IBC Case Laws

Supreme Court of India

Vishnoo Mittal Vs. M/s Shakti Trading Company Criminal Appeal No. of 2025 @ Special Leave Petition (Crl) No.1104 of 2022. Date of Supreme Court's Judgement: March 17, 2025.

Facts of the Case

The present appeal is filed by Vishnoo Mittal (Appellant), in the capacity of Director of M/s Xalta Food and Beverages Private Limited/CD against M/s Shakti Trading Company (Respondent) challenged the order dated 21.12.21 passed by the Punjab and Haryana High Court. The High Court had dismissed the Appellant's petition filed under Section 482 of the Criminal Procedure Code, 1973 (CrPC), which sought quashing of proceedings under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), initiated by the Respondent. The CD had engaged the Respondent as its super stockist and issued eleven cheques amounting to approximately ₹11,17,326/- to the Respondent.

These cheques were dishonoured on 07.07.18. Consequently, a demand notice under Section 138 of the NI Act was issued on 06.08.18, and upon non-payment, a complaint was filed in September 2018. Meanwhile, on 25.07.18, insolvency proceedings were initiated against the CD under the Insolvency and Bankruptcy Code, 2016 (IBC), a moratorium under Section 14 of the IBC was imposed and an Interim Resolution Professional (IRP) was appointed. Despite the moratorium, the Magistrate Court issued summons to the Appellant on 07.09.18. Challenging this, the Appellant moved the High Court, which dismissed the petition, holding that the moratorium under Section 14 of the IBC protected only the CD and not the natural person (i.e., the director). Aggrieved by this, the Appellant approached the Supreme Court.

Supreme Court's Observations

The Supreme Court critically examined the applicability of the moratorium under Section 14 of the IBC and its impact on proceedings under Section 138 of the NI Act. While acknowledging the High Court's reliance on the precedent laid down in *P. Mohan Raj v. Shah Brothers*

Ispat Pvt. Ltd. (2021), the Supreme Court clarified that the facts of the present case were materially different and distinguishable.

In P. Mohan Raj, the cause of action for the offence under Section 138 NI Act arose before the moratorium commenced. However, in the present case, although the cheques were dishonoured on 07.07.18, the legal notice was issued on 06.08.18 after the moratorium was imposed on 25.07.18. The Court emphasized that under the NI Act, the offence under Section 138 is not complete upon dishonour of the cheque alone. As per the statute and reiterated in *Jugesh Sehgal v. Shamsher Singh Gogi* (2009), the offence is constituted only after the drawer fails to make payment within fifteen days of receiving the statutory demand notice. Given that the appellant had ceased to be in control of the CD from 25.07.18 onwards (the date of appointment of the IRP under Section 17 of the IBC), he lacked the legal and factual capacity to repay the amount post-notice. The IRP was in charge of the debtor's affairs and all bank operations. Furthermore, the Respondent had also filed a claim before the IRP under the IBC mechanism.

Accordingly, the Apex Court held that the High Court erred in not exercising its inherent jurisdiction under Section 482 CrPC to quash the criminal proceedings, especially considering that the essential ingredients of Section 138 NI Act could not be satisfied under the peculiar facts of this case.

Order: The Supreme Court set aside the impugned order of the High Court dated 21.12.21, and quashed the summoning order dated 07.09.18. Consequently, the

complaint case no. 15580/2018 pending before the Chief Judicial Magistrate, Chandigarh, was also quashed.

Case Review: *Appeal Allowed and pending applications, if any, were disposed of.*

Saranga Anilkumar Aggarwal Vs. Bhavesh Dhirajlal Sheth & Ors. Civil Appeal No(S). 4048 OF 2024. Date of Supreme Court Judgement: March 04, 2025.

