

IBC Case Laws

Supreme Court of India

SVG Fashions Pvt. Ltd. Vs. Ritu Murli Manohar Goyal & Anr. & Ors. Civil Appeal No. 4228 of 2020, Date of Judgment: 29th March 2022

Facts of the Case

This Appeal was filed by Appellant (Operation Creditor 'OC' of the Corporate Debtor) aggrieved by the order of the NCLAT whereby it reversed the order of the NCLT (Adjudicating Authority 'AA') and held that the application filed under Section 09 of the IBC, 2016 was barred by limitation.

The facts of the case are that the Appellant filed an application under Section 9 of IBC on 20.04.2018 against M/s Arpita Filaments Pvt. Ltd. (Corporate Debtor 'CD') stating that the CD had started dealing with them from 2013 by selling and delivering various fabrics to the CD. The CD was irregular in making payments of the bills raised. Hence a demand notice under section 08 of IBC read with Rule 05 was issued to the CD to which there was no response.

The CD raised 04 major objections before AA, one of which was that the claim was barred by limitation. The AA found on a basis of letter dated 28.09.2015 produced by OC that six cheques had been issued in favour of OC, which returned dishonoured when presented for payment. The CD had taken stand that those cheques were lost by the CD in March, 2017 and it had already issued stop payment instructions to the bank on 04.03.2017. He also claimed that the letter dated 28.09.2015 relied upon by OC was issued by Shree Adeshwar Textiles and the same cannot be relied upon. However, the AA by its order dated 26.09.2019 overruled the objections and held that there was acknowledgement of liability on the part of CD, therefore the application was within the period of limitation and ordered the admission of same.

On appeal, the NCLAT reversed the decision of the NCLT on the ground that the acknowledgment of liability in terms of Section 18 of the Limitation Act ought to have been on or before 07.10.2016 for the dues that arose between 11.08.2013 to 02.09.2013, but the cheques were dated December, 2017.



Supreme Court's Observations

The Apex Court observed that the NCLAT had not considered the letter dated 28.09.2015. It noted that the cheque numbers mentioned in the letter were the same as the ones allegedly lost by the CD in March, 2017. Further the 01st respondent had claimed in his affidavit that the CD had issued stop payment instructions, he had conceded later that the acknowledgement issued by the banker was dated 01.01.2018. The Apex Court further stated that the failure of the NCLAT as the first appellate authority to look into a very vital aspect such as this, vitiates its order, especially when NCLT has recorded a specific finding of fact on this. The Apex court also stated its judgment in *Asset Reconstruction Company (India) Limited Vs. Bishal Jaiswal and Anr.* whereby it had held that while applying Section 18 of the Limitation Act, it had even went to the extent of holding that an entry in the balance sheet of the company could also be treated as an acknowledgement in writing. Further, the Apex Court also stated that the law as it has developed on the applicability of Section 18 of Limitation Act and the circumstances in which it would apply were also not examined by NCLAT.

Order

The Apex Court in view of the above observations allowed this appeal and remanded back the matter for fresh consideration to NCLAT. The impugned order of NCLAT was set aside.

Case Review: - Appeal Allowed

Amit Katyal Vs. Meera Ahuja and Ors. Civil Appeal No. 3778 Of 2020 with IA No. 105732/2021 and 18679/2022, Date of Judgment: 03rd March 2022

Facts of the Case

This Appeal was filed by Appellant (Promoter/Majority Shareholder of Jasmine Buildmart Pvt. Ltd. (Corporate Debtor 'CD')) feeling aggrieved and dissatisfied with the impugned order passed by the NCLAT, New Delhi in Company Appeal (AT) (Insolvency) No. 1380 of 2019, by which the NCLAT dismissed the above appeal preferred by the Appellant and confirmed the order passed by the NCLT, New Delhi (Adjudicating Authority 'AA') in admitting the petition under Section 7 of the IBC, 2016.

The facts of the case are that CD had come out with housing project (Krrish Provence Estate) which it could not complete even after a period of eight years, resulting in Section 7 application being filed before AA by respondent nos. 1 to 3 (Original applicants and Home buyers). The original applicants sought refund of an amount of Rs. 7 crores approx. due to delay in the completion of project and failure to handover possession within the stipulated time. The Appellant challenged the order of AA before the NCLAT and during the hearing tried to settle the matter with the original applicants, however, the settlement did not go through. The NCLAT by the impugned order dismissed the appeal and upheld the admission order and directed commencement of CIRP.

Subsequently, the appellant preferred the present appeal and the Apex Court by its order stayed the operation and implementation of the impugned order, subject to the Appellant depositing the amount of Rs.2,75,55,186/- and interest @ 6% per annum within two weeks from the order, which was deposited by the same. However the present appeal was adjourned from time to time on the ground that the dispute between the appellant and original applicants was being settled and the CD was prepared to complete the project within a period of nine months, if the home buyers make payments, as scheduled.

Further, the respective parties (Appellant & 82 Homebuyers) settled the dispute with the CD under which, it was agreed that the CD shall complete the entire project and hand over the possession to the home buyers (who want the possession), within a period of one year. The Appellant agreed to refund the amount of Rs.3,36,02,000/- with applicable/accrued interest to the original applicants. Hence it was requested under Article 142 of the

Constitution of India read with Rules 11 and 12 of the NCLT Rules, 2016 to record the settlement and permit the original applicants to withdraw CIRP proceedings pending before the AA and dismiss all matters pending between the appellant and original applicants.

Supreme Court's Observations

The Apex court stated the matter of Swiss Ribbons Private Limited and Another v. Union of India whereby it had held that at any stage before a COC is constituted, a party can approach AA directly and AA may in exercise of its powers, allow or disallow an application for withdrawal or settlement. Hence, in the present case, although the COC was constituted on 23.11.2020, there was a stay on CIRP proceedings on 3.12.2020 and no proceedings took place before the COC. Further the COC comprises of 91 members, of which 70% were the members of the Flat Buyers Association who are willing for the CIRP proceedings being set aside, subject to Appellant and CD honouring its undertaking.

The Apex court in view of the above stated that when the withdrawal of the CIRP proceedings initiated by the original applicants is allowable by the NCLT and instead of relegating the original applicants to approach the AA by moving an application under Section 12A of the IBC, Apex Court was of the opinion that this is a fit case to exercise powers under Article 142 of the Constitution of India as the settlement arrived at between the home buyers and the appellant and CD shall be in the larger interest of the home buyers as out of 128 home buyers, 82 home buyers are likely to get possession within a period of one year, for which they are waiting since last more than eight years after they have invested their hard earned money. This shall be in furtherance of the object and purpose of IBC.

