvt.	NCLT, New	19.11.2020
		made over by the RP and	Ltd. Vs. Moser Baer Electronics	Delhi	
		payments of the dues has to be	Ltd. [IA No. 412/2020 in CP No.		
		paid outside the waterfall	(IB)-1265(ND)/2019]		
		mechanism. The RP was directed			
		to release the dues of the ex-			
		employees and deposit the			
		provident fund with EPFO and			
		release gratuity forthwith.			
403.		Liquidation proceedings are time-	Pinakin Shah – Liquidator of Brew	NCLAT	25.02.2021
		bound to maximize the value and all the creditors are entitled to get	Berry Hospitalities Pvt. Ltd. Vs. The Assistant Commissioner of		
		their dues only in terms of section	State Tax & Anr. [CA (AT) (Ins.) No.		
		53 of the Code and different	32 of 2021]		
		creditors cannot be allowed to	- ,		
		resort to different proceedings			
		and enactments only because they			
		are 'authorities' under earlier			
		enactments considering the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		provision of section 238 of the Code.			
404.		In the normal parlance "going concern" sale is transfer of assets along with the liabilities. However, as far as the 'going concern' sale in liquidation is concerned, there is a clear difference that only assets are transferred and the liabilities of the CD has to be settled in accordance with section 53 of the Code and hence the purchaser of this assets takes over the assets without any encumbrance or charge and free from the action of the creditors. Further, the decision to sell the CD as a going concern is taken by the liquidator himself or in consultation with the creditors / stakeholders and the proceeds from the sale of assets are going to be utilised for distribution to the creditors in the manner specified under section 53 of the Code. Hence all the Creditors of the CD any encumbrances. The legal entity of the CD, however survives.	Gaurav Jain Vs. Sanjay Gupta, Liquidator of Topworth Pipes and Tubes Pvt. Ltd. [IA No. 2264 of 2020 in CP (IB) No. 1239-MB- 2018]	NCLT, Mumbai	09.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
	54.	Dissolution of corporate debtor			
405.		By conjoint reading of section 54, section 60 and regulation 45 of Liquidation Process Regulations, the ultimate objective of the Code is either to resolve the issue by way of resolution plan or to dissolve the corporate debtor, as expeditiously as possible.	In the matter of SGP Software Solutions Pvt. Ltd. [I.A. No. 14/2021 and C.P. (IB) No. 137/BB/2018]	NCLT, Bengaluru	01.02.2021
	55	Fast track corporate insolvency res	olution process		
406.		The CD does not come within the category of CD in terms of clauses (a) or (b) or (c) of sub-section (2) of section 55 as its assets and income being not below a level, notified by the Central Government nor having class of creditors or amount of debt as notified by the Central Government. Therefore, section 55 cannot be invoked against the CD.	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr. [CA (AT) (Ins.) No. 560 of 2018]	NCLAT	03.01.2019
	59	Voluntary liquidation of corporate			
407.		Voluntary liquidation can only be done, as required under regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, if the debt of the CD has been discharged to the satisfaction of the creditors and no litigation is pending against CD. Since the CD did not satisfy the twin requirements in the matter, the voluntary liquidation of the CD was suspended.	Central Inland Water Transport Corporation Ltd. [C.A. (IB) No. 791/KB/2018]	NCLT, Kolkata	28.09.2018
	60	Adjudicating Authority for corporat	te persons		

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
408.		With regard to the issue as to whether AA has jurisdiction to determine the issue of disputed question of fact as to who holds the first charge, it was held that it is the exclusive prerogative of AA which is exclusively vested with the power to adjudicate the matters relating to and connected with insolvency and bankruptcy law particularly the process of liquidation and the related measures to be adopted in the said process of liquidation. It was observed that it is not just a substantive law but also a procedural law and therefore, the AA can decide on the issues of disputed question of fact when the documents unequivocally prove the point that is sought to be decided.	Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018]	NCLT, Mumbai	Judgement 10.05.2019
409.		A plain reading of section 60(2) with sections 95 and 97(3) of the Code indicates that, even while an application for CIRP or liquidation is pending against CD, an application against the personal guarantor can be allowed to be filed. The law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of CIRP of the CD has come to an end.	State Bank of India Vs. Anil Dhirajlal Ambani [IA No. 1009 of 2020 in CP (IB) 916 (MB) of 2020 and Anr.]	NCLT, Mumbai	20.08.2020
410.		Clause (c) sub-section (5) of section 60 of the Code vests the jurisdiction in AA to entertain and dispose of any question of priorities or any question of law or	GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]	HC, New Delhi	26.06.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		fact, arising out of or in relation to the insolvency resolution for liquidation proceedings. Therefore, the jurisdiction vested in AA while dealing with a resolution plan is of wide ambit and any question of law or fact in relation to the insolvency resolution has to be determined by the AA.			
411.		The AA has no jurisdiction to enforce a foreign decree, however, there is no bar in taking cognizance of a foreign decree.	Stanbic Bank Ghana Ltd. Vs. Rajkumar Impex Pvt. Ltd. [CP/670/IB/2017]	NCLT, Chennai	27.04.2018
412.		Though the AA and the NCLAT have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to adjudicate upon disputes such as those arising under the Mines & Minerals (Development and Regulation) Act, 1957, and the rules thereunder, especially when the disputes revolve around decisions of statutory or quasi- judicial authorities, which can be corrected only by way of judicial review of administrative action.	Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors. [Civil Appeal No. 9170, 9172 of 2019]	SC	03.12.2019
413.		If the AA is satisfied that there are circumstances suggesting that the business of a CD is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, and that the affairs of the CD ought to be investigated, after giving a reasonable	M. Srinivas Vs. Ramanathan Bhuvaneshwari & Ors. [CA (AT) (Ins.) No. 498 of 2019]	NCLAT	24.07.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		opportunity of being heard to the parties concerned, it may refer the matter to the Central Government for investigation into the affairs of the CD.			
414.		Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, it is for the disciplinary authority i.e. IBBI to close the proceedings or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of such power being vested with AA, the AA cannot quash the disciplinary proceedings initiated by IBBI.	IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]	NCLAT	11.07.2019
415.		The AA is not supposed to pass any adverse observations, even prima facie, against the RP, without giving an opportunity to him as to why in view of certain act, the matter be not referred to the IBBI.	Ilam Chand Kamboj Vs. ANG Industries Ltd. [CA (AT) (Ins.) No. 253 of 2019 and I.A. No. 995 of 2019]	NCLAT	02.08.2019
416.		Section 212 of the Companies Act, 2013 does not empower the NCLT or AA to refer the matter to the Central Government for investigation by Serious Fraud Investigation Office (SFIO) even if it notices the company defrauding creditors and others. However, in terms of section 213(b) of the said Act, it can direct the Central Government to investigate through inspectors and after investigation and if case is made out, it may decide the matter to be investigated by SFIO. It was held that the AA is not competent to	Union of India Vs. Maharashtra Tourism Development Corporation & Anr. [CA (AT) (Ins.) No. 964 and 965 of 2019]	NCLAT	02.12.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		straight away direct any investigation to be conducted by the SFIO.			
417.		The Code does not confer any power and jurisdiction on the AA to compel specific performance of a resolution plan by an unwilling resolution applicant.	Committee of Creditors of Metalyst Forging Ltd. Vs. Deccan Value Investors LP & Ors. [CA (AT) (Ins.) No. 1276 and 1281 of 2019]	NCLAT	07.02.2020
418.		Section 60 of the Code in sub- section (1) thereof, refers to insolvency resolution and liquidation for both CDs and personal guarantors, the AA for which shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. The scheme of section 60(2) and (3) is clear that the moment there is a proceeding against the CD pending under the Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the CD, be transferred to the NCLT or, if initiated after such proceedings had been commenced against the CD, be filed only in the NCLT.	State Bank of India Vs. V. Ramakrishnan & Anr. [CA No. 3595 of 2018]	SC	14.08.2018
419.		An order of moratorium will be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. However, this order of moratorium will not be applicable on filing of applications for triggering CIRP under sections 7 or 9 or 10 of the Code against the	State Bank of India Vs. D. S. Rajendra Kumar [CA (AT) (Ins.) Nos. 87 to 91 of 2018]	NCLAT	18.04.2018