Facts of the Case

The present appeal has been filed by the Appellant, Saranga Anilkumar Aggarwal (Appellant) against Bhavesh Dhirajlal Sheth & Ors. (Respondent), challenging the final judgment and order of the National Consumer Disputes Redressal Commission (NCDRC). The dispute arises from multiple penalties imposed (27 in total) on the Appellant due to the failure to deliver possession of residential units to homebuyers within the stipulated timeline. The Appellant seeks a stay on the execution of penalty proceedings on the grounds that an application under Section 95 of the IBC code 2016 has been filed, triggering an interim moratorium under Section 96 of the IBC. The matter originates from an execution application filed by Respondents before the NCDRC, demanding compliance with its earlier orders penalizing the Appellant for deficiency in service and breach of contractual obligations. The NCDRC had issued a ruling dated 10.08.18 in Consumer Complaint No. 1362 of 2017 and other related cases, directing the Appellant to complete construction, obtain an occupancy certificate, and hand over possession. However, the Appellant failed to comply, leading to execution applications seeking enforcement of penalties. The appellant contends that the penalties should be stayed due to ongoing insolvency proceedings against the company. The Appellant further argues that insolvency proceedings were initiated against A.A. Estates Pvt. Ltd., for which the Appellant is a personal guarantor. Following this, the State Bank of India (SBI) filed an application under Section 95 of the IBC against the Appellant, triggering an interim moratorium under Section 96. The Appellant submits that the moratorium prevents all legal proceedings, including the NCDRC's execution proceedings. The NCDRC, however, rejected the Appellant's plea on 07.02.24, asserting that penalties imposed under consumer law do not fall within the scope of the IBC moratorium.

The main issue raised before this court is: (i) Whether the execution of penalty orders passed by the NCDRC can be stayed under the interim moratorium provisions of Section 96 of the IBC or not?

Supreme Court's Observations

The Supreme Court held that civil proceedings are generally stayed under IBC provisions, but criminal proceedings, including penalty enforcement, do not automatically fall within its ambit unless explicitly stated by law. The penalties imposed by the NCDRC are regulatory and arise due to non-compliance with consumer protection laws. They are distinct from "debt recovery proceedings" under the IBC. The Supreme Court observed that a moratorium under Section 96 of the IBC applies to individuals and personal guarantors, staying legal actions relating to debt. However, this provision does not cover regulatory penalties. The statutory scheme of the IBC suggests that penalties arising from regulatory infractions are outside the definition of "debt." The Apex court while placing its reliance on P. Mohanraj and Ors. vs Shah brothers Ispat Pvt. Ltd. 2021 held that there is a distinction between punitive actions and criminal proceedings. While criminal proceedings aim to determine guilt, regulatory penalties, such as those imposed by the NCDRC, ensure compliance and deter violations. Section 27 of the CP Act empowers consumer fora to impose penalties for non-compliance. These penalties do not arise from "debt" but rather from failure to comply with consumer law. Unlike criminal prosecutions requiring mens rea, NCDRC penalties are regulatory, aiming to protect public interest rather than punish criminal behavior. A distinction must be drawn between the corporate debtor moratorium under Section 14 and the personal guarantor moratorium under Section 96 of the IBC.

The court also said that enforcing consumer rights through regulatory penalties, not just a financial dispute. Since the CP Act aims to ensure consumer welfare, staying such penalties would violate public policy. The appellant cannot use insolvency proceedings to evade statutory liabilities. The IBC is meant to resolve financial distress, not nullify regulatory obligations. The legislative intent behind Section 96 must be respected, and a blanket stay on regulatory penalties would defeat consumer protection objectives.

Order: The Apex court held that there is no merit in the appellant's arguments. The penalties imposed by the NCDRC are regulatory in nature and do not constitute "debt" under the IBC and directed to comply with penalties within period of eight weeks. The moratorium under Section 96 of the IBC does not extend to regulatory penalties imposed for non-compliance with consumer protection laws.

Case Review: *Appeal Dismissed.*

State Bank of India Vs. India Power Corporation Limited Civil Appeal No(s). 8178 of 2023. Date of Supreme Court's Judgement: February 14, 2025.