Order

The Apex Court in view of the above observations allowed the appeals and directed the Appellant and CD to abide by the settlement plan and to submit 05 separate undertakings which included that they shall complete the entire project within one year from 01.03.2022 and offer the possession to the respective home buyers, to complete the entire project including all the apartments, common areas, amenities, etc. as specified in the ABA, to be filed within a period of one week from the date of order.

Case Review: - *Appeal Allowed.*

M/s Consolidated Construction Consortium Limited Vs. M/s Hitro Energy Solutions Private Limited Civil Appeal No 2839 of 2020, Date of Judgment: 04th February 2022

Facts of the Case

This Appeal was filed under Section 62 of the IBC, 2016 and arises out of the judgment of the National Company Law Appellate Tribunal 'NCLAT' by which it reversed the decision of the National Company Law Tribunal, Chennai Bench (Adjudicating Authority 'AA'). The Facts of the case are that AA had admitted an application filed by the Appellant, under Section 9 of the IBC for the initiation of the CIRP against the Respondent. While admitting the application, the AA held that the Respondent's Memorandum of Association, proved that it took over a proprietary concern, Hitro Energy Solutions, and that the proprietary concern owed the Appellant an outstanding operational debt. Further, the AA declared a moratorium under Section 14 of the IBC vide its order.

The NCLAT set aside the order of the AA and dismissed the application of the Appellant filed under Section 9 of the IBC and released the respondent from the ongoing CIRP. Further in support of its conclusions, the NCLAT held that Firstly, the Appellant was a 'purchaser', and thus did not come under the definition of 'operational creditor' under the IBC since it did not supply any goods or services to the Proprietary Concern/respondent; Secondly there was nothing on record to suggest that the Respondent has taken over the proprietary concern and Thirdly, the appellant cannot move an application under Sections 7 or 9 of the IBC since all purchase orders were issued on 24th June 2013 and cheques were issued on advance basis.

The Apex Court issued a notice and stayed the operation of NCLAT's judgment. It further stated that the issues arising before it were as follows: -

- Whether the appellant is an operational creditor under the IBC even though it was a 'purchaser'?
- Whether the Respondent took over the debt from the proprietary concern?
- Whether the application under Section 9 of the IBC is barred by limitation?

Supreme Court's Observations

The Apex Court regarding the first question stated that in the present case, the phrase “in respect of” in Section 5(21)

of IBC has to be interpreted in a broad and purposive manner in order to include all those who provide or receive operational services from the CD, which ultimately lead to an operational debt and the appellant clearly sought an operational service from the Proprietary Concern. Further, when the contract was terminated the Proprietary Concern nonetheless encashed the cheque for advance payment, it gave rise to an operational debt in favor of the appellant, which now remains unpaid. Hence, the appellant is an operational creditor under Section 5(20) of the IBC.

Regarding the second question, the Apex Court stated that the dispute resolved around the MoA of the Respondent whereby the MOA stated that one of its main objects is to take over the Proprietary Concern. However, the respondent produced a resolution passed by its Board of Directors, purportedly resolving to not take over the Proprietary Concern. In this regard the respondent provided no proof that the procedure prescribed Companies Act 2013 was followed to amend the MoA. Hence the MOA of the respondent remained unchanged and conclusive proof that the respondent took over the Proprietary Concern and was liable to re-pay the debt to the appellant. Regarding the Third question, the Apex Court held that the application under Section 9 of the IBC was not barred by limitation as a letter was addressed by the Appellant to the proprietary concern on 27 February 2017, demanding the payment and the same was replied by the proprietary concern on 2 March 2017, finally refusing to make re-payment to the Appellant.

Order

The Apex Court in view of the above allowed the appeal and consequently set aside the order of the NCLAT.

Case Review: - Appeal Allowed

Bank of Baroda & Anr Vs. MBL Infrastructures Limited & Ors. Civil Appeal No. 8411 Of 2019, Date of Supreme Court Judgment: 18th January 2022

Facts of the Case

This Appeal was filed to seek the judicial interpretation of Section 29A(h) of the Insolvency and Bankruptcy Code, 2016 'IBC', as amended by the Act 26 of 2018 from the Hon'ble Supreme Court.

The brief facts of the case are that M/s. MBL Infrastructures Limited (Respondent No.1) 'MBL' set up by Mr. Anjanee Kumar Lakhotiya (Respondent No. 3)

availed loans/ credit facilities from consortium of banks. On the failure of MBL to act in tune with the terms of repayment, forced few banks to invoke the personal guarantees extended by the Respondent No.3. Subsequently RBL Bank issued a notice under Section 13(2) of the SARFAESI Act, after duly invoking the personal guarantee which was followed by a similar action at the hands of other banks. Later in the context of above, RBL Bank filed an application under Section 7 of IBC before the NCLT, Kolkata (Adjudicating Authority 'AA') to initiate CIRP against MBL which was admitted, and two resolution plans were received of which one was by Respondent No. 3 which was prior to the introduction of Section 29A of the Code.

Thereafter the CoC in its meeting deliberated upon the impact of the amendment and the eligibility of Respondent No. 3 in submitting a resolution plan, who in view of the same filed an application praying for a declaration that he was not disqualified from submitting a resolution plan under sub-section (c) and (h) of Section 29A of the Code, whereby the AA, vide its order held that it was eligible for the same. It ruled that since the personal guarantee having not been invoked and the Respondent No.3 merely having extended his personal guarantee, as such there is no disqualification per se under Section 29A(h) of IBC as the liability under a guarantee arises only upon its invocation.

The resolution plan was approved by more than 75% of voting share after considering the technoeconomic viability and feasibility of the plan and the same was approved by the AA as well. Further the other appeals and IAs including that of Appellant were dismissed on the above grounds by AA as well as Appellate Tribunal. The Appellate Tribunal further confirmed the order of the AA.

Meanwhile the IBC went further amendments. The Appellant challenged the order of the Appellate Tribunal confirming the order of the AA in this appeal.

Supreme Court's Observations

The Apex Court was of the view that the Respondent No.3 executed personal guarantees which were invoked by three of the FCs even prior to the application filed which attracted Section 29A(h) of the Code. The eligibility can never be restricted to the aforesaid three creditors, but also to other financial creditors in view of the import of Section 7 of the Code. Thus, in the interpretation of Section 29A(h), the plan submitted by the Respondent No.3 ought not to have been entertained. The AA and the Appellate

tribunal were not right in rejecting the contentions of the appellant on the ground that the earlier appeals having been withdrawn without liberty, the issue qua eligibility cannot be raised for the second time.