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		guarantor or the personal guarantor under section 60(2).			
420.		The limited judicial review available to AA can in no circumstance trespass upon a business decision of the majority of the CoC. The residual jurisdiction of the AA under section 60(5)(c) cannot, in any manner, whittle down section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the AA outside section 30(2) of the Code, while adjudicating a resolution plan.	Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s]	SC	15.11.2019
421.		Without initiating any CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC qua corporate guarantor.	Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. [CA (AT) (Ins.) No. 92, 93 & 148 of 2017]	NCLAT	08.01.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
422.		It was noted that the AA under the	UT Worldwide (India) Pvt Ltd. Vs.	NCLT,	17.10.2017
		Code exercises only a summary	Integrated Caps Pvt. Ltd. [IB-	New Delhi	
		jurisdiction and cannot be made to	298/ND/2017]		
		conduct the proceedings by way of			
		a detailed trial to ascertain the			
		amount of debt claimed is as			
		claimed or not, as is done by a Civil Court taking a detailed			
		examination of documents			
		supported by oral examination of			
		witnesses when the plaintiff			
		approaches it by way of a suit.			
423.		The non-obstante clause in section	Arcelormittal India Pvt. Ltd. Vs.	SC	04.10.2018
		60(5) is designed for a different	Satish Kumar Gupta and Ors.		
		purpose i.e. to ensure that the	[Civil Appeal Nos. 9402 to 9405		
		NCLT alone has jurisdiction when it	of 2018]		
		comes to applications and			
		proceedings by or against a CD			
		covered by the Code, making it			
		clear that no other forum has			
		jurisdiction to entertain or dispose			
		of such applications or			
		proceedings.			
424.		Section 60(5) of the Code does not	P. Purushothaman Vs. Union Bank of India & Anr.	NCLT,	04.06.2019
		provide for review jurisdiction to		Chennai	
		the NCLT.	[MA/496/2019 in CP/280/IB/2018]		
425.		The prayer to recall and cancel	Vistar Financiers Pvt. Ltd. Vs.	NCLT,	22.06.2018
		NCLTs own order of admission of	Datre Corporation Ltd. [CA No.	Kolkata	12.00.2010
		CIRP would not come within the	209 of 2018 in CP (IB) No.		
		purview of section 60 of the Code.	441/KB/2017]		
		Moreover, the order of admission			
		of CIRP is an appealable order			
		under section 32 of the Code.			
426.		The AA is empowered to direct the	Amandeep Singh Bhatia & Ors.	NCLAT	30.08.2018
		ex-directors not to leave the	Vs. Vitol S.A. & Anr. [CA (AT)		
		country without its prior	(Ins.) No. 502 of 2018]		
		permission.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
427.		There is no bar in the Code against filing of two applications under section 7 simultaneously, against the principal borrower as well as the corporate guarantor or against both the guarantors. However, once for same set of claim, application under section 7 filed by the FC is admitted against one of the CDs (i.e. principal borrower or corporate guarantor), second application by the same FC for same set of claim and default cannot be admitted against the other CD (i.e. corporate guarantor or the principal borrower).	Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. [CA (AT) (Ins.) 346 & 347 of 2018]	NCLAT	08.01.2019
428.		The AA has no jurisdiction to pass any order with regard to any matter pending before the court of criminal jurisdiction.	Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. &Anr. [CA (AT) (Ins.) 469 of 2019]	NCLAT	02.05.2019
429.		NCLT is not a court subordinate to the HC and hence as prohibited by the provisions of section 41(b) of the Specific Relief Act, 1963, no injunction can be granted by the HC against a CD from institution of proceedings in NCLT.	Jotun India Pvt. Ltd. Vs. PSL Ltd. [CP Nos. 434, 1048, 878 of 2015 & 256 and 392 of 2016]	HC, Bombay	05.01.2018
430.		The question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar, NCLT in its administrative capacity. The Registrar, NCLT is bound to place the matter before the appropriate bench of the NCLT, for the said question to be judicially determined.	Skillstech Services Pvt. Ltd. Vs. Registrar, National Company Law Tribunal, New Delhi & Anr. [W.P.(C) 474/2021 & CM Appl. 1227/2021]	HC, New Delhi	13.01.2021

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
431.		The recovery of rent from the tenant and the eviction of tenant from the property of the CD is in exclusive domain of the civil courts and cannot be dealt by the AA by invoking section 60(5) and the jurisdiction lies with the Civil Court/Rent Control Court only. On the guise that the Code is complete in itself, the AA can neither enlarge nor amplify its jurisdiction.	Liquidator of Precision Fasteners Ltd. Vs. Siddhi Edibles Pvt. Ltd. [M.A. No. 1512/2018 and M.A. No. 47/2019 in CP (IB) No. 1339/NCLT/MB/2017]	NCLT, Mumbai	Judgement 27.10.2020
432.		When the application for approval of resolution plan is pending before the AA, at that time the AA cannot entertain an application of a person who has not participated in CIRP even when such person is ready to pay more amount in comparison to the successful resolution applicant. If a resolution plan is considered beyond the time limit then it will make a never ending process.	Kalinga Allied Industries India Pvt. Ltd. Vs. Hindustan Coils Ltd. & Ors. [CA (AT) (Ins.) No. 518 of 2020]	NCLAT	11.01.2021
433.		 i. NCLT/NCLAT can exercise jurisdiction under section 60(5)(c) of the Code to stay termination of contracts solely on account of CIRP being initiated against the CD. ii. NCLT has the jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD; however, in doing so, the NCLT and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals. 	Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. [Civil Appeal No. 9241 of 2019]	SC	08.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		 iii. RP can approach the NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes out of the insolvency, the RP must approach the competent authority. iv. NCLT cannot do what the Code consciously did not provide it the power to do. v. The jurisdiction of the NCLT cannot be invoked in matters where a termination may take place on grounds unrelated to the insolvency of the CD. vi. It cannot even be invoked in the event of a legitimate termination of a contract based on an <i>ipso facto</i> clause, if such termination will not have the effect of making certain the death of the CD. vii. NCLT to be cautious in setting aside valid contractual terminations which would merely dilute the value of the CD, and not 			Judgement
		push it to its corporate death.			
434.		AA is sufficiently empowered under section 60(5)(c) of the Code to make a determination of the amount which is payable to an expert valuer as an intrinsic part of the CIRP costs, even in a situation where the CIRP is eventually set	Alok Kaushik Vs. Bhuvaneshwari Ramanathan and Ors. [Civil Appeal No. 4065 of 2020]	SC	15.03.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		aside by the AA or by the Appellate Authority, as the case may be.			
435.		If the facts and circumstances of a case justify that no purpose would be served to keep the CD under regular CIRP proceedings, and thereafter under liquidation proceedings, under the provisions of the Code, the AA, by exercising its inherent powers conferred under the Act, may pass appropriate order(s) in the interest of speedy justice.	Mandar Wagh, IRP of Synew Steel Pvt. Ltd. [C.P. (IB)No. 96/BB/2020 and I.A. No. 435/2020]	NCLT, Bengaluru	16.11.2020
	61	Appeals and Appellate Authority			
436.		There is a sea of difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' by a tribunal. The erroneous or failure to exercise jurisdiction by a tribunal is a ground which can be effectively be taken before the Appellate Authority.	SEL Manufacturing Company Ltd. &Anr. Vs. Union of India & Ors. [CWP No. 9131 of 2018]	HC, Punjab and Haryana	01.05.2018
437.		As per sub-section (3) of section 61 of the Code, an appeal is required to be filed within 30 days and the NCLAT has been empowered to condone delay not exceeding 15 days, if satisfied on the ground mentioned in the petition for condonation of delay. It was held that NCLAT has no jurisdiction to condone the delay beyond 45 days.	Custodial Services (India) Pvt. Ltd. Vs. Metafilms (India) Ltd. [CA (AT) (Ins.) No. 183 of 2017]	NCLAT	16.11.2017