Facts of the Case

The present appeal has been filed u/s 62 of the IBC 2016 by the State Bank of India (Appellant) against India Power Corporation Ltd. (Respondent) challenging the order dated 04.10.23, passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal and upheld the earlier order passed by the Adjudicating Authority/AA. The dispute originates from an application filed by the Appellant u/s 7 of the IBC before AA in February 2020, seeking initiation of insolvency proceedings against the Respondents. In November 2021, the Respondent filed its counter affidavit before AA.

The Appellant filed its rejoinder affidavit on 13.06.22, but with a delay, which was attributed to a separate money suit filed by the Respondent. Consequently, the Appellant filed an IA requesting the tribunal to condone the delay in filing the rejoinder affidavit. The AA in its order dated 30.01.23, condoned the delay but ruled that the factual assertions made in the rejoinder affidavit shall not be taken into consideration while deciding the Section 7 application. Dissatisfied with this decision, the Appellant approached the Appellate Tribunal, which dismissed Appellant's appeal on 04.10.23, effectively upholding the AA's order. Following this, the AA rejected the Appellant's Section 7 application on 30.11.23, stating that only the facts mentioned in the respondent's reply to affidavit could be considered. Aggrieved by this the Appellant approached the Supreme Court to challenge the Appellate tribunal's order.

Supreme Court's Observations

The Supreme Court observed that both the AA and Appellate Tribunal committed an egregious error by adopting a highly technical and pedantic approach. Having condoned the delay and permitted the Appellant to file its rejoinder, the AA erred in directing that the assertions in the rejoinder affidavit shall not be considered.

The Apex Court emphasized that it was expected of the Appellate Tribunal to correct this error, but it too fell into the same mistake. The learned Solicitor General of India referred to *Dena Bank vs. C. Shivakumar Reddy* (2021), where it was held that in the absence of any express provision prohibiting or setting a time limit for filing additional documents, there is no bar to submitting them beyond those initially filed with a Section 7 petition. The Apex Court clarified that a financial creditor filing a Section 7 application in Form 1 does not require elaborate pleadings, and such an application cannot be judged by the same standards as a plaint in a suit. It reiterated that there is no legal restriction on amending pleadings or filing additional documents. However, if there is an inordinate delay, the AA may at its discretion decline such requests and proceed with a final order. In the present case, the Supreme Court found that both the AA and the Appellate Tribunal failed to apply this principle. Having permitted the Appellant to file its rejoinder affidavit after condoning the delay, the AA was incorrect in prohibiting the Appellant from relying on it, and the Appellate Tribunal erred in upholding this decision. The Apex Court also noted that the Appellant had already filed an appeal before the Appellate tribunal against the final rejection of its Section 7 application by the AA. In light of this, the Supreme Court ruled that the appeal must be allowed, and the matter remanded for reconsideration.

Order: The Supreme Court allowed Appellant's appeal and set aside the Appellate Tribunal's order dated 04.10.23. The Apex Court clarified that it had not expressed any opinion on the merits of the case, leaving the final decision to the appropriate forums.

Case Review: *Appeal Allowed.*

China Development Bank Vs. Doha Bank Q.P.S.C. & Ors. Civil Appeal No. 7298 OF 2022 with 7407, 7615 and 7328 of 2022 & 7434 of 2023. Date of Supreme Court Judgement: December 20, 2024.

Facts of the Case

The current appeal is filled by the China Development Bank (Appellant) against Doha bank Q.P.S.C & Ors. (Respondents). The appeals, Civil Appeal Nos. 7298, 7407, 7615 and 7328 of 2022, and 7434 of 2023, challenge the judgment dated 09.09.22 passed by the Appellate Tribunal.

