

IBC News

CD is not entitled for restoration of high-tension electricity connection without making payment of security deposit: NCLAT

After approval of the Resolution Plan by NCLT, the Chairman of the Monitoring Committee of *Kalptaru Steel Rolling Mills Ltd.* filed a petition seeking directions to electricity supplier - *Southern Power Distribution Company of A.P. Ltd.* to immediately restore electricity connection of the Corporate Debtor (CD). Besides, it was also urged to order the power supplier that the restoration be made without insisting for payment of any past dues or any fresh security deposit from the Resolution Applicant, as the supply of electricity is an essential and integral part of the resolution of the CD. The NCLT rejected the demand of applicant for restoration of electricity connection without making payment for security deposit, which was challenged for the NCLAT.

Upholding the decision of NCLT, the Appellate Tribunal said that security deposit is a pre-condition for sanction of High-Tension Power Connection to industries. The reliance was placed on a previous judgement of NCLAT in the matter of *Damodar Valley Corporation Vs. Cosmic Ferro Alloys Limited & Anr.*, (2020) in which the Court has ruled that any dues relating to electricity supplied after the moratorium has ceased will have to be paid by the CD. “The Applicant being a heavy industry huge power supply is required. The security deposit is only to adjust the shortfalls which come in payment of bills,” said the Court.

Source: *Live Law.In, December 16, 2022*

<https://www.livelaw.in/news-updates/high-tension-electricity-connection-of-cd-cannot-be-restored-unless-security-deposit-is-paid-nclat-delhi-216885>

Adjudicating Authority (AA) has no power to modify Resolution Plan: NCLAT

The New Delhi Bench of NCLAT has observed that if a Resolution Plan is in compliance with Section 30 and Section 31(1) of IBC, then such Resolution Plan has to be approved by the Adjudicating Authority (AA).

In Section 31 of IBC the word “shall” has been incorporated with proviso that the AA must be satisfied that the Resolution Plan has provisions for its effective



implementation. Furthermore, Section 31(2) of IBC empowers the AA to reject the Resolution Plan, if he is satisfied that Resolution Plan is not in conformity with Section 31(1) of IBC. However, there is no provision in the IBC which empowers AA for making alteration or modifications in the Resolution Plan.

This judgement came in the matter of *Mathuraprasad C Pandey & Ors. v Partiv Parikh & Anr.* wherein the AA had modified the Resolution Plan to the extent that “if any member of Resolution applicants has entered into or stand as guarantor in the individual capacity, in that event, he shall not be covered with any immunity given under the Resolution Plan”.

Source: *Live Law.in, December 19, 2022*

<https://www.livelaw.in/news-updates/aa-shall-either-approve-or-reject-the-resolution-plan-no-power-to-modify-it-nclat-delhi-217065>

Canada based Great Panther undergoes bankruptcy

Great Panther Mining Ltd., a precious metals producer in Canada, has made a voluntary assignment into bankruptcy under the Bankruptcy and Insolvency Act (Canada). This development came following an order of the Supreme Court of British Columbia granting terminating of its proceedings under Companies' Creditors Arrangement Act (Canada). As per the media reports the bankruptcy of Great Panther does not affect Great Panther's subsidiaries, and the Trustee will now exercise the rights of Great Panther as shareholder. Alan Hair, Joseph Gallucci, Trudy Curran, and John Jennings have already resigned from the Company's board of directors.

Source: *CISION PR Newswire, December 16, 2022*

<https://www.prnewswire.com/news-releases/great-panther-makes-voluntary-assignment-into-bankruptcy-under-the-bankruptcy-and-insolvency-act-canada-301705554.html>

Government has approved 286 deals under SWAMIH, to benefits over 1.7 lakh homebuyers

Central Government has informed the Lok Sabha that over 1.72 lakh homebuyers stuck in stalled housing projects will benefit from the 286 deals amounting ₹28,393 crore approved under the SWAMIH scheme as of November 30, 2022.

The Special Window for Completion of Affordable and Mid-Income Housing (SWAMIH investment fund) has been created for funding of stalled projects that are net-worth positive and registered under RERA. This includes those projects that have been declared as Non-Performing Assets (NPAs) or are pending proceedings before the NCLT under the IBC, 2016. "‘Land’ and ‘Colonization’ are State subjects. The data of real estate projects are not maintained centrally by Ministry of Housing and Urban Affairs (MOHUA). In order to protect the interest of homebuyers and to ensure the transparency and accountability in the Real Estate Sector, the Ministry has enacted The Real Estate (Regulation and Development) Act, 2016 (RERA)," said the Shri Kaushal Kishore, Minister of State in the Ministry of MOHUA. Kishore was replying to a query on the steps taken by the Government to provide relief to people who have booked their flats but are stuck in stalled projects.