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
438.		An unsuccessful resolution	Hindustan Oil Exploration	NCLAT	17.11.2020
		applicant has no locus to question	Company Vs. Erstwhile		
		any action of any of the	Committee of Creditors JEKPL		
		stakeholders qua implementation	Pvt. Ltd. & Ors. [CA (AT) (Ins.)		
		of the approved resolution plan	No. 969 of 2020]		
		nor can it claim any prejudice on			
		the pretext that any of the actions			
		post approval of the resolution			
		plan of successful resolution			
		applicant in regard to its			
		implementation has affected its			
		prospects of being a successful			
		resolution applicant.			
439.		There is a need to introduce	Surinder Kaur & Ors. Vs.	NCLAT	18.03.2021
		provisions in the legal framework	International Recreation and		
		to vest power of superintendence	Amusement Ltd. through RP [CA		
		and control qua NCLTs in the	(AT) (Ins.) No. 208 of 2021]		
		NCLAT.			
440.		The NCLAT does not have an	Adish Jain Vs. Sumit Bansal &	NCLAT	03.02.2021
		inherent power to review its own	Anr. [Review Application No. 13		
		orders and that the 'power of	of 2020 in CA (AT) (Ins.) No. 379		
		review' has to be granted by	of 2020]		
		statute and it is not an inherent			
		power, and therefore cannot be			
		exercised unless conferred			
		specifically or by necessary			
441.		implications. The NCLAT dropped the contempt	Committee of Creditors of Leel	NCLAT	29.01.2021
441.		proceedings admitted against the	Electricals Ltd. Vs. Arvind Mittal,	INCLAT	29.01.2021
		IRP, on an application filed by CoC	IRP of Leel Electricals Ltd.		
		as the latter was in the process of	[Contempt Case (AT) No. 01 of		
		approaching IBBI for taking action	2021 in CA (AT) (Ins.) No. 1100 of		
		against the IRP.	2020]		
	62	Appeal to Supreme Court			
442.		Section 62 of the Code provides a	Gammon India Ltd. Vs.	SC	20.11.2020
		period of 45 days from the date of	Neelkanth Mansions and		20121.2020
		the receipt of an order of the	Infrastructure Pvt. Ltd. [Civil		
		NCLAT for filing an appeal. It	Appeal No. D No 13202 of 2019]		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
INO.					Judgement
		empowers the SC to condone a			Judgement
		delay of a further period up to 15			
		days for sufficient cause. Since the			
		delay of 51 days is beyond the			
		period of delay which can be			
		condoned, the SC dismissed the			
		appeal on the ground that it is			
443.		barred by limitation. The SC declined to entertain a writ	Upendra Choudhury Vs.	SC	11.02.2021
445.		petition under Article 32 of the	Bulandshahar Development	30	11.02.2021
		Constitution filed by a singular	Authority & Ors. [Writ Petition		
		homebuyer, stating that it would	(Civil) No. 150 of 2021]		
		be inappropriate to do so as there			
		are specific statutory provisions			
		holding the field, including the			
		Consumer Protection Act 1986 and			
		its successor legislation; the Real			
		Estate (Regulation and			
		Development) Act 2016; and the Code.			
		Code.			
		Remedy under Article 32 cannot			
		be used as a ruse to flood the SC			
		with petitions that must be filed			
		before the competent authorities			
		set up pursuant to the appropriate			
		statutory framework.			
	63	Civil Court not to have jurisdiction	OF Device India Ind. Vo. 1990		20.00.2020
444.		Sections 63 and 231 of the Code create a bar on the jurisdiction of	GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A.	HC, New Delhi	26.06.2020
		the Civil Court in respect of any	4016/2020]		
		matter in which the AA and NCLAT	4010/2020]		
		has jurisdiction under the Code			
		and the AA under the Code is			
		competent to pass any order.			
445.		If the questions raised in the suits	Liberty House Group PTE Ltd. Vs.	HC, New Delhi	22.02.2019
		arise out of or in relation to	State Bank of India & Ors. [CS		
		insolvency resolution, the NCLT	(COMM) 1246 /2018 and IAs No.		
		will have jurisdiction to entertain	16056/2018 and 16060/2018		

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the same. The jurisdiction of the HC will also be barred by section 231 of the Code.	and CS (COMM) 1247/2018 and IAs No. 16061/2018 and 16065/2018]		
	64	Expeditious disposal of application	S		
446.		Section 64 makes it clear that the timelines are to be adhered to by the NCLT and NCLAT as they are of great importance, and reasons must be recorded by either the NCLT or NCLAT, if the matter is not disposed of within the time limit specified.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]	SC	04.10.2018
447.		The strict adherence of the timelines is of essence to both the triggering process and the insolvency resolution process.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017]	SC	21.09.2017
	65	Fraudulent or malicious initiation o			
448.		Though section 65 provides for penal action against initiating CIRP with a fraudulent or malicious intent, the same cannot be construed to mean that if an application is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution.	Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd. [CA (AT) (Ins.) No. 99 of 2020]	NCLAT	16.07.2020
449.		There is nothing on record to suggest that the corporate applicant has suppressed any fact or has not come with the clean hands. The AA has also not held that the application has been filed by the corporate applicant 'fraudulently' or 'with malicious intent' for any purpose other than	Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In absence of any such reasons recorded by the AA, the impugned order of AA was not be upheld.			
		Further, as the AA before imposing penalty under section 65 has not given nor served any notice to the corporate applicant recording its <i>prima facie</i> view and intent to punish the corporate applicant, therefore, the impugned order of AA cannot be upheld as being passed in violation of rules of natural justice.			
450.		 i. In case an allottee does not want to go ahead with its obligation to take possession of the flat, but wants to get back the monies already paid, by way of coercive measure, the use of section 65 is justified, as one allottee is misusing his position to stall the entire project. But it does not mean that an application satisfying the requirements of section 7 or 9 could be dismissed arbitrarily under the guise of section 65. ii. The Code provides stringent action under section 65 against the person who initiates proceeding fraudulently or with malicious intent, for the purpose other than 	Amit Katyal Vs. Meera Ahuja & Ors. [CA (AT) (Ins.) No. 1380 of 2019]	NCLAT	09.11.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the resolution of insolvency or liquidation.			
	66	Fraudulent trading or wrongful trad	ling		
451.		The AA had allowed the application under sections 66, 43 and 45 of the Code and ordered that the mortgaged properties be vested with the CD. On appeal, the NCLAT noted that the mortgages were made in favour of the banks and financial institutions by the CD in the ordinary course of business. Further, in absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA.	(AT) (Ins.) No. 243 of 2018 and Ors.]	NCLAT	01.08.2019
	70	Punishment for misconduct in cours	se of CIRP		
452.		Despite directions of handing over the CD to the RP, the business head and statutory auditor did not extend any co-operation for handing over possession of the CD to the RP. Hence, a penalty of Rs. 10 lakh each was imposed under section 70 of the Code.	Company (India) Ltd. Vs. Shivam Water Treaters Pvt.	NCLT, Mumbai	28.03.2019
	196	Powers and functions of Board			
453.		IBBI can monitor the performance of the IPs and in appropriate cases, may pass any direction as may be required for compliance of the provisions of the Code.	IBBI Vs. Wig Associates Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 415 of 2018]	NCLAT	01.08.2018