The CIRP of Reliance Infratel Limited (RITL)/Corporate Debtor, part of the RCom entities (including RCom, RCIL, and RTL), was initiated by Ericsson India Pvt. Ltd. u/s 15 of the IBC. The appellants submitted claims as Financial Creditors, relying on the Master Security Trustee Agreement (MSTA) and the Deeds of Hypothecation (DoH). The claims were admitted by the RP, and the appellants were included in the CoC. The Respondents contested this classification before the AA, arguing that the appellants were not direct lenders to the CD and that the DoH merely created a charge without constituting a "guarantee" u/s 126 of the Contract Act. While the AA approved the Resolution Plan on 03.12.20, it did not decide on the appellants' status. The Appellate Tribunal later held that the DoH was not a deed of guarantee, lacking the essential three-party structure and a covenant by the CD to discharge RCom or RTL's liabilities. It ruled that the appellants' claims were contingent and unenforceable due to the moratorium u/s 14 of the IBC. The appellants argued that Clause 5(iii) of the DoH obligated the CD to cover shortfalls in debt realization, qualifying as a "guarantee" under Section 126. They claimed this established their debts as financial debt u/s 5(8) of the IBC. Then the appeal was filled before the Supreme Court for final adjudication. The core issues arrised before the Apex court are: (i) Whether the appellants, including, Industrial and Commercial Bank of China, and other financial institutions, qualify as "Financial Creditors" under sub-section (7) of Section 5 of the IBC, and if not then in that case, (ii) Whether they are entitled to payments as "Secured Creditors."

Supreme Court's Observations

The Apex Court emphasized that financial debt involves a debt disbursed against consideration for the time value of money. It reviewed the Deeds of Hypothecation (DoH), specifically Clause 5(iii), which required the CD to pay any shortfall in debt recovery after the realization of hypothecated assets and held that this provision constituted a "guarantee" under Section 126 of the Indian Contract Act, 1872. The Apex Court observed while citing Anuj Jain, Interim Resolution Professional for *Jaypee Infratech Limited v. Axis Bank Limited & Ors.* (2020), the Court reiterated that mere creation of a charge or security interest does not qualify as financial debt unless it includes a guarantee or disbursement against time value of money. Referring to *Phoenix ARC Pvt. Ltd. v. Ketulbhai Ramubhai Patel* (2021), the Apex Court further highlighted that a guarantee entails a promise to discharge a third party's liability in case of default. The Apex Court concluded that the CD had agreed to discharge RCom and RTL's liabilities, meeting the conditions of a guarantee. It rejected the argument that the moratorium under Section 14 extinguished claims, clarifying that the liability under agreements like the DoH remains valid during the moratorium. The Apex Court also relied on *Vistra ITCL (India) Ltd. & Ors. v. Dinkar Venkatasubramanian & Ors.* (2023) to reaffirm secured creditors' rights in CIRP and cited *Kotak Mahindra Bank Ltd. v. A. Balakrishnan* (2022) and *Orator Marketing Pvt. Ltd. v. Samtex Desinz Pvt. Ltd.* (2023) to emphasize that financial debt need not be directly disbursed to the CD to qualify a creditor as a Financial Creditor. It clarified that the DoH created a contractual obligation for the CD to pay shortfalls, rendering the appellants' claims financial debt under Section 5(8).

Order: The Supreme Court overturned the Appellate Tribunal judgment, restoring the AA decision to classify the appellants as Financial Creditors. The Apex Court held that the DoH created a guarantee within the meaning of the IBC and the Contract Act, entitling the appellants to Financial Creditor status. It directed the AA to proceed with implementing the Resolution Plan, taking into account the appellants' claims.

Case Review: *Appeals Allowed.*

APURVA @ Apurvo Bhuvanbabu Mandal Vs. Dolly & Ors. Criminal Appeal Nos.5148-5149 of 2024 (Arising out of SLP (Crl.) Nos.10093-10094/2022). Date of Supreme Court Judgement: December 10, 2024.