However, the very resolution plan submitted by the Respondent No. 3, being ineligible is not maintainable, much water has flown under the bridge. The requisite percentage of voting share has been achieved and majority of the creditors have given their approval to the resolution plan. The AA rightly noted that it was accordingly approved after taking into consideration, the techno-economic report pertaining to the viability and feasibility of the plan. The plan has also put into operation and as of now MBL is an on-going concern. Further the interest of over 23,000 shareholders and thousands of employees of MBL needs to be taken in Consideration and Rs. 300 crores (approx.) has also been approved by the shareholders to be raised by MBL.

The Apex court further stated that the ultimate object of the Code is to put the CD back on the rails and no prejudice would be caused to the dissenting creditors as their interests would otherwise be secured by the resolution plan itself, which permits them to get back the liquidation value of their respective credit limits. Thus, on the peculiar facts of the present case, the Court did not wish to disturb the resolution plan leading to the on-going operation of the MBL.

Order

The Apex Court in view of the above observations disposed of the case.

Case Review: - Appeal Disposed

Devarajan Raman Vs. Bank of India Limited Civil Appeal No 3160 Of 2020, Date of Judgment: 05th January 2022

Facts of the Case

This Appeal challenged the order passed by the National Company Law Appellate Tribunal 'NCLAT'. The issue of the case arises in dispute related to the payments of costs and expenses incurred by the Resolution Professional (Appellant). The Facts of the case are that pursuant to respondent (Financial Creditor of Poonam Drums and Containers Private Limited (Corporate Debtor 'CD')), the appellant had submitted his technical and financial bid for appointment as an Interim Resolution Professional 'IRP' in

the CIRP of CD which was initiated by respondent by filing a petition under Section 7 of IBC, 2016 and the same was admitted by Adjudicating Authority 'AA'.

Later, the order of AA was set aside in appeal by the NCLAT at the behest of the Directors of the CD. The NCLAT remitted the proceedings to AA to decide upon the fee and costs of the CIRP incurred by the appellant which was to be borne by the respondent. An amount of Rs 14,75,660/- was payable as fee and costs and the Respondent had reimbursed an amount of Rs 5,66,667 leaving Rs 9,08,993/-in balance, according to the appellant. Hence, the appellant moved AA for obtaining the release of the remaining fee and costs. The respondent confirmed the details of the fee and costs as stated by the appellant and stated that it would release the payment, upon receipt of an order of AA. Subsequently, AA in its order disposed of the application directing the Respondent to pay all the expenses incurred by RP and Rs. 5,00,000 /- plus GST towards the fee of the RP.

Aggrieved by the above order, the Appellant filed an Appeal before NCLAT stating that AA passed the impugned order reducing the CIRP cost and fee quoted by the appellant, without citing any reasons for the same. However, NCLAT upheld the order of AA stating that the appellant had worked for about three months as RP. Further, the expenses had been allowed in full and the consolidated amount of Rs 5,00,000/- plus GST allowed as fee of the RP for the entire period was not unreasonable and fixation of the fee is not a business decision depending on the commercial wisdom of the CoC. Hence, the appellant filed this appeal.

Supreme Court's Observations

The Apex Court was of the view that after the NCLAT set aside the order of the AA initiating the CIRP, the proceedings were remitted back for determining the insolvency resolution costs. The Court materially noted that the appellant had addressed a letter to the respondent prior to the filing of the application to which the respondent, upon verification had stated that the costs and fees were in conformity with both the technical and financial bid, based on which the assignment was awarded. Further, in the application, which was filed by the appellant before the AA, the appellant annexed a statement of costs, the amount, which was reimbursed

with the balance dues, however, the order of the AA reveals that none of the submissions of the appellant were considered. The AA merely directed the respondent to pay the expenses incurred and an amount of Rs 5,00,000 plus GST towards the fee of the RP. Neither the basis of the claim nor its reasonableness was considered by the AA. Further, the NCLAT merely proceeded in an ad hoc manner on the ground that the amount of Rs 5,00,000 as fee, in addition to the expenses, appears to be reasonable. The Apex Court stated that both the orders suffer from an abdication in the exercise of jurisdiction and in the absence of any reasons in both the order, it is impossible to deduce the basis on which the payment of an amount of Rs 5,00,000 together with expenses has been found to be reasonable and an order of remand becomes necessary.

Order

The Apex Court in view of the above observations allowed the appeal and set aside the impugned judgment and order of the NCLAT and AA. Further it restored the misc. appeal of the AA for a fresh decision and directed AA to expedite the disposal of appeal and to complete the process within a period of one month from the date of receipt of a certified copy of this order on its record.

Case Review: - Appeal Allowed

High Court

Angre Port Private Ltd. Vs. Tag 15 (Imo. 9705550) & Anr. Commercial Admiralty Suit(L) NO. 4 of 2020, Date of Bombay High Court Judgment: 03rd January 2022

Facts of the Case

This Appeal was filed to seek a summary judgment against Tag Offshore Ltd. (Defendant) whose vessel had been occupying berth space in the port of Angre Port Private Ltd (Plaintiff), wherein the basic premise states that the Defendants had admitted the dues of the Plaintiff.

The brief facts of the case are that the vessel of the Defendant had entered and occupied berth space in the Plaintiff's Port. The Plaintiff charged the Defendant berthing charges as per its Tariff Booklet. However, Exim Bank, a secured creditor of Tag Offshore Ltd invoked the admiralty jurisdiction of the Court by filing Commercial Admiralty Suit against the Defendant's Vessel and obtained an order of arrest.

Accordingly, the said Vessel continued under arrest and started to incur berthing charges and port dues, in addition to other dues and charges, as the same had been occupying the berth at the Plaintiff's port. Thenceforth, insolvency proceedings were initiated against the Defendant by R.H. Petroleum Ltd. under section 9 of the IBC, 2016, which resulted in severe unrest amongst the crew on board the vessel since neither EXIM Bank nor the IRP took any measures to provide supplies, stores, bunker etc. to the said vessel or its crew resulting in the crew to abandon the said vessel.

Thereafter the NCLT ordered the CoC to secure the assets of Defendant and take possession of the vessel, if necessary, and proceed in terms of Sections 51 and 52 of the Merchant Shipping Act, 1958 and also directed the CoC to explore the liquidation option and move the Vessel to a safer place without creating problems for the Port Trust. Finally, the NCLT ordered the liquidation of the Defendant resulting in the present appeal as the invoices of the Plaintiff remained unpaid.