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
454.		IBBI cannot under section 196, directly or indirectly regulate the manner of exercise of commercial wisdom by FCs during the voting on resolution plan.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 with other CAs]	SC	05.02.2019
	220	Appointment of disciplinary commi	ittee		
455.		If there is any complaint against the IP, then IBBI is competent to constitute a disciplinary committee and have the same investigated from an investigating authority as per the provision of section 220 of the Code. If, after investigation IBBI finds that a criminal case has been made out against the IP, then IBBI has to file a complaint in respect of the offences committed by him.	Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/2017)]	NCLT, New Delhi	22.09.2017
456.		Since the remuneration quoted by the IRP being quite exorbitant, the matter was referred to IBBI for taking appropriate action/remedial measure against the proposed IRP, including disciplinary action, if any, as deemed fit.	Shrikrishna Rail Engineers Pvt. Ltd. Vs. Madhucon Projects Ltd. [CP(IB) SR No. 4322/9/HDB/2017]	NCLT, Hyderabad	22.11.2017
457.		An appeal can only be entertained against an order passed by the AA. However, no appeal is maintainable against the order passed by the IBBI including its disciplinary committee.	Bhavna Sanjay Ruia Vs. IBBI [CA (AT) (Ins.) No. 341 of 2019]	NCLAT	08.04.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
458.		Once a disciplinary proceeding is	IBBI Vs. Rishi Prakash Vats &	NCLAT	11.07.2019
		initiated by IBBI on the basis of	Ors. [CA (AT) (Ins.) No. 324 of		
		evidence on record, IBBI has to	2019]		
		close the proceeding or pass			
		appropriate orders in accordance			
		with law. The AA cannot quash the proceeding, even if proceeding is			
		initiated at the instance and			
		recommendation made by the AA.			
	227		tife financial costor providera etc.		
459.	227	Power of Central Government to no The RBI filed an application under		SC	21 01 2020
459.		section 227 and 239 of the Code	Vinay Kumar Mittal & Ors. Vs. Dewan Housing Finance	SC	31.01.2020
		read with rule 5 and 6 of the			
		Insolvency and Bankruptcy	•		
		(Insolvency and Liquidation	Appear No. 034 to 000 01 2020]		
		Proceedings of Financial Service			
		Providers and Application to			
		Adjudicating Authority) Rules, 2019			
		for insolvency resolution of Dewan			
		Housing Finance Corporation Ltd.			
		(DHFL), which was admitted by			
		NCLT, Administrator was appointed			
		and moratorium imposed. The HC			
		restrained DHFL from making any			
		further payments to any unsecured			
		creditors and secured creditors			
		except in cases where payments are			
		to be made on a <i>pro-rata</i> basis to all			
		secured creditors out of its current			
		and future receivables.			
		The fixed deposit holders aggrieved			
		by the orders of the HC restraining			
		from making any payments towards			
		their fixed deposits, challenged the			
		order of the HC before SC. The SC			
		held that since the depositors are			
		being represented by the			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		authorised representative before the CoC, they are free to raise all points and contentions before the CoC, the Administrator, and if necessary, before the AA.			
	231	Bar of jurisdiction	•		
460.		The jurisdiction of the HC will also be barred by section 231 of the Code which provides that no Civil Court shall have jurisdiction in respect of any matter in which the AA is empowered, by or under, the Code to pass any order.	Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No.16061/2018 and 16065/2018]	HC, New Delhi	22.02.2019
	236	Trial of offences by Special Court	•		
461.		Before referring any matter to IBBI or the Central Government, the AA is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and, if satisfied, may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under section 236 of the Code for alleged offence under section 74(3) or any other provision under Chapter VII of Part II of the Code and for punishment under section 447 of the Companies Act, 2013.	Committee of Creditors of Amtek Auto Ltd. through Corporation Bank Vs. Dinkar T. Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 219, 442 & 443 of 2019]	NCLAT	16.08.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
462.		There is complete bar of trial of offences in the absence of filing of a complaint by IBBI as is evident from a perusal of sub-sections (1) and (2) of section 236 the Code. Therefore, a complaint by a former director with the police would not be maintainable and competent as the complaint is not lodged by IBBI.	Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/ 2017)]	NCLT, New Delhi	22.09.2017
	238	Provisions of this Code to override	other laws		
463.		An acknowledgement of debt interrupts the running of prescription and that it does not create a new right but only extends the period of limitation.	Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank and Anr. [CA (AT) (Ins.) No. 236 of 2020]	NCLAT	14.09.2020
464.		The accounting conventions cannot supersede any express provisions laid down in the specific law on the subject.	Vijay Kumar V Iyer Vs. Bharti Airtel Ltd. and Ors. [CA (AT) (Ins.) No. 530 & 700 of 2019]	NCLAT	13.07.2020
465.		When it comes to any clash between the Maharashtra Housing and Area Development Act, 1976 and the Code, on the plain terms of section 238, the Code must prevail.	Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority and Anr. [Civil Appeal No. 12248 of 2018]	SC	19.02.2020
466.		Section 238 of the Code prevails over section 421 of the Code of Criminal Procedure, 1973.	Ajay Kumar Bishnoi Vs. Tap Engineering [Crl OP(MD) No. 34996 and Ors. of 2019]	HC, Madras	09.01.2020
467.		The Code will override the provisions of Maharashtra State Electricity Regulatory Commission Transmission Open Access Regulations, 2005 in terms of section 238 of the Code.	Maharashtra State Electricity Transmission Co. Ltd. Vs. Sri City Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1401 of 2019]	NCLAT	03.02.2020
468.		Section 61(2) of the Code will prevail over section 5 of the	Radhika Mehra Vs. Vaayu Infrastructure LLP & Ors. [CA (AT) (Ins.) No. 121 of 2020]	NCLAT	30.01.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Limitation Act, 1963 by virtue of section 238 of the Code.			
469.		Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 will not extend the period of limitation since those proceedings are independent and as per section 238, the Code will have overriding effect on other laws.	Bimalkumar Manubhai Savalia Vs. Bank of India and Anr. [CA (AT) (Ins.) No. 1166 of 2019]	NCLAT	05.03.2020
470.		The objective of PMLA, being distinct from the purposes of the Recovery of Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and the Code, the latter three legislations do not prevail over the former. They must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other.	The Deputy Director, Enforcement Directorate Vs. Axis Bank & Ors. [CRL.A.143/2018 & Crl.M.A. 2262/2018]	HC, New Delhi	02.04.2019
471.		CIRP cannot be equated with winding up proceedings and hence no prior consent of the Central Government under the Tea Act, 1953 would be required for initiation of the proceedings under section 7 or 9 of the Code as it overrides the said statute.	Duncans Industries Ltd. Vs. A. J. Agrochem [Civil Appeal No. 5120 of 2019]	SC	04.10.2019
472.		Even by a process of harmonious construction, Real Estate (Regulation and Development) Act, 2016and the Code must be held to co-exist, and, in the event of a conflict, the Code shall prevail.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 43 of 2019 and other petitions]	SC	09.08.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
473.		TheMaharashtraReliefUndertakings(SpecialProvisionsAct), 1958 cannot stand in the wayof the CIRP under the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [CA No. 8337- 8338 of 2017]	SC	31.08.2017
474.		Given section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act, 1961.	Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483/2018]	SC	10.08.2018
475.		Section 238 provides overriding effect of Code over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the Code.	Edelweiss Asset Reconstruction Company Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) 169 to 173 of 2017]	NCLAT	14.12.2018
476.		The non-obstante clause contained in section 238 of the Code will not override the Advocates Act, 1961 as there is no inconsistency between section 9 read with the AA Rules and Forms, and the Advocates Act, 1961.	Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 with other appeals]	SC	15.12.2017
477.		Inter-se agreement between the FCs cannot override the express provisions of the Code nor can take away the right of any creditor to file application under section 7 of the Code.	Indian Overseas Bank Vs. Pearl Vision Pvt. Ltd. [CP No (IB)- 419(PB)/2018]	NCLT, New Delhi	12.10.2018
478.		The overriding effect of section 238 of the Code will not have any bearing over the asset of the workmen lying in the possession of the CD because that asset will not be considered as part of the liquidation estate, moreover, to apply section 238 over any other law for the time being in force, the other law must be inconsistent with the provisions of the Code.	Precision Fasteners Ltd. Vs. Employees Provident Fund Organization [MA 576 and 752/2018 in C.P.(IB) 1339(MB)/2017]	NCLT, Mumbai	12.09.2018