Facts of the Case

The present criminal appeals were filed by Apurva (Appellant) against Dolly (Respondent), arising out of Special Leave Petitions, SLP (Crl.) Nos. 10093-10094 of 2022), and challenged the judgment dated 12.09.22 passed by the High Court of Gujarat at Ahmedabad. The High Court enhanced the maintenance amounts granted to the Respondent and the two children. Under the impugned order dated 12.09.22, the Respondent was awarded maintenance of ₹1,00,000 per month, and the children were each granted ₹50,000 per month. This was a significant enhancement from the earlier order of the Family Court, Surat, which had awarded ₹6,000 per month to the wife and ₹3,000 per month to each child.

The High Court justified the enhancement by noting the appellant-husband's status as a businessman owning a diamond factory. It also considered that the Appellant employed a manager to handle his office's day-to-day affairs, reflecting his financial capacity. Furthermore, adverse inferences were drawn against the appellant for failing to produce income tax returns or other financial documents, despite being a taxpayer and having been directed by the High Court to submit these records. The High Court directed that the enhanced maintenance amounts would be payable from the date of the initial filing of the maintenance application. Additionally, the Appellant was instructed to clear the arrears of maintenance within six months. Interim relief was granted by the Apex dated 07.11.22, staying the enhanced maintenance amounts temporarily, provided the Appellant paid interim maintenance of ₹50,000 per month to the Respondent and ₹25,000 per month to each child. A further order dated 12.03.24 clarified that the reduced maintenance amounts would be applicable retrospectively from the date of the impugned order dated 12.09.22. The Appellant contested the High Court's findings, arguing that his financial condition had worsened due to business setbacks and recovery proceedings. He also claimed that the respondent, being self-employed, had her own source of income and did not require maintenance. However, these claims were not substantiated with sufficient evidence before the Court. The matter was adjudicated under Section 125 of the Criminal Procedure Code, with the High Court considering the totality of circumstances, including the fundamental right to dignity and sustenance, while granting the enhancement.

Supreme Court's Observations

The Supreme Court observed that the maintenance awarded under Section 125 of the Criminal Procedure Code, 1973, was based on the appellant's presumed financial status, which lacked substantiation through documentary evidence. The appellant's failure to produce income tax returns and financial records, despite High Court directions, led to an adverse inference against him. The Apex Court clarified that interim maintenance amounts of ₹50,000 per month for the wife and ₹25,000 per month for each child were appropriate for their sustenance, considering the totality of circumstances. However, it emphasized that maintenance amounts could be adjusted based on evidence of the appellant's actual income and financial capacity, which may be addressed under Section 127 of the Criminal Procedure Code. Recognizing the fundamental right to maintenance as integral to dignity and sustenance under Article 21 of the Constitution, the Court stated this right override statutory claims under laws like the Insolvency and Bankruptcy Code, 2016, and SARFAESI Act, 2002. It directed arrears of maintenance to take priority over the appellant's assets, including those in recovery proceedings. Highlighting the importance of ensuring the respondents' dignity and standard of living, the Court noted maintenance as both a legal and constitutional mandate. It directed arrears to be paid within three months, failing which the Family Court could take coercive measures, including auctioning the appellant's immovable assets. While reducing maintenance amounts, the Court clarified this adjustment did not render the High Court's award erroneous but balanced competing claims and available evidence.

Order: The appeals were partially allowed. The maintenance amounts were reduced to ₹50,000 per month for the wife and ₹25,000 per month for each child, effective from the High Court's order date. The arrears, at the rates awarded by the High Court, were upheld, with

specific directions to prioritize these payments over any secured creditor claims. The appellant was directed to clear the arrears within three months, with the Family Court authorized to enforce recovery through coercive measures.

Case Review: *The appeals are allowed in part; the pending interlocutory applications also stand disposed of.*

High Court

Bhushan Power & Steel Ltd. Vs. Union of India & Anr. W.P.(CRL) 1261/2024. Date of Delhi High Court's Judgement: January 30, 2025.