High Court's Observations

The Court, therefore, directed sale of the vessel wherein the Court also opened the bids received from the prospective buyers in presence of Liquidator and the other stakeholders of the said Vessel/ CoC of Defendant. After considering the point of view of the advocates for the Defendants and EXIM Bank, the Court confirmed the sale of the vessel in favour of J. T. Marine Services Pvt Ltd, for a consideration of Rs. 10.75 crores whereby Liquidator as well as EXIM Bank stated that they had no objection if the vessel was sold to the highest bidder.

The Court stated that under the provisions of the IBC, 2016, admittedly, Liquidator would have no jurisdiction to adjudicate any claim against the vessel. Apart from this, Liquidator accepted berth hire charges as well as penal berth hire charges. Once having accepted that the amounts are payable to the Plaintiff, Liquidator may not argue that the Plaintiff is not entitled to any penal berth hire charges as it would be a penalty which will be required to be proved.

Hence, a decree in favour of the Plaintiff was awarded. Out of the sale proceeds of the vessel a sum of approx. Rs. 5.51 crores will be paid to the Plaintiff. Further an interest of 18% per annum will be payable on the above sum from 18th December 2020 till payment and/or realization. The

claim towards Salvage operations shall not be granted and will have to be proved at the trial of the suit. The Plaintiff, along with their claim for Salvage operations, shall also be entitled to agitate their claim for interest and legal costs, at the trial of the suit.

Order

The High Court in view of the above disposed of the Interim Application in the aforesaid terms.

Case Review: - Appeal Disposed

National Company Law Appellate Tribunal (NCLAT)

S. Rajendran Vs. Mr. B. M Anand & Ors. Company Appeal (AT) (CH) (Insolvency) No. 37 Of 2022, Date of Judgment: 11th March 2022

Facts of the Case

This Appeal was filed by Appellant being aggrieved of the order dated 07.01.2022, passed by the NCLT Chennai (Adjudicating Authority 'AA') whereby, the AA disposed of the Application filed by the Respondents herein. The Appellant herein is the Resolution Professional of M/s Vasan Healthcare Pvt. Ltd. (Corporate Debtor 'CD'). He stated that the AA vide impugned order directed the Appellant to pay to the Respondents a sum of ~Rs. 1.13 crores from the CIRP cost within a period of 14 days from the date of order. Further, the AA directed the Appellant to pay monthly rent to the Respondents during the CIRP Period till such time the CD is in occupation of the premises. However, AA rejected the prayer of the Respondents seeking handing over of vacant possession of the property.

The Appellant submitted that the CD was admitted into CIRP on 21.04.2017 to which he was appointed as IRP and subsequently confirmed as the RP. He took necessary steps to take control of the CD and to ensure increase in the revenues generated by the CD to meet the CIRP Costs. Subsequently due to lockdown, the revenue generation was adversely impacted and only 50% of the payments to the Landlords towards rental dues could be paid for the month of May 2021. However, from June 2021 onwards due to the improvement in the pandemic situation and increase in the operations of the CD, he was able to meet the 100% of payment towards CIRP Costs. Further the CIRP of the CD was dependent on the revenues generated from its business.

Appellant submitted that the CD operates its business, out of leased premises wherein substantial amount towards interior development has been invested and it is important to retain the leased premises to continue the CD as a going concern based on which the Resolution Plans were received. In view of the above the Appellant prayed to allow the Appeal by setting aside the impugned order.

The Respondent submitted that the Appellant is duty bound to pay the CIRP Costs as per the provision of Section 5 (13) (c) read with regulation of 31 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and that the Appellant instead of implementing the impugned order and in order to overcome the obligation arising out of the above impugned order, is merely seeking to state that the other Landlords would also claim such legitimate dues based upon the order which would entail huge outlay on the part of the CD.

NCLAT's Observations

The Appellate Tribunal stated that the main issue in the present appeal for consideration is whether the impugned order passed by the AA is sustainable in law or not. Keeping in view that the Appellant is in obligation to pay the dues to the Respondents, the Appellate Tribunal was of the view that the issue for consideration is mixed question of fact and law. The fact remains that the premises in which the CD is carrying on its business belongs to the Respondents and the Appellant is duty bound to pay the dues to the Respondents. Therefore, it stated on facts, that the AA did not commit any error while passing the impugned order. Further, in so far as the law is concerned, the status quo is to be maintained with respect to the premises which the business of the CD is carrying on, when the CD went into CIRP. After admitting the Application, the AA would declare moratorium as per Section 14 of the IBC. Admittedly the CD was into CIRP and declared moratorium by the AA on admission of the Application against the CD. In pursuance of clause (d) of Sub- Section 1 of Section 14, which provides that during the moratorium period the lesser or an owner of the property cannot recover the possession of the property from the CD. In view of the law, the CD continuing its business in the premises leased to it. For the above reason the AA had rejected the prayer of the Respondents seeking handing over of vacant possession of the premises.

Order

The Appellate Tribunal in view of the above observations dismissed this appeal and upheld the order passed by AA and directed the Appellant to implement the order of the

AA within a period of two weeks from passing of this order and report compliance before the AA.

Case Review: - Appeal Dismissed.

Damodar Valley Corporation Vs. Kharkia Steels Pvt. Ltd & Ors. Company Appeal (AT) (Insolvency) No. 119 of 2022, Date of Judgment: 15th March 2022

Facts of the Case

This Appeal was filed by Appellant under section 61 of the IBC, 2016 which arised out of the order dated 25.11.2021 passed by the Adjudicating Authority ' AA' (NCLT, Kolkata Bench). On an IA filed by the Successful Resolution Applicant of Kharkia Steels Pvt. Ltd. 'KSPL' (Corporate Debtor 'CD') for a new connection on temporary basis the AA directed by its Order that KSPL shall deposit the requisite security deposit amount for the new connection to Appellant, whereafter Appellant shall process the application within ten days and provide the new connection for electricity supply to KSPL. The Appellant was aggrieved by this order, that while his appeal was pending for consideration before the NCLAT, wherein he assailed the approval of the resolution plan, the AA provided a final relief in the form of direction for providing new connection to the successful resolution applicant.

The facts of the case are that the Appellant entered into a Power Purchase Agreement with CD and due to large quantum of unpaid dues, a notice of disconnection of power supply was sent by the DVC to the CD. Thereafter in September 2019, by filing an application under section 7 of the IBC by Dena Bank, a Financial Creditor 'FC' CIRP was initiated. Upon completion of the CIRP, the Resolution Plan proposed by Amritvani Exim Private Limited 'AEPL' (Successful Resolution Applicant) was approved by the Committee of Creditors 'CoC' and subsequently approved by the AA vide order dated 21.9.2020.