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
479.		Section 238 of the Code will apply in case there is an inconsistency between the Code and the Arbitration and Conciliation Act, 1996.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 & 21825 of 2017]	SC	14.08.2018
480.		The company petition pending before the HC cannot be proceeded with further, in view of section 238 of the Code. The writ petitions that are pending before the HC have also to be disposed of in light of the fact that proceedings under the Code must run their entire course.	Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & Electricals Ltd. & Ors. [Civil Appeal No. 12023 of 2018 arising out of SLP (Civil) No. 18598 of 2018]	SC	12.12.2018
481.		The statutory right of an FC satisfying the requirements of section 7 of the Code to trigger CIRP cannot be made subservient to adjudication of an application under sections 241 and 242 of the Companies Act, 2013. The Code is supreme so far as triggering of CIRP and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.	Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 428 of 2018]	NCLAT	14.08.2018
482.		FC can proceed simultaneously under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 as well as under the Code but section 238 of the Code will prevail over any other law for the time being in force.	Punjab National Bank Vs. Vindhya Cereals Pvt. Ltd. [CA (AT) (Ins.) No. 854 of 2019]	NCLAT	26.02.2020
483.		In regard to recovery of the Government dues (including Income Tax) from a company in liquidation under the Code, if there is inconsistency between	Om Prakash Agrawal, Liquidator - S. Kumars Nationwide Ltd. Vs. Chief Commissioner of Income Tax (TDS) & Anr. [CA (AT) (Ins.) No. 624 of 2020]	NCLAT	08.02.2021

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		section 194 IA of the Income-tax Act, 1961 and section 53(1)(e) of the Code, section 53(1)(e) of the Code shall have overriding effect on the provisions of the section 194 IA of the Income-tax Act, 1961 by virtue of section 238 of the Code.			
484.		The SC while dealing with an appeal involving the issue of filing of an insolvency application under the provisions of the Code when a winding up petition has already been admitted against the same company, held, that a petition either under section 7 or 9 of the Code is an independent proceeding which is unaffected by winding up proceedings that may be filed qua the same company. It observed that a discretionary jurisdiction under the fifth proviso to section 434(1)(c) of the Companies Act, 2013 cannot prevail over the undoubted jurisdiction of the AA under the Code are fulfilled.	A Navinchandra Steels Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Ors. [Civil Appeal Nos. 4230- 4234 of 2020]	SC	01.03.2021
	238A	Limitation			
485.		Upon perusal of the documents on record it was observed that there was acknowledgement of debt in the balance sheet of the CD and that it was well-settled through various judgments of the SC that an acknowledgement in the	Syndicate Bank Vs. Bothra Metals and Alloys Ltd. [CP (IB) No. 2579/MB.IV/ 2019]	NCLT, Mumbai	06.07.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		balance sheet of the company			
		satisfies the requirements of			
		section 18 of the Limitation Act,			
		1963, leading to a fresh period of			
		limitation commencing from each			
		such acknowledgement.			
486.		The provisions of the Limitation	Jagdish Prasad Sarada Vs.	NCLAT	28.08.2020
		Act, 1963 vide section 238A of the	Allahabad Bank [CA (AT) (Ins.)		
		Code will be applicable to all non-	No. 183 of 2020]		
		performing asset cases provided			
		they meet the criteria of Article			
		137 of the Schedule to the			
		Limitation Act, 1963 and that the			
		extension of the period of limitation can only be done by way			
		of application of section 5 of the			
		Limitation Act, 1963, if any case for			
		condonation of delay is made out.			
487.		The application under section 7 of	Invent Assets Securitization and	NCLAT	11.08.2020
		the Code is governed by Article	Reconstruction Pvt. Ltd. Vs.		11.00.1010
		137 of the Limitation Act, 1963 and	Xylon Electrotechnic Pvt. Ltd. [CA		
		any application filed by the FC for	(AT) (Ins.) No. 677 of 2020]		
		initiation of the CIRP beyond three			
		years from the date of the CDs			
		account being classified as non-			
		performing asset, would be barred			
		by limitation.			
488.		As acknowledgement of liability	Jayprakash Vyas Vs. Prabhat	NCLAT	24.07.2020
		was made after a lapse of about	Steel Traders Pvt. Ltd. and Anr.		
		five years, a fresh period of	[CA (AT) (Ins.) No. 1238 of 2019]		
		limitation will not accrue since the			
		period of limitation was three			
		years. Since the acknowledgement			
		was made much later than the			
		prescribed period of limitation,			
		the petitioner cannot claim the			
		benefit of section 18 of the			
		Limitation Act, 1963, which			
		provides a fresh period of			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/
					Judgement
		limitation from the time when the			
		acknowledgement was so made.			
489.		Any application filed beyond 3	Babulal Vardharji Gurjar Vs. Veer	SC	14.08.2020
		years from the date of default is barred by limitation. CIRP of the	Gurjar Aluminium Industries Pvt. Ltd. & Anr. [Civil Appeal No. 6347		
		CD was set aside on the ground	of 2019]		
		that the application filed under			
		section 7 of the Code is barred by			
		limitation, with the following observations:			
		(a) the Code is a beneficial			
		legislation intended to put the CD			
		back on its feet and is not a mere			
		money recovery legislation;			
		(b) CIRP is not intended to be			
		adversarial to the CD but is aimed			
		at protecting the interests of the			
		CD;			
		(c) intention of the Code is not to			
		give a new lease of life to debts			
		which are time-barred;			
		(d) the period of limitation for an			
		application seeking initiation of			
		CIRP under section 7 of the Code is			
		governed by Article 137 of the Limitation Act, 1963, and is,			
		therefore, 3 years from the date			
		when right to apply accrues;			
		(e) trigger for initiation of CIRP by			
		a FC is default on the part of the			
		CD, that is to say, the right to apply			
		under the Code accrues on the			
		date when default occurs;			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		 (f) default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable; (g) if default had occurred over 3 years prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act, 1963 does 			
		not apply to the application under consideration.			
490.		Since the CD had acknowledged the debt in 2015 in a letter sent to the OC, the application is well within the limitation period of 3 years.	Bango Industries Vs. U T Ltd. [CP (IB) No. 08/KB/2018]	NCLT, Kolkata	19.04.2018
491.		For the purposes of computing the period of limitation of an application under section 7 of the Code, the date of default is the date on which the accounts of CD were declared non-performing asset (NPA).	V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) &Anr. [CA (AT) (Ins.) No. 57 of 2020]	NCLAT	12.03.2020
492.		An application which is filed under section 7 of the Code will fall within Article 137 instead of Article 62 of the Limitation Act, 1963.	Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019]	SC	18.09.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
493.		The period of lockdown ordered by the Central/State Governments including the period as may be extended either in whole or part of the country, where the registered office of the CD may be located, shall be excluded for the purpose of counting of the period for CIRP under section 12 of the Code in all cases where CIRP is pending before any AA or in appeal before NCLAT.	Suo Moto [CA (AT) (Ins.) No. 01 of 2020]	NCLAT	30.03.2020
494.		From the minutes of meeting of the Board of Directors, it can be clearly stated that there was an acknowledgement of debt by the CD as on the relevant date and the application for initiating CIRP was not time barred.	Rupesh Kumar Gupta Vs. Punjab National Bank & Anr. [CA (AT) (Ins.) No. 1119 of 2019]	NCLAT	28.02.2020
495.		A judgement or a decree for recovery of money by the Civil Court/Debt Recovery Tribunal cannot shift forward the date of default for the purposes of limitation. It was also held that action taken by the FC under section 13(2) or (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is not a civil proceeding or appeal or revision, and thus the period cannot be excluded for counting the limitation period.	Ishrat Ali Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1121 of 2019]	NCLAT	12.03.2020
496.		The relevant date is the date of default and article 137 of the Limitation Act, 1963 is applicable, for application under section 7 or 9 of the Code. It was also clarified	Digamber Bhondwe Vs. JM Financial Asset Reconstruction Company Ltd. [CA (AT) (Ins.) No. 1379 of 2019]	NCLAT	05.03.2020