Facts of the Case

The writ petition was filed by Bhushan power & Steel Ltd. (Appellant) against Union of India (Respondent) before the High Court under Article 226 of the Constitution of India read with Section 482 of the Cr.P.C., seeking quashing of ECIR NO. DLZO-I/02/2019 u/s 3 and 4 of PMLA and all related proceedings, including the order dated 17.01.20 passed by the Special Judge-05, CBI (PC Act), Rouse Avenue District Court against Appellant. The AA admitted an insolvency application against Appellant on 26.07.17, filed by PNB u/s 7 of IBC, 2016. During the CIRP, JSW Steel Ltd. emerged as the successful resolution applicant. On 05.04.19, the CBI registered FIR against Appellant, its Chairman, Directors, and others for alleged offences under Sections 120-B r/w 420, 468, 471 & 477A of IPC and Section 13(2) r/w 13(1) (d) of the Prevention of Corruption Act, 1988. Based on this, the ED recorded ECIR on 25.04.19 for suspected money laundering activities. On 05.09.19, the AA conditionally approved JSW's Resolution Plan u/s 31 of IBC, granting protection from criminal proceedings related to the erstwhile management but not explicitly shielding Appellant from past liabilities.

On 10.10.19, the ED issued Provisional Attachment Order (PAO No. 11/2019) u/s 5(1) of PMLA, attaching Appellant's assets as "proceeds of crime," restricting their transfer or disposal. This led to a legal conflict, prompting NCLAT to stay the attachment on 14.10.19, allowing the RP to regain control over Appellant's assets.

On 17.01.2020, the ED filed a Prosecution Complaint under PMLA against the Appellant, its former Chairman, Managing Director, and other executives, alleging bank fraud of ₹47,204 crores. On 17.02.20, the NCLAT ruled the ED's asset attachment illegal, citing Section 32A of IBC (introduced via the IBC (Amendment) Ordinance, 2019), which protects CDs from prosecution for past offences if there is a change in management. The ED challenged this ruling in Civil Appeal No. 3362/2020 before the Supreme Court, which, on 11.12.24, disposed the appeal while affirming the restoration of Appellant's assets to JSW Steel under Section 8(8) of PMLA, subject to ED's ongoing investigation against the erstwhile promoters.

High Court's Observations

The Hon'ble high Court observed that Section 32A of the IBC provides that a CD's liability for offences committed before CIRP shall cease upon approval of a Resolution Plan provided there is a change in management. It noted that the Resolution Plan for Appellant was approved by the AA on 05.09.19 and by the NCLAT on 17.02.20, thereby protecting the CD from prosecution. However, the erstwhile management, including promoters and key officers, could still be prosecuted under the second proviso to Section 32A (1). The ED provisionally attached Appellant's assets on 10.10.19, but the high court found this contrary to Section 32A, as it came after the resolution plan's approval. The NCLAT ruled this attachment illegal, and the Supreme Court later affirmed that the assets should be restored to JSW Steel, subject to ongoing investigations against the former management.

The Court acknowledged the ED's argument that while Appellant cannot be prosecuted post resolution, its former directors and promoters remain under investigation for alleged fraudulent transactions. It noted that the ED filed a Prosecution Complaint on 17.01.20, alleging a bank fraud of ₹47,204 crores, but since the Appellant had undergone a successful resolution process, it could not be held liable under Section 32A. Accordingly, the criminal proceedings against the Appellant were set aside, but the ruling would not impact investigations or potential prosecution of its erstwhile management. The Supreme Court's order dated 11.12.24 directed the restoration of Appellant attached assets to JSW Steel under Section

8(8) of PMLA, while leaving the ED's right to investigate the former promoters intact

Order: In light of these findings, the Hon'ble High court allowed the writ petition to the extent of setting aside criminal proceedings against Appellant but clarified that this decision remains subject to pending appeals challenging the resolution plan before the Supreme Court. It reiterated that these observations would not affect the trial of Appellant's former promoters and key executives.