Subsequently, AEPL applied for reconnection of power supply to the premises of the CD through the IA and aggrieved by the Order in the IA, the Appellant filed the present appeal. The Appellant contended that by allowing the IA the AA gave final and substantive relief to AEPL through an interim order when the appeal assailing the resolution plan approval was pending, which is not proper. Further the legality of the approval of the resolution plan should have been decided first before granting any relief in this matter to AEPL.

Further, the payment of past dues and reconnection of electricity supply after depositing security deposit are

covered under the West Bengal Electricity Regulatory Commission (Electricity Supply Code) Regulations made under the Electricity Act, and thus the AA exceeded its jurisdiction by approving a resolution plan which, inter alia, takes away the right of the Appellant available under the Electricity Act and WBERC Regulations.

NCLAT's Observations

The Appellate Tribunal stated that the main issue in the present appeal is whether the relief granted by the AA directing the DVC to provide new connection to AEPL after payment of the security deposit could have been given by the AA while the main appeal was pending before Appellate Tribunal and whether the jurisdiction under IBC is not proper in granting such a relief?

The NCLAT considered the legal validity of the resolution plan as approved by the AA which was assailed by Appellant and upheld the approval of resolution plan. NCLAT noted that the Successful Resolution Plan has to be implemented in a certain time frame as contained therein and as the pending appeal has been disposed upholding the legality of the approval of resolution plan. Therefore, the plan has to be implemented in letter and spirit. Further the plan directs DVC to ensure availability of continuous power to the plant at the same rate at which it is supplied power to the adjoining units. However, it needs slight modification since the conditions that are applicable for supplying power to the CD under a new agreement shall be at the tariff rate and conditions that would prevail at the time of signing of the agreement for a fresh connection by DVC with AEPL.

Order

The Appellate Tribunal in view of the above observations disposed the appeal and modified the clause of the plan as follows: (i) AEPL to apply for fresh connection, payment of security deposit and any other charges that may be admissible under WBERC Regulations will have to be paid by AEPL, and (ii) The supply of electricity to the CD should be in accordance with the WBERC Regulations made under the Electricity Act.

Further the direction given by the AA to DVC to provide temporary connection to the SRA is in accordance with a legally approved resolution plan and therefore suffers from no illegality.

Case Review: - Appeal Disposed.

Dr. Periasamy Palani Gounder Vs. Mr Radhakrishnan Dharmarajan. & Ors. Company Appeals (AT) (CH)(Insolvency) No.164, 176, 218 & 219 Of 2021, Date of Judgment: 17th February 2022

A Valuation Consisting of Mere Naked Values Without A Detailed Report Is Not Valid. It Is a Settled Proposition That The Valuation Exercise Is Conducted To Facilitate The Coc's Decision-Making Process.

Facts of the Case

These Appeals were filed against a common impugned order passed by the NCLT-Chennai Bench (Adjudicating Authority 'AA') whereby the AA approved the Resolution Plan for the revival of the Appu Hotels Limited (Corporate Debtor 'CD'). The Appellant is the Promoter and erstwhile Director of the CD. The CIRP was initiated by a Financial Creditor whereby Respondent No. 01, was appointed as the Resolution Professional 'RP'.

The Appellant also initiated the measures under Section 12A of the IBC for withdrawal of CIRP. However, the proposal of the Appellant was not placed before the CoC, leaving the proposal unconsidered. Further, the Appellant filed an application before the AA for fair Valuation and objected that the Valuation of the CD was done in violation of the statutory mandates, as a result of which, CoC was deceived into approving the Resolution Plan submitted by Respondent No. 2, i.e. M.K. Rajagopalan, thereby allowing him to acquire the assets of the CD for a price less than 25% of the actual market value.

The Appellant stated that there was a violation of section 88 of the Indian Trust Act, 1882 and it can be seen from the final list of prospective Resolution Applicants that Respondent no. 02 is the founder and Managing Trustee of Sri Balaji Vidyapeeth whose resolution plan was approved and who is ineligible on the ground that it is a charitable trust and it cannot run a profit making entity.

The Appellant stated that the estimate of the Fair Value and Liquidation Value of the CD was computed without physical verification of the CD's assets and the Resolution Applicant is disqualified under Section 164 (2) (b) of the Companies Act 2013 hence ineligible under Section 29 A (e) of the IBC to submit a Resolution Plan.

NCLAT's Observations

The main issue before the Appellate Tribunal was that whether the approved Resolution Plan contravenes

Section 30 (2) and Sec 61(3) of the IBC, 2016?. The Appellate Tribunal stated that a valuation consisting of mere naked values without a detailed report is not valid. It is a settled proposition that the valuation exercise is conducted to facilitate the CoC's decision-making process. Therefore, the existence of a valid and accurate valuation report is a sine qua non for the CoC to exercise its commercial wisdom. Further the observations of AA, that a statutory provision regulating a matter of practice or procedure will generally be read as a directory and not mandatory is erroneous. Compliance with statutory requirements in regulating a matter of practice and procedure are mandatory. The AA is a creature of statute, and by interpretation, it cannot dilute the statutory compliances.

The Appellate Tribunal further stated that as the Prospective Resolution Applicant, 'Sri Balaji Vidyapeeth' was ineligible as the 2nd Respondent, cannot permitted to act as its alter ego in implementing the Resolution Plan and attain any financial advantage or gain, which is barred by Section 88 of the Indian Trusts Act. NCLAT also stated that the revised Resolution Plan was not approved by CoC. It was further modified, and the final Revised Resolution Plan was never laid before the CoC for approval. Thus, the approval of the Resolution Plan by the AA cannot be treated as valid under Sec. 31(1) of the IBC, 2016.

Order

The Appellate Tribunal in view of the above observations allowed the appeals and stated that the approved Resolution Plan is in contravention of Section 30 (2) of the IBC, 2016. Further it set aside the resolution plan approved by AA and directed RP to proceed with the CIRP from the publication stage of Form 'G' for inviting Expression of Interest afresh as per CIRP Regulations and also directed to put up the Appellants Settlement proposal for consideration before the CoC.

NCLAT directed the RP to call the CoC within 15 days from the date of order and settlement proposal should be put to the vote and if approved with 90% vote share of the CoC, then proceeding for withdrawal of the CIRP under Section 12 A read with Regulation 30A of CIRP Regulation.