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		that though a 'decree-holder' is covered in the definition of 'creditor' under section 3(10) of the Code, he cannot initiate CIRP under section 7 and 9 as FC and OC do not include a 'decree-holder'.			Judgement
497.		The application was filed after 3 years of the cut-off period of default and there was nothing on record to suggest that there was acknowledgement of the debt within 3 years in terms of section 18 of the Limitation Act, 1963. Thus, the application was barred by limitation.	Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 177 of 2019 & I.A. Nos. 3392 & 3542 of 2019]	NCLAT	07.02.2020
498.		The date of coming into force of the Code does not and cannot form a trigger point of limitation for applications filed under the Code.	Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. [Civil Appeal No. 7673 of 2019]	sc	30.09.2019
499.		If there is a delay of more than 3 years from the date of cause of action and no laches on the part of applicant, the applicant can explain the delay. When there is a continuing cause of action, the question of rejecting any application on the ground of delay, does not arise.	Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. [CA (AT) (Ins.) No. 47 of 2017 and other appeals]	NCLAT	07.11.2017
500.		There is nothing on the record that Limitation Act, 1963 is applicable to the Code. The Code is not an Act for recovery of money claim rather it relates to initiation of CIRP.	Neelkanth Township & Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd. [CA (AT) (Ins.) No. 44 of 2017]	NCLAT	11.08.2017
501.		The right to apply under the Code accrues only on the date the Code came into effect, that is, on or	Black Pearls Hotels Pvt. Ltd. Vs. Planet M Retail Ltd. [CA (AT) (Ins.) No. 91 of 2017]	NCLAT	17.10.2017

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		after 1 st December, 2016 and before this date.			
502.		If the default has occurred over 3 years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, 1963, save and except in those cases where, in the facts of the case, section 5 of the said Limitation Act, 1963 may be applied to condone the delay in filing such application. Section 238A of the Code, being clarificatory of the law and being procedural in nature is retrospective in effect.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017]	SC	11.10.2018
503.		The HC set aside the order of admission on the ground that the AA had no jurisdiction to admit an application under section 7 of the Code, beyond the prescribed period of three years as provided in Article 137 of the Limitation Act, 1963.	Gouri Shankar Chatterjee Vs. State Bank of India [C.O. 1257 of 2020]	HC, Calcutta	15.10.2020
504.		The date of default would not be extended on account of acknowledgement made in the OTS proposal (One Time Settlement) of the CD.	State Bank of India Vs. Krishidhan Seeds Pvt. Ltd. [CA (AT) (Ins.) No. 972 of 2020]	NCLAT	17.11.2020
505.		The limitation under section 7 of the Code, would run from the date of declaration of the non performing asset (NPA). The passing of decree or issue of recovery certificate, will not give a fresh right to trigger Code.	A. Balakrishnan Vs. Kotak Mahindra Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1406 of 2019]	NCLAT	24.11.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
506.		The date of default is extendable	Bishal Jaiswal Vs. Asset	NCLAT	Judgement
506.		within the ambit of section 18 of	Bishal Jaiswal Vs. Asset Reconstruction Company (India)	NCLAT	22.12.2020
		Limitation Act, 1963 based on an	Ltd. & Anr. [Reference made by		
		acknowledgement in writing made	Three Member Bench in CA (AT)		
		by the CD before the expiry of	(Ins.) No. 385 of 2020]		
		period of limitation.			
507.		The writers of law were conscious	Vinod Singh Negi Vs. Kiran Shah,	NCLAT	19.01.2021
		that there could be situation where time-barred debts are	Liquidator of ORG Informatics Ltd. [CA (AT) (Ins.) No. 1101 of		
		claimed before the IRP or the RP.	2020]		
		The employee submitting claim			
		during the liquidation stage for			
		salary of 2012, without showing as			
		to how it is within limitation, is			
508.		liable to be rejected. Section 238A of the Code makes	Sach Nath Singh 9 Apr Va	SC	22.03.2021
508.		the provisions of the Limitation	Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-	SL	22.05.2021
		Act, 1963 as far as may be,	operative Bank Ltd. and Anr.		
		applicable to proceedings under	[Civil Appeal No. 9198 of 2019]		
		the Code. All provisions of the			
		Limitation Act, 1963 are applicable			
		to proceedings in the NCLT/NCLAT			
		to the extent feasible.			
		Legislature has in its wisdom			
		chosen not to make the provisions			
		of the Limitation Act verbatim			
		applicable to proceedings in			
		NCLT/NCLAT, but consciously used			
		the words 'as far as may be'. The			
		words 'as far as may be' are not			
		meant to be otiose. Those words are to be understood in the sense			
		in which they best harmonise with			
		the subject matter of the			
		legislation and the object which			
		the Legislature has in view. The			
		Courts would not give an			
		interpretation to those words			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		which would frustrate the purposes of making the Limitation Act, 1963 applicable to proceedings in the NCLT/NCLAT 'as far as may be'.			
		Section 14 of the Limitation Act, 1963 excludes the time spent in proceeding in a wrong forum, which is unable to entertain the proceedings for want of jurisdiction.			
509.		A decree passed by the DRT or any suit, cannot shift the date of default. The decree passed by the DRT only suggests that debt has become due and payable.	G Eswara Rao Vs. Stressed Assets Stabilisation Fund & Anr. [CA (AT) (Ins.) No. 1097 of 2019]	NCLAT	07.02.2020
	240	Power to make regulations			
510.		IBBI may make regulations, but it should be consistent with the Code and rules made thereunder, to carry out the provisions of the Code. The provisions made by IBBI cannot override the provisions of the Code, nor can it be inconsistent with the Code.	Central Bank of India Vs. RP of the Sirpur Paper Mills Ltd. & Ors. [CA (AT) (Ins.) No. 526 of 2018]	NCLAT	12.09.2018
511.		Section 240 is the general regulation making power of the IBBI and section 240(1) does not impose any restraints on the powers of the IBBI, except that regulations should be consistent with the Code and the rules thereunder and should be for the purposes of carrying out the provisions of the Code.	CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]	HC, Madras	28.07.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
	240A	Application of this Code to micro, s			40.04.0004
512.		The exemption granted under	Harkirat Singh Bedi Vs. The	NCLAT	12.01.2021
		section 240A of the Code is only in	Oriental Bank of Commerce &		
		respect of clause (c) and (h) of section 29A of the Code and in the	Ors. [CA (AT) (Ins.) No. 40 of		
		instant case, the Appellant was	2020]		
		declared ineligible under clause (b)			
		of section 29A <i>i.e.</i> , declared as a			
		willful defaulter for which no			
		exemption has been given to			
		MSME. The NCLAT further held			
		that since the date of registration			
		of the CD as MSME was after the			
		order of admission, the application			
		for registration of MSME was			
		without authorization, and hence			
		was invalid.			
	252	Amendments of Act 1 of 2004 (The	Sick Industrial Companies (Special F	rovisions) Repeal	Act, 2003)
513.		It was held that the power to reject	Bank of New York Mellon	SC	21.02.2017
		the reference, on the ground that	London Branch Vs. Zenith		
		the company is not an industrial	Infotech Ltd. [Civil Appeal No.		
		unit, does not lie with the Registrar	3055 of 2017]		
		or the Secretary of the Board for			
		Industrial and Financial			
		Reconstruction. Therefore, the			
		reference was deemed to be			
		pending before BIFR on			
		01.11.2016 (date of			
		commencement of the Code) and			
		the company can seek its remedies			
		under the provisions of section			
	255	252 of the Code. Amendments of Act 18 of 2013 (The	Companies Act. 2012)		
514.	235	In a case where a winding up	Unigreen Global Pvt. Ltd. Vs.	NCLAT	01.12.2017
514.		proceeding has been initiated	Punjab National Bank [CA (AT)	NCLAT	51.12.2017
		against a CD by the High Court or	(Ins.) No. 81 of 2017]		
		Tribunal or liquidation order has			
		been passed in respect of the CD,			
		seen passed in respect of the eb,			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/ Judgement
		no application under section 10 can be filed by the corporate applicant in view of the ineligibility under section 11(d) of the Code.			Jungement
		Rules / Regulations under the Code			
515.	Rule 6 of AA Rules	The trade union collectively represents its members who are workers, to whom dues may be owed by the employer, which are debts owed for services rendered by each individual workman. If each workman files a separate cause of action, the fact that a joint petition could be filed under rule 6 of AA Rules would be ignored.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]	SC	30.04.2019
516.	Rule 8 of AA Rules	In the appeal before SC, a question as to whether, in view of rule 8 of the AA Rules, the NCLAT could utilise the inherent power under rule 11 of the National Company Law Appellate Tribunal Rules, 2016, to allow compromise before it by the parties after admission of the matter. The SC upheld the views of NCLAT that after admission, inherent power could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms.	Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance and Investment Managers LLP [Civil Appeal no. 9279 of 2017]	SC	24.07.2017
517.	Regulatio n 33 of Liquidatio n Process Regulatio ns	The proper interpretation on clauses (a) and(b) of the regulation 33 of Liquidation Process Regulations would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017]	NCLT, New Delhi	16.07.2019