Source: *Financial Express, December 10, 2022*

<https://www.financialexpress.com/money/swamih-deals-approved-1-72-lakh-homebuyers-stuck-in-stalled-housing-projects-to-benefit-says-modi-govt/2908334/>

NCLAT sets aside Liquidation of Delhi based hospital on alleged Connivance of RP with Creditors

The Liquidation order of Febris Multispeciality Hospital was challenged by ex-director of the Corporate Debtor. The Appellate Tribunal observed that meetings of Committee of Creditors (CoC) were held "in the premises of the Financial Creditor and also joint filing of the reply by RP and Financial Creditor...Reflects that something was going on in between the parties". Furthermore, the RP had not taken any reasonable step to invite prospective resolution applicants for the hospital and run it as a "going concern which is mandated as per Section 25(2)(h)" of the Insolvency and Bankruptcy Code and as "such there is no

reason to allow the impugned order to further continue". The court put on record its observations on several infirmities and illegalities it has noticed during hearing of the case and ordered the Insolvency and Bankruptcy Board of India (IBBI) for a thorough investigation into the matter.

Source: *The Economic Times, December 12, 2022*

<https://economictimes.indiatimes.com/news/company/corporate-trends/nclat-sets-aside-liquidation-of-febris-multispeciality-hospital-orders-probe-into-rps-conduct/articleshow/96174331.cms>

NCLT approved Resolution Plan of Café Coffee Day's subsidiary Sical Logistics Ltd.

NCLT Chennai has approved Resolution Plan of Pristine Malwa to acquire Sical Logistics Ltd. under IBC, 2016. The ₹521 crore Resolution Plan includes payment to lenders, employees, and cash in the company. The offer which equates to 30% recovery for verified creditors was approved with 77.5% votes by the CoC. According to the Plan the Successful Resolution Applicant (SRA) will provide ₹470 crore staggered payment to secured lenders, which includes ₹94 crore as upfront payment and remaining to be paid in two years. They have allocated ₹6.75 crore for employees.

Source: *The Economic Times, December 13, 2022*

<https://economictimes.indiatimes.com/industry/banking/finance/pristine-malwa-gets-court-nod-for-resolution-plan-of-ccd-arm/articleshow/96180841.cms>

NCLAT Approved CoC's Decision to Provide 100% Payment to Sugarcane Farmers

Operational Creditors (OCs) had challenged the approval of Resolution Plan of the Corporate Debtor (New Phaltan Sugar Works Ltd.) by NCLT on the ground that the Plan was discriminatory as sugarcane farmers (OCs) were given 100% of the dues whereas the Appellant(s) received only 1% of the dues which violates Section 30(2) of the IBC. It was contended that IBC does now allow discrimination among OCs. NCLAT observed that the Resolution Plan was approved by 100% Voting Share of the CoC under which the OCs were paid their dues as per Section 30 (2) (b) of the Code which read together with Regulation 38 of the CIRP Regulations, the 'OCs' are entitled to receive only such money that are payable to them as per Section 53 of the Code. The court recognized

the 'final discretion' of the 'Collective Commercial Wisdom' of CoC in relation to the amount to be paid and the quantum of money to be paid to a certain category or the incidental category of Creditors, balancing the interests of the 'Stakeholders' and the 'Operational Creditors', as the case may be. The appeal was dismissed.

Source: *Live Law.in, December 04, 2022.*

<https://www.livelaw.in/news-updates/nclat-approves-sugar-farmers-as-separate-creditors-group-in-the-sugar-industry-resolution-plan-215762>

Major Crypto Companies went into Bankruptcy in 2022

The year 2022, has been a rough year for the crypto industry. The price of bitcoin has dropped 65% since the start of the year, the cryptocurrency Luna suffered a total collapse in value, and crypto exchange FTX went from buying Super Bowl ads to crash landing into bankruptcy. John Ray, the new CEO brought in to oversee FTX's bankruptcy, said he had never seen “such a complete failure of corporate controls”. He was tasked with cleaning up Enron's debts in the wake of its early-2000s accounting fraud scandal.

Source: *Reuters.com, December 02, 2022.*

<https://www.reuters.com/technology/crypto-companies-crash-into-bankruptcy-2022-12-01/>

Moratorium under IBC does not take away ED's power to order Attachment of Property under PMLA

Delhi High Court while adjudicating “Rajiv Chakraborty, Resolution Professional of EIEL Vs. Directorate of Enforcement” case stated that the provisions of the money laundering Act are not subservient to the moratorium provision comprised in Section 14 of IBC. The Court was of the view that acceptance of contention that Section 14 would take away ED's power to order attachment of property would not only run contrary to the legislative policy but also undermine the efforts of the legislature to combat the offense of money laundering.