Case Review: - Appeals Allowed.

Sumit Bansal, Insolvency Professional. Vs. Committee of Creditors of JP Engineers Pvt. Ltd. & Ors. Comp. App. (At) (Ins.) No. 160 Of 2022, Date of Judgment: 18th February 2022

IBBI is fully clothed with jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed to regulate the subject

Facts of the Case

This Appeal was filed against the order dated 07.01.2022 passed by the NCLT-New Delhi (Adjudicating Authority 'AA') on an I.A. filed by the Appellant. The facts of the case are that Appellant was appointed as Interim Resolution Professional 'IRP' by the AA on 26.02.2020 of the Corporate Debtor and in the first CoC meeting, IRP had claimed that he should be paid Rs. 2 Lakhs per month. The matter of fee, however, could not be decided by the CoC and ultimately CoC ratified payment of Rs. 50,000/- per month only.

The Appellant claimed that he worked till 27.01.2021 after which he was replaced by the Resolution Professional (Respondent No.2). The Appellant thereafter filed above mentioned I.A. before the AA claiming the payment of fees at Rs. 2 Lakh per month whereby the AA decided to refer the matter to the Insolvency and Bankruptcy Board of India 'IBBI' to examine the claim of IRP and his agreement with the CoC. It further directed to submit their specific recommendations and thereafter the matter be directed to be listed again before the AA.

The Appellant challenged the order stating that the IBBI had no jurisdiction to decide the question of payment of his fees. He further submitted that the AA should not have asked for recommendation of the IBBI regarding his fee and should have itself decided the matter regarding fee.

The Respondents submitted that the amount as approved by the CoC has already been paid to the Appellant i.e. Rs. 50,000 per month and on the sufficiency of fee, it is the CoC which has jurisdiction to take a decision and Appellant should not have filed the I.A. before the AA.

NCLAT's Observations

The Appellate Tribunal referred to the judgment of Hon'ble Supreme Court in the matter of "Alok Kaushik Vs.

Mrs. Bhuvaneshwari Ramanathan and Ors. - Civil Appeal No. 4065 of 2020” and stated that there is no quarrel to the proposition that it is the AA which has power to take a final decision regarding payment of fee to which IRP or RP may be entitled.

Further, the issue which has been raised in this Appeal, that IBBI has no jurisdiction nor AA should have referred the matter for a recommendation. The Appellate Tribunal stated that from pursuing the order, it is clear that the ultimate decision regarding this issue raised in I.A was to be taken by the AA and the AA had not directed the IBBI to decide the issue and only recommendations were called for from IBBI and it did not agree with the submissions of the Appellant that IBBI has no jurisdiction with regard to question of fee which is entitled to be paid to the IRP/ RP, stating that the IBBI is clothed with Regulations making power under Section 240 of the IBC.

It further stated that as per the Regulation 7(2)(h) of IBBI (Insolvency Professionals) Regulations, 2016, an IRP has to abide by the Code of Conduct specified in the First Schedule to these Regulations which requires an IP to provide services for remuneration which is charged in a transparent manner and is a reasonable reflection of the work.

Order

The Appellate Tribunal in view of the above observations stated that IBBI has jurisdiction to regulate payment of remuneration of RP and IRP both by framing regulation or by issuing executive instructions till regulation are not framed to regulate the subject. Further, in the present case, it dismissed the appeal by stating that the AA may dispose of I.A immediately after receiving recommendations from the IBBI.

Case Review: - *Appeal Dismissed*

Standard Surfa Chem India Pvt. Ltd Vs. Kishore Gopal Somani. Company Appeal (AT) (Insolvency) No. 684 of 2021, Date of NCLAT Judgment: 14th February 2022

Satisfaction of creditor claims while ensuring asset maximization is the underlying principle of the IBC, which cannot be overridden on account of meagre delays induced by a force majeure event.

Facts of the Case

This Appeal was preferred by Standards Surfa Chem India Private Limited (Appellant), who is successful auction

purchaser of the Pondicherry unit of the property of Advanced Surfactants India Ltd (Corporate Debtor 'CD') in liquidation. The Appellant in this appeal was concerned with the auction sale of only the 'Pondicherry unit' of the CD in an E-Auction. In the E-Auction conducted the Appellant had emerged as the successful bidder in the proceeding with a bid of ₹ 3.3 crores and the Liquidator had issued a letter of intent dated 05th March 2021 stipulating 90 days timeline for making the full payment to complete the auction proceeding expiring on 03rd June 2021. Before the expiry of the said 90 days the Appellant preferred an IA before the NCLT (Adjudicating Authority 'AA'), seeking time extension in complying with auction proceedings, under Rule 11 of the NCLT Rules, 2016. However, the AA dismissed the IA vide impugned order, which stated that the application had become infructuous.

The Appellant stated that the grounds of this appeal are that the Liquidator refused to grant any extension of time for completion of the auction process, despite being empowered to do so and despite recognizing the difficulties faced by the Appellant on account of the 2nd wave of Covid 19 outbreak, in securing the loan from its bankers within the stipulated timelines. Further, the Liquidator also failed to take note of Regulation 47 A of the Liquidation Process Regulation 2016 according to which the Appellant was entitled to complete exclusion of the period from May 2021 on account of Lockdown.

The Appellate Tribunal raised two points for decision in this Appeal, Firstly, Whether the NCLT and Liquidator were justified in refusing extension to the Appellant without considering Regulation 47 A of the Liquidation Process Regulation 2016? and Secondly, Whether the Appellant is entitled to the exclusion/extension of time for the period of Lockdown due to Covid 19 as stipulated under Regulation 47 A of the IBBI (Liquidation Process) Regulation, 2016?

NCLAT's Observations

The Appellate Tribunal in view of the observations of Hon'ble Supreme court in the matter of Pioneer Urban Land and Infrastructure Ltd. v. Union of India, (2019) stated that the applicant had sought an extension of 3 months on the ground of the 2nd wave of the Covid 19 outbreak. Regulation 47 A provided that the period of Lockdown imposed by the central government in the wake of the Covid 19 outbreak shall not be counted for computation of timeline for any task that could not be

completed due to Lockdown in relation to any liquidation process. Hence the Appellate was doubtful about the relevance of Regulation 47 A in the instant case because Lockdown was declared by Tamil Nadu State.