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise, the purpose of Regulation would be defeated if time is required to be spent in filing an application and taking permission, because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value, if not sold immediately.			
518.	Regulation 33 of Liquidation Process Regulations	The HC directed IBBI to consider the petition as a representation on the issue of adoption of Swiss Challenge method as a form of an auction under the Liquidation Process Regulations.	MRG Estates LLP Vs. Akash Shinghal, Liquidator, Amira Pure Foods Pvt. Ltd. & Ors. [W.P.(C) 10023/2020]	HC, New Delhi	15.12.2020
519.	Regulation 6 of CIRP Regulations	It is the responsibility of the creditor to file claim within the time after the issue of public notice inviting claims by the RP.	Dy. Commissioner of Customs DEEC (Monitoring Cell) Vs. Jyoti Structures Ltd. & Ors. [IA 1218/MB/2020 in CP(IB) 1137/MB/2017]	NCLT, Mumbai	05.10.2020
520.	Regulatio n 30A(1) of CIRP Regulatio ns	Regulation 30A(1) of the CIRP Regulations is not mandatory but directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under regulation 36A of the said Regulations.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
	Regulation 39D of CIRP Regulations	The fact that CoC has taken a decision regarding the liquidation costs, expenses, and the remuneration payable to the liquidator with the requisite percentage, brings it within the	Narinder Bhushan Aggarwal Vs. Little Bee International Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 980 of 2020]	NCLAT	18.11.2020

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		ambit of regulation 39D of the			Judgement
		CIRP Regulations. It is not			
		permissible to resort to any other			
		provision if action of CoC falls			
		within the purview of regulation			
		39D.			
522.	Regulatio	The Code contains adequate	CA. Venkata Siva Kumar Vs.	HC, Madras	28.07.2020
	n 7(2)(ca)	safeguards to ensure that the	IBBI & Ors. [W.P. No. 9132 of		
	of IP	Parliament effectively supervises	2020 and W.M.P. No. 11134 of		
	Regulatio	all rules and regulations with the	2020]		
	ns	power to modify or even annul the			
		same and that regulation 7(2)(ca) of the IP Regulations does not			
		suffer from any constitutional			
		infirmity on account of the			
		absence of <i>quid pro quo</i> .			
523.	Regulatio	The delegation of power is not in	CA V. Venkata Sivakumar Vs.	HC, Madras	03.11.2020
	n 7A of IP	derogation of the principles laid	IBBI & Ors. [WP No. 13229 of	,	
	Regulatio	down by earlier jurisprudence.	2020]		
	ns and	Further the existence of more than			
	Regulatio	one authority with regulatory or			
	n 12A of	disciplinary control over a			
	the IBBI	professional is per se not a ground			
	(Model	to hold that the impugned			
	Bye-Laws	regulations are unconstitutional			
	and Governin	The criteria mentioned under			
	g Board of	regulation 12A are clearly not unreasonable or arbitrary but			
	Insolvenc	appear to be germane for deciding			
	V	the eligibility of an IP for such AFA,			
	, Professio	as these measures are intended to			
	nal	regulate the profession and not to			
	Agencies)	deprive a person of the right to			
	Regulatio	practice the profession.			
	ns, 2016				
524.	Regulatio	Section 25(2)(h) inserted on	State Bank of India Vs. Su Kam	NCLT,	05.09.2018
	n 36A of	23.11.2017 by way of amendment	Power Systems Ltd. [(IB)-	New Delhi	
	CIRP	does not contemplate floating of	540(PB)/2017]		
		any Expression of Interest. IBBI			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	Regulatio ns	taking upon itself the task of framing regulation 36A of CIRP Regulations, using the expression 'invitation of expression of interest' along with Form 'G' amounts to assumption of power and beyond the competence of IBBI. The source of power to frame regulations under the Code is drawn from section 240 of the Code. [Note: This order has since been stayed by the Delhi High Court vide order dated 05.10.2018 in the matter of IBBI Vs. State Bank of India & Ors. (LPA 566/2018)]			
			SCELLANEOUS		
			ee of IRP/IPE		
525.		For performance of duty of 27 days as IRP, a fee of Rs. 5 lakh is excessive. An IPE is not eligible or entitled to receive any fees or any cut or commission from the fees of the IRP.	Bhasin Infotech and Infrastructure Pvt. Ltd. Vs. Gurpreet Singh [CA (AT) (Ins.) No. 491 of 2018]	NCLAT	13.12.2018
		Suspended m	anagement's locus standi		
526.		The suspended management has no <i>locus standi</i> to move an application to start business operations, when the CD is under the control of the liquidator. There is no statutory provision which allows the CD to run the company till it is sold as a going concern.	Himanshu Prafulchandra Varia Vs. Sunil Kumar Agarwal & Ors. [IA 347 of 2020 in IA 362 of 2019 in CP(IB)No. 149/NCLT/AHM/ 2017]	NCLT, Ahmedabad	22.07.2020
		Exemptio	n of lockdown period		

SI.	Section	Dictum	Citation	Forum	Date of
No.	Section	Dictum	citation		Order/
					Judgement
527.		The period of CIRP during	Finquest Financial Solutons Pvt.	NCLT,	15.09.2020
5271		promulgation of lockdown will be	Ltd. Vs. Ballarpur Industries Ltd.	Mumbai	1010012020
		exempted pursuant to the	[IA No. 1175 of 2020 in CP(IB)		
		notification of the Central	No. 2915/2019]		
		Government read with new			
		amendment which took place in			
		the CIRP Regulations of the IBBI.			
528.		Having considered nationwide	In the matter of Sudip	NCLAT	08.10.2020
		lockdown in the wake of Covid-19	Bhattacharya, RP of Reliance		
		from March 23, 2020 to May 29,	Naval and Engineering Ltd. [CA		
		2020 and extension of lockdown in	(AT) (Ins.) No. 858 of 2020]		
		Maharashtra till August 31, 2020,			
		directed that the period of			
		lockdown from March 25, 2020 till			
		August 31, 2020 shall be excluded			
		while computing the period of			
		CIRP.			
		Right of defau	Ited promoters of MSMEs		
529.		Since CD is an MSME, even if the	Marutham Steel Rolling Mills	NCLT,	03.07.2020
		promoters/directors have been	Pvt. Ltd. [MA/1219/2019 in	Chennai	
		declared as wilful defaulters, they	IBA/264/2019]		
		can apply under the provisions of			
		section 230 of the Companies Act,			
		2013 as they are exempted from			
		section 29A of the Code.			
	1		ts inapplicable under Code		
530.		The bar in filing of suit in terms of	Shree Dev Chemicals	NCLT,	16.07.2020
		section 69(2) of the Indian	Corporation Vs. Gammon India	Mumbai	
		Partnership Act, 1932 will not	Ltd. [CP(IB)No		
		apply on applications filed under	3637/MB.IV/2018]		
		the Code as they are not 'suits' but			
		are only 'proceedings'.			
504			flict of interest		40.00.0000
531.		The RP may not be currently in	Kanakabha Ray Vs. Narayan	NCLAT	18.08.2020
		employment of the FC or drawing	Chandra Saha & Ors. [CA (AT)		
		salary under it but the fact remains	(Ins.) No. 687 of 2020]		
		that on account of services			
		rendered in past, an element of			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
					Judgement
		loyalty is there which cannot be			
		ignored. Accordingly, there is a			
		possibility that the RP would not			
		be fair in his working.			
		Powe	r of AA to review		
532.		The power to review is not an	Deepakk Kumar Vs. Phoenix	NCLAT	17.09.2020
		inherent power under rule 11 of	ARC Pvt. Ltd. and Anr. [CA (AT)		
		the NCLT Rules, 2016, and hence, a	(Ins.) No. 848 of 2019]		
		review jurisdiction cannot be			
		pressed into service as an			
		appellate jurisdiction.			
533.		The power of review has not been	Anubhav Anilkumar Agarwal	NCLAT	07.12.2020
		expressly conferred on NCLAT and	Vs. Bank of India & Anr.		
		the power under Rule 11 of NCLAT	[Review Application (AT) No. 15		
		Rules, 2016 can only be exercised	of 2020 in CA (AT) (Ins.) No.		
		for correction of mistakes. The	1504 of 2019]		
		power of review is not an inherent			
		power which cannot be exercised			
		unless conferred specifically or by			
		necessary implication.			
			tion of fee of RP		
534.		Fixation of fee of the RP is not a	Devarajan Raman Vs. Bank of	NCLAT	30.07.2020
		business decision depending upon	India Ltd. [CA (AT) (Ins.) No. 646		
		the commercial wisdom of the	of 2020]		
		CoC.	01 2020]		
			HC in writ jurisdiction		
535.		There is no absolute bar on the HC	Atin Arora Vs. Oriental Bank of	HC, Calcutta	13.08.2020
		to entertain an application under	Commerce [C.O. No. 3894 of		
		Article 227 of the Constitution,	2019 with CAN 12340 of 2019]		
		when a challenge is made to an			
		order, which is otherwise			
		amenable to be challenged by way			
		of an appeal before the appellate			
		forum if there is a patent error or			
		miscarriage of justice apparent			
		from the record.			