The court further said PMLA proceedings are not akin or similar to steps that may be taken by a creditor pursuing an ordinary monetary claim. The Court was of the view that the act of attachment does not result in the effacement of rights in property, it would clearly stand and survive

outside the scope of a moratorium or an action relating to an action in respect of a debt due or payable. The Resolution Professional was open to approach the competent authorities under the PMLA for such reliefs in respect of tainted properties as may be legally permissible. It was also held that the rights of ED over the properties would stand restricted to the extent of the observations made in the ruling as well as in the judgement made in the matter of *Deputy Director of Enforcement, Delhi Vs. Axis Bank & Ors.*

Source: *Live Law.in, November 11, 2022.*

<https://www.livelaw.in/news-updates/ed-power-attach-under-pmla-not-fall-ambit-ibc-delhi-high-court-213901>

CoC of HDIL Group approves the resolution plans for six realty projects

The resolution plans submitted by the RP on November 11, 2022 has been approved by the CoC of HDIL Group. The CoC voted for Adani Properties Pvt Ltd for Project BKC, while a consortium of Khyati Realtors and Dosti Realty for Majestic Towers in Nahur, Whispering Towers in Mulund and Premier Residences in Kurla. The committee also approved the resolution plan by Adani Properties for HDIL's Shahad Maharaal Lands, while voted for Dev Land and Housing Pvt Ltd's plan for HDIL Towers. During the resolution process, it was decided to invite resolution plans for 10 verticals. Application is being filed with Hon'ble NCLT for the initiation of liquidation of remaining four verticals for which no compliant resolution plan is received.

Source: *Hindustan Times, November 16, 2022.*

<https://www.hindustantimes.com/cities/mumbai-news/adani-group-gets-project-bkc-3-others-get-4-projects-in-hdil-insolvency-resolution-101668540327768.html>

SEBI proposes to allow Minority Shareholders to Participate in CIRP on the Same Pricing Terms as Available to the Resolution Applicant

Capital market regulator, SEBI, came out with a proposal to protect the interest of public equity shareholders in cases of listed companies undergoing Corporate Insolvency Resolution Process (CIRP).

The proposed framework would provide an opportunity to minority shareholders to participate in the CIRP on the

same pricing terms as available to the Resolution Applicant (RA). The existing public equity shareholders of the Corporate Debtor should be provided an opportunity to acquire equity of the fully diluted capital structure of new entity to the extent of up to the minimum public shareholding percentage. The pricing terms should be the same as agreed upon by the RA. The new entity should endeavour to achieve at least 5% public shareholding through such mode of offer made to the non-promoter public shareholders. The mechanism should be an integral part of the resolution plan submitted by the RA for all listed entities undergoing CIRP. To ensure adequate float and liquidity in the new entity post its restructuring through the resolution plan, it should be specified that the entity should be permitted to continue as a listed entity only if 5% of the fully diluted capital structure of new entity is with the public shareholders. The SEBI has sought comments on the proposals from the public till November 24. Listing out the merits of the proposal, SEBI said the company will be able to retain its status as listed company with minimum public float post restructuring.

Source: *BQPrime.com, November 10, 2022.*

<https://www.bqprime.com/business/sebi-proposes-framework-to-protect-public-shareholders-interest-in-companies-undergoing-insolvency-resolution>

Govt appointed 15 Members at NCLT

The government has appointed 9 judicial and 6 technical members at NCLT to deal with the shortage of members and to expedite adjudication matters. The members are appointed for a period of five years from the date of taking charge or till they attain the age of 65 years, whichever is earlier. Among the new members two are retired judges of High Courts. Besides, judges of district courts, senior lawyers and bureaucrats are also in the list. NCLT has a total of 28 benches, with a sanctioned strength of 63 members. This includes 31 each from the judicial and administrative sides along with the President, NCLT.

Source: *The Economic Times, November 08, 2022.*

<https://economictimes.indiatimes.com/news/economy/policy/govt-appoints-15-judicial-technical-members-at-nclt/articleshow/95384933.cms>

Supreme Court approved Resolution Plan of Arcelor Mittal for Odisha Slurry Pipeline Infrastructure (OSPL)

The Resolution Plan was challenged by SREI Infra which questioned whether the revised Resolution Plan deserved to be sanctioned on account of its failure to maximize the value of the assets of the corporate debtor. It also alleged that the NCLAT had “adopted a blinkered approach of not looking at the issues raised in their true perspective, simply relying on the fact that the RP of AMI was approved by 100% vote of the CoC of OSPIL and the commercial wisdom of the CoC is beyond the purview of judicial review”. However, the Supreme Court relied on the arguments of Corporate Debtor that the process was followed as per the provisions of the IBC, 2016 and related Regulations and dismissed the appeal of SREI Infra.