However, it mentioned that Regulation 47 deals with the Model Timeline for Liquidation Process and is only directory in nature. It cannot be considered a deadline. It is provided under Regulation as a guiding factor to complete the liquidation process in a timebound manner. In exceptional circumstances it can be extended. Further, Hon'ble Supreme Court, while dealing with the timeline provided under Section 7 of IBC 2016, has held that the timeline provided under Section 7 of the IBC is directory in nature and in special exceptional circumstances, it can be extended.

Further, it stated that E-Auction Process Information Document also provided discretion to the Liquidator to extend the timeline. The impact of the 2nd wave of Covid 19 was everywhere in India, of which judicial notice can be taken. In the special circumstances, the Liquidator ought to have sought permission of the AA to extend the timeline. However, the AA did not consider that the satisfaction of creditor claims while ensuring asset maximization is the underlying principle of the IBC, which cannot be overridden on account of meagre delays induced by a force majeure event.

Order

The Appellate in view of the above observations allowed the appeal and dismissed the impugned order passed by the AA.

Case Review: - *Appeal Allowed.*

Edelweiss Asset Reconstruction Company Limited Vs. Peter Beck and Peter Vermoögensverwaltung Limited. Company Appeal No 161 of 2021, Date of Judgment: 5th January 2022

The successful resolution applicant has claimed to be unsecured financial creditor of the CD, and therefore has interest in maintaining the CD as a going concern.

Facts of the Case

The present appeal arises from the impugned order of the NCLT in the matter of *Edelweiss Asset Reconstruction Company Ltd. (Edelweiss) Vs. Peter Beck and Peter Vermoögensverwaltung Ltd. and Anr.* (Peter Group) and Company Appeal AT 169 of 2021 filed by the State Bank

of India, authorized by other financial creditors to file the appeal on their behalf, against the Peter Group. The appeal was filed against the order of the AA, providing an extra period of two weeks to Peter Group, the successful Resolution Applicant (Respondent No. 1) to deposit Rs. 10 crores.

In this matter, AA vide an order 28 February 2018 approved the Resolution Plan of Peter Group (Respondent No. 1) to takeover Sharon Biomedicine Ltd. (Corporate Debtor). This was also approved by the Supreme Court. Alleging failure of the Peter Group to implement the Resolution Plan as per its provisions, the Appellant approached AA demanding that CIRP should be re-initiated along with reinstating the previous Resolution Professional and 90 days of extra period should be given to invite Expressions of Interest (EOI) for resolution plans. However, the Peter Group claimed to issue four bank guarantees. It also submitted that Appellants are arm twisting the Successful Resolution Applicant for appropriation of cash Corporate Debtor and sharing of profits generated by the Corporate Debtor, which is completely outside the terms and conditions of the Approved Resolution Plan and contrary to law.

The Counsel for the State Bank of India stated that when asked to renew the Bank Guarantee, Peter Group sent an e-mail on November 18, 2019, to the monitoring agency claiming that Rs. 10 crores, which was deposited in Abhyudaya Cooperative Bank Limited, was in respect of share application money and sought its return as per applicable laws in respect of the share application money.

NCLAT's Observations

The NCLAT considered two issues arising in the appeal, firstly, whether the default of Respondent No. 1 in implementing the successful resolution plan is justified due to pending appeals, and secondly, whether any more time could be granted as prayed by the Appellants.

NCLAT relied on the submission of the Peter Group that the CoC agreed to infusion of funds amounting to Rs. 10 crores in the Corporate Debtor in the lieu of bank guarantee and based on this agreement it infused Rs. 10 crores in the Corporate Debtor before the expiry of the bank guarantee and honor its commitment and this amount remains with the Corporate Debtor till date. The Successful Resolution Applicant has claimed to be unsecured Financial Creditor of the Corporate Debtor, and therefore has interest in maintaining the Corporate Debtor as a going concern.

NCLAT stated that the main hindrance in implementation of the approved resolution plan was submission of a proper bank guarantee of Rs. 10 crores and other payments and actions that had to be taken from zero date in accordance with the approved resolution plan. Thus, the NCLAT was of the opinion that it would serve the interests of justice if the Corporate Debtor was not sent into liquidation, but its insolvency was resolved so that it continued to be a going concern as that would be in the interest of the Corporate Debtor's stakeholders and creditors.

Order

The Appellate Authority partially modified the order of the AA and directed that an enforceable bank guarantee of Rs. 10 crores should be submitted by the Successful Resolution Applicant within 30 days of this order. All the payments which are overdue should be done by the Successful Resolution Applicant within two months of this order. If the bank guarantee of Rs. 10 crores have already been deposited, the amount will be either adjusted against the pending amounts or refunded within a period of 30 days.

Case Review: - Appeal Disposed

Krish Realtech Private Limited Company Appeal (At Insolvency) Nos. 1008, 1009 & 1010 Of 2021, Date of Judgment: 21st December 2021

Facts of the Case

This Appeal was filed under Section 61 of the IBC 2016, for challenging three orders passed by the National Company Law Tribunal, New Delhi (Adjudicating Authority 'AA'). The Appeal raised a limited issue as to whether the AA while considering Application of pre-packaged insolvency 'pre-pack' under Section 54C of the IBC can, before admission of the Application, hear Objectors/Interveners.

The facts of the case are that the Appellant (Corporate Debtor 'CD') who claimed to be under a debt of Rs.673.00 crore (approx.) instituted an application for pre-pack. Subsequently, the CD issued an e-mail addressed to its stakeholders that it intended to take recourse to pre-pack and in the e-mail indicated that it shall be appointing Resolution Professional 'RP'. Further, the CD claimed that the RP was appointed and approval of FCs to pre-pack was also obtained. Then, the CD filed an application before the AA to initiate pre-pack and when the matter first came up

for hearing before the AA, several objectors appeared who opposed the Application. The AA granted one-week time to the objectors to file their objections.

After the Objectors filled their applications and when the matter was again taken up by the AA, it passed the order that the Applicant is directed to file reply to each of the IAs along with a synopsis of the pointwise reply within 2 weeks. Rejoinder, if any, be filed within 1 week thereafter. The Applicant was also directed to file replies to the objections already uploaded on the Data Management System. Aggrieved by the above order, the Applicant filed this Appeal.

NCLAT's Observations

The Appellate Tribunal noticed that cardinal principle of procedure to be followed by the AA is the adherence of Rules of natural justice which is statutorily provided for under Section 424 of the Companies Act, 2013. The time given for objection to the objectors in this case, is in accordance with principle of natural justice which is to be followed by the AA. Further, there is no violation of any Regulations or Rules or provisions of the IBC in giving opportunity to objectors to file their objection nor any such violation has been pointed out before us. It is further relevant to notice that all the objectors who have filed different IAs for objection are the persons who are included in list of unrelated FCs as disclosed by the Appellant itself in his Application filed for pre-pack except few objectors who claimed that although they are allottees, but their names have not been shown in the list.