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		Nutrie			Judgement
536.			and construction of provisions	SC	24.04.2010
536.		There is no doubt whatsoever that Notes on Clauses are an important	Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil	SC	31.01.2019
		aid to the construction of sections	Appeal No. 8430 of 2018 with		
		of the Code as they show what the	WP (C) No.1266 of 2018		
		drafting committee had in mind			
		when such provisions were			
		drafted.			
			to meet cost of processes		
537.		For effective continuation of CIRP,	Reliance Commercial Finance	NCLT,	12.04.2019
		the FC constituting the CoChas to	Ltd. Vs. Noble Resourcing	New Delhi	
		contribute to the expenses, fee	Business and Solution Pvt. Ltd.		
		and other cost of the process,	[(IB)-494(PB)/2017]		
		otherwise the whole process			
		would come to a halt and cause			
		unnecessary delay.			
			Power of IBBI		1
538.		The powers of IBBI to frame	CA. Venkata Siva Kumar Vs.	HC, Madras	28.07.2020
		regulations with regard to the fee	IBBI & Ors. [W.P. No. 9132 of		
		payable by IPs and IPEs cannot be	2020 and W.M.P. No. 11134 of		
		questioned if the power is used for	2020]		
		carrying out the purposes of the Code.			
			ee of FC becoming IRP		
539.		Substitution of RP on the	State Bank of India Vs.	SC	19.08.2020
555.		apprehension of bias was	Metenere Ltd. [Civil Appeal No.	50	15.00.2020
		challenged before the SC on the	2570 of 2020]		
		premise that the proposed IRP was			
		an <i>ex</i> -employee of the FC in			
		service for over 39 years and was			
		drawing pension from the FC. It			
		was observed that the approach			
		adopted by the NCLAT was			
		incorrect that merely an RP who			
		was in the service of the FC and			
		was getting pension, was			
		disentitled to be the IRP. However,			
		while directing the AA to appoint a			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		new RP, it further observed that the change of the RP shall not reflect adversely upon the integrity of the concerned RP who was replaced. It was also clarified that as the impugned order does not reflect a correct approach, the			
		same shall not be treated as a			
		precedent.	on of justice by NCLAT		
540.		The NCLAT closed its functioning as one of its employees was suffering from Covid-19. On appeal, the SC observed that the doors of justice cannot be closed and that NCLAT should find out a way for online hearing in such a situation. While dismissing the appeal, it requested the NCLAT to start hearing the matter on interim stay, immediately on reopening.	Marathe Hospitality Vs. Mahesh Surekha & Ors. [SLP (C) No(s). 8139 of 2020]	SC	10.07.2020
541.		The AA will admit applications under section 7 filed against five CDs and appoint a common RP and the project will be completed in one go by initiating a consolidated resolution plan for total development.	Edelweiss Asset Reconstruction Company Ltd. Vs. Sachet Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 377-385 of 2019]	NCLAT	20.09.2019
			n of assets and liabilities		
542.		The AA ordered that the assets and liabilities of the Videocon group companies should be substantively consolidated due to common control, common directors, common assets, common liabilities,	State Bank of India & Anr. Vs. Videocon Industries Ltd. & Ors. [MA 1306/2018 in CP Nos. 02- 2018 and other applications]	NCLT, Mumbai	08.08.2019

SI.	Section	Dictum	Citation	Forum	Date of
No.					Order/
		interdependence, interlacing of			Judgement
		finance, co-existence for survival, pooling of resources, intertwined			
		accounts, interloping of debts,			
		singleness of economics of units,			
		common FCs and common group of CDs.			
543.		The concept of group insolvency is	Punjab National Bank Vs. KSK	NCLT,	12.02.2021
		unknown to the Code. If the AA	Mahanadi Power Company Ltd.	Hyderabad	
		directs CoCs and RPs of different	& Ors. [IA No. 32/2020 in CP(IB)		
		CDs to resolve insolvencies of different CDs together, there will	No. 492/07/HDB/2019]		
		be a chaotic situation relating to			
		consolidation of assets and			
		liabilities of all the CDs. The			
		inherent jurisdiction of the AA			
		under Rule 11 of the NCLT Rules			
		cannot be used to create such a			
		situation.	- marida information of accets		
544.		The AA imposed cost of Rs. 10 lakh	o provide information of assets Asset Reconstruction Company	NCLT,	28.03.2019
544.		on the appellants because they	(India) Ltd. Vs. Shivam Water	Mumbai	28.05.2019
		failed to provide any information	Treaters Pvt. Ltd. [CP(IB)		
		pertaining to assets, finance and	1882(MB)/2018]		
		operations of the CD and did not			
		extend their cooperation to RP for			
		taking control and custody despite			
		directions under section 19.			
			ng CIRP of functional company		
545.		Starting of CIRP against a	Vinod Mittal Vs. Rays Power	NCLAT	18.11.2019
		functional company is a serious	Experts &Anr. [CA (AT) (Ins.) No. 851 of 2019]		
		matter and parties cannot be allowed to play hide and seek. It	140. 051 01 2013]		
		imposed a cost of Rs. 5 lakh on the			
		OC and Rs. 2.5 lakh on the son of			
		the director of the OC.			

SI. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
			abuse of power by RP		
546.		The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy. The RP was directed to pay the amount claimed by him along with a cost of	BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP (IB) 4301/2018]	NCLT, Mumbai	16.10.2019
		one lakh rupees to the applicant.			
			plementation of approved plan		
547.		AA imposed a cost of Rs. 10 lakh because the appellant did not implement the resolution plan which was approved by the CoC and the AA.	Ingen Capital Group LLC Vs. Ramkumar S.V. Anr. [CA (AT) (Ins.) No. 795 of 2018]	NCLAT	30.04.2019
		Penalty for n	on-cooperation with RP		
548.		The AA slapped a cost of Rs. 5 lakh on the delinquent officer of the Directorate of Economic Offences, for not cooperating with RP as directed by the HC. The NCLAT noted that though the conduct of officer for not extending cooperation may be violative of the directions of the HC, however, the same cannot be linked with the order of liquidation. Therefore, the NCLAT observed that while passing order of liquidation, the AA exceeded its jurisdiction in slapping the appellant with liability of costs.	Directorate of Economic Offences Vs. Binay Kumar Singhania and Ors. [CA (AT) (Ins.) No.1361-1362 of 2019]	NCLAT	05.02.2020

Insolvency and Bankruptcy Board of India

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