Source: *The Financial Express, November 11, 2022.*

<https://www.financialexpress.com/industry/odisha-slurry-supreme-court-approves-arcelor-plan/2805341/>

Interim Moratorium under Section 96 of IBC is limited to particular Guarantor and will not protect the other personal Co-Guarantors of same debt: Delhi High Court

The Delhi High Court while dealing with two summary suits filed by creditors of Bhushan Steel Limited against the ex-promoters for recovery of money has held that the interim moratorium under section 96 of the IBC 2016 is specific to all debts of a particular debtor and will not be applicable to other personal co-guarantors.

The defendant contended that insolvency proceedings have also been filed against him before NCLT, Delhi after the judgement was reserved therefore, by virtue of interim moratorium, suit cannot proceed against any of the Defendant. It was further contended that interim moratorium would only apply against all debts of a particular co debtor and not any other person or co-guarantor. Plaintiffs opposed the same on the ground that by virtue of Section 78 & 79 of Code, the adjudicating authority for personal guarantors is DRT and therefore, an application under Section 95 of IBC cannot be filed before NCLT. The Bench referring to the judgment of NCLAT in *State Bank of India Vs. Mahendra Kumar Jajodia* held that

in relation to insolvency resolution for corporate persons, including corporate debtors and personal guarantors, the Adjudicating Authority shall be the NCLT. The Court also held that interim moratorium against one of the Co-guarantors will not protect the other co-guarantor even though the liability of both the co-guarantors arises from the same debt.

Source: *Live Law.in, November 07, 2022.*

<https://www.livelaw.in/news-updates/delhi-high-court-section-96-of-insolvency-bankruptcy-code-personal-guarantor-interim-moratorium-213421>

When Corporate Debtor does not create a Gratuity Fund, No Gratuity is payable: NCLT Chandigarh

The NCLT while adjudicating an application filed in SIDBI v International Mega Food Park Ltd., has held that if the CD had not created a Gratuity Fund, then the RP cannot be directed to pay Gratuity to the employee(s). Further, the salary and leave encashment of employees accrued during CIRP period fall within the definition of insolvency resolution process cost under Section 5(13)(c) of IBC. Reliance was placed on the Supreme Court judgment in Sunil Kumar Jain and others v Sundaresh Bhatt and others. The Bench further directed the RP to make provisions for payment of salary and leave encashment to the Applicant after taking necessary information.

Source: *Live Law.in, November 07, 2022.*

<https://www.livelaw.in/news-updates/nclt-chandigarh-small-industries-development-bank-of-india-sidbi-corporate-debtor-gratuity-213420>

Aluminium extrusions Titan China Zhongwang enters Bankruptcy Proceedings

The biggest aluminium extrusions producer in the People's Republic of China and the second biggest in the world is now in bankruptcy proceedings. As per estimate the firm has about US\$64 billion in liabilities, but less than half that amount in assets at present. In mid-October the company announced that its subsidiaries have endured significant losses and were thus unable to address the situation appropriately.

Source: *Aluminium Insider*

<https://aluminiuminsider.com/aluminium-extrusions-titan-china-zhongwang-enters-bankruptcy-proceedings/>

Adjudicating Authority Can Invoke Inherent Powers to Replace Liquidator: NCLAT

The NCLAT while adjudicating an appeal filed in Subrata Maity v Mr. Amit C. Poddar & Ors., has held that the Adjudicating Authority can invoke its inherent powers to replace the Liquidator and to do substantial justice. The NCLAT held that the Liquidator does not have any personal right to continue in the Liquidation Process. The Adjudicating Authority did not err in replacing the Appellant especially when the days were lost due the Appellant's incapability to act as a Liquidator.

Source: *Live Law.in, October 21, 2022*

<https://www.livelaw.in/news-updates/nclat-adjudicating-authority-can-invoke-inherent-powers-to-replace-the-liquidator-212209>

UK Supreme Court Confirms Existence of Directors' Duties to Creditors

The UK's Supreme Court in *BTI 2014 LLC Vs. Sequana SA and others* [2022] UKSC 25 case has considered for the first time the circumstances in which directors are required to act in the interests of creditors when a company faces insolvency but is not yet in an insolvency process. The Court stated that Directors must consider the interests of creditors when i) the company is insolvent on a balance sheet basis or is unable to pay debts as and when they fall due and therefore insolvent on a cashflow basis. ii) the company is bordering on insolvency iii) insolvent liquidation or administration is probable, or, iv) the particular transaction would create one of the above situations.

Creditors' duty is a modification of the statutory duty to act in good faith and promote the success of the company under section 172 of the Companies Act 2006. It exists at common law and is distinct from directors' liabilities in relation to wrongful trading and unlawful preferences under the Insolvency Act 1986.

Source: *Mondaq.com, October 26, 2022*

<https://www.mondaq.com/uk/insolvencybankruptcy/1243524/uk-supreme-court-delivers-landmark-judgment-on-directors39-duties-when-a-company-faces-insolvency>