The Appellate Tribunal was of the view that no error has been committed by the AA in giving opportunity to the objectors to file their objections. The Appellant was also given opportunity to file his rejoinder and reply to the objections, hence he cannot claim that any prejudice is cause to him only because objectors have been given time to file objection. The objectors who have appeared before the AA have huge stakes since they are all homebuyers/allottees and have paid substantial amount to the Appellant running in lakhs and crores. No exception can be taken to their anxiety to ensure that prepack is resorted in accordance with the procedure prescribed in law. They have come up before the Court only to protect their claims and point out the Court about the non-compliance of the statutory provisions and it is for the AA to consider the objections and take decision on merit. Further, the Appellate reiterated its observations that any observations

made by it in this judgment are only for the purpose of considering as to whether AA has committed any error in granting time to the intervenors/ objectors to file objection. The Appellate made it clear that it has not expressed any opinion on merits of the claim of any of the objectors and it is for the AA to consider and ultimately take a decision as to whether Application under Section 54C deserves to be admitted or rejected.

Order

The Appellate Tribunal in view of the above observations did not find any merit in the appeal and did not find any error in the orders passed by the AA. Further it stated that no error has been committed by the AA in granting time to objectors to file their objections within a week.

Case Review: - Appeal Dismissed

National Company Law Tribunal (NCLT)

Outlook Tracom Private Limited Vs. Toshniwal Enterprises Controls Limited, IA (IB) No. 142/KB/2022 in CP (IB) No. 1175/KB/2019, Date of Judgment: 04th April 2022

Facts of the Case

This application was filed by the Resolution Professional with the approval of the Committee of Creditors 'CoC' seeking liquidation of the Toshniwal Enterprises Controls Limited (Corporate Debtor 'CD'), on the ground that the CoC rejected the submitted Resolution Plan and decided to liquidate the CD. The reliefs sought by Applicant were to pass an order requiring the CD to be liquidated in the manner as laid down in Chapter III as provided under section 33 of the IBC, 2016 or to appoint Mr. Kamal Nayan Jain to act as Liquidator as provided under section 34(1).

The Adjudicating Authority 'AA' had vide its order dated 22.11.2019 on a Petition filed by the Outlook Tracom Private Limited (Financial Creditor 'FC') under section 7 of the IBC, 2016 directed initiation of the Corporate Insolvency Resolution Process 'CIRP' against the CD and had appointed Mr. Kamal Nayan Jain as the Interim Resolution Professional 'IRP' and as the Resolution Professional 'RP'.

In the 17th COC meeting held on 18.01.2022, the COC had voted against the submitted resolution plan with

79.04% voting share and approved the decision to liquidate the CD under section 33 of the IBC. The CoC further decided to sell the CD as per regulation 39C of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and appointed RP as the liquidator.

NCLT's Observations

The NCLT considered the submission made by the Applicant and perused the record and stated that Section 33(1) of the Code enjoins the AA to pass an order for liquidation of the CD where before the expiry of the insolvency resolution process period or the maximum period permitted for completion of the CIRP the AA does not receive a resolution plan under sub-section (6) of section 30.

Order

The NCLT in view of the above observations allowed the appeal and ordered the liquidation of the CD. Further it appointed RP as the liquidator of the CD and ordered liquidator to initiate the liquidation process.

Case Review: - Appeal Disposed

ICICI Bank Limited Vs. Prashant Bothra, CP (IB) No. 181/KB/2021, Date of Judgment: 24th March 2022

Facts of the Case

The Petition was filed under section 95(1) of the IBC, 2016 read with Rule 7(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor) Rules, 2019 'IRP Rules' and regulation 4(2) of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019 'IRP Regulations' by ICICI Bank Limited, seeking to initiate Insolvency Resolution Process against Prashant Bothra, the Personal Guarantor of Kohinoor Paper and Newsprint Private Limited 'KPNPL'.

The facts of the case are that Petitioner had given various loan facilities to KPNPL through facility agreement dated 24th June 2011 which was restructured from time to time. The Deed of Guarantees were executed on 30th March 2015. KPNPL and the Personal Guarantor failed to make payment as per the terms of the Facility Agreement of Rs.34 Crores approx. The default of KPNPL was adjudicated vide an order passed by DRT-III, Kolkata filed by ICICI Bank Limited.

Further KPNPL was admitted under CIRP by Adjudicating Authority 'AA' vide order dated 26 September 2019 on a petition filed by Sendoz Commercials Private Limited. The Resolution Professional 'RP' appointed in the CIRP submitted his report and requested the Personal Guarantor to provide documents to prove that the Personal Guarantor had made payment to ICICI Bank Limited but the IRP did not receive any reply from the Personal Guarantor. Hence, the RP recommended the acceptance of the Petition filed by ICICI Bank Limited under section 95(1) of the Code as the debts owned by KPNPL was guaranteed by Mr. Prashant Bothra and he failed to pay the debts within fourteen days of the service of the notice of demand sent by ICICI Bank Limited.

NCLT's Observations

The NCLT stated that the petition made by the Petitioner was complete in all respect as required by law. Further, NCLT accepted the Report of the RP that the Personal Guarantor was in default of a debt due and payable.

Order

The NCLT in view of the above observations admitted the appeal under section 95 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 for initiating resolution process against Prashant Bothra, the Personal Guarantor and announced moratorium under Section 101 of the Code.

Case Review: - Appeal Admitted

The image is a promotional poster for a 'Discussion Forum' organized by the Indian Institute of Insolvency Professionals of ICAI. The poster features a light blue background with purple and white abstract shapes. At the top left is the ICAI logo and the text 'Indian Institute of Insolvency Professionals of ICAI (Company formed by ICAI as per Section 8 of the Companies Act 2013)'. The main title 'Discussion Forum' is prominently displayed in white text on dark green rectangular backgrounds. Below this, a purple cloud-like shape contains a list of topics: 'For queries related to: 1. CIRP, 2. Liquidation, 3. Voluntary Liquidation, 4. Personal Guarantor to Corporate Debtor, 5. Pre-Pack'. Two circular callouts on the sides encourage participation: 'Post & Respond to professional Queries' and 'Join using registered mail id with IIPPI'. At the bottom, a dark green bar provides the URL 'To join, Click: <https://forum.iipicai.in/member>'.