Case review: *Petition disposed of, along with pending applications if any.*

Ankit Bhuwalka Vs. IDBI Bank Ltd. & Union of India Writ Petition no.12 of 2025. Date of Bombay High Court Judgement: January 16, 2025.

Facts of the Case

This petition is filled by Mr. Ankit Bhuwalka, the erstwhile Director of Bhuwalka Steel Industries Limited (BSIL) (Petitioner) against the IDBI Bank Ltd. and Ors. (Respondents) challenged the issuance of a Show Cause Notice (SCN) dated 05.04.23 and subsequent orders by the Wilful Defaulters Committee (WDC) on 14.09.23 and the Wilful Defaulters Review Committee (WDRC) on 25.10.24, declaring him a wilful defaulter. These actions were based on findings in a Transaction Audit Report (TAR) prepared by M/s G.D. Apte & Co. during BSIL's Corporate Insolvency Resolution Process (CIRP), initiated by the AA in 2019. The TAR alleged fraudulent transactions, including diversion of ₹74.27 crore between BSIL and its group company, Shree Durga Trade Links Pvt. Ltd. (SDTL). The report indicated that receivables from BSIL were transferred to SDTL despite pending dues, suggesting diversion of funds. The petitioner argued that the TAR relied on assumptions and was deemed inconclusive by the AA in its order dated 10.03.21, which directed the RP to conduct a more thorough inquiry.

The petitioner claimed that the Respondent Bank failed to provide the complete TAR or supporting documents despite repeated requests, depriving him of a meaningful opportunity to respond to the SCN. Only an extract of the TAR was provided, which was insufficient for him to prepare a defence. He also cited his inability to access BSIL's records from the new management or the RP after the resolution process. A personal hearing was held on 28.02.24, where the petitioner reiterated his lack of access to documents. Despite this, the WDC declared him a wilful defaulter on 13.06.24, and the WDRC confirmed the decision on 25.10.24. The petitioner contended that these actions violated principles of natural justice and relied on a TAR previously found unreliable by the AA. He highlighted the severe repercussions of being declared a wilful defaulter, including reputational damage and restrictions on business activities.

High Court's Observation

The Bombay High Court noted significant procedural lapses by the Respondent Bank, particularly its failure to provide the full Transaction Audit Report (TAR) and supporting documents despite repeated requests via emails on 22.04.23, 25.05.23, and 17.10.23. Relying solely on an extract of the TAR, the Bank violated the principles of natural justice by denying the petitioner a meaningful opportunity to defend himself. The court highlighted that the AA, in its 10.03.21 order, found the TAR inconclusive and based on assumptions, directing further inquiry into the flagged transactions. The court further emphasized that the RBI's Master Circular on Wilful Defaulters dated 01.07.15 requires transparency, disclosure of evidence, and a fair hearing, which were not adhered to. Referring to Supreme Court rulings in *Jah Developers Pvt. Ltd. vs. State Bank of India* (2019) and *Rajesh Agarwal vs. State Bank of India* (2023), it stressed the serious repercussions of being declared a wilful defaulter, including reputational harm and restrictions on business under Article 19(1)(g). It also cited *Milind Patel v. Union Bank of India* (2024), emphasizing the need to disclose all material relevant to the case. The maintainability of the writ petition was affirmed under *Kaushal Kishore vs. State of Uttar Pradesh* (2023), establishing that fundamental rights can be enforced against non-state actors. The court concluded that the SCN and orders were procedurally flawed, relying on an inconclusive TAR and denying the petitioner fair representation. It quashed the SCN and orders, allowing the Bank to issue a fresh SCN only if it follows due process and ensures adherence to the principles of natural justice.

Order: The Bombay High Court quashed and set aside the SCN dated 05.04.23 and the orders dated 14.09.23, and 13.06.23, and 25.10.24 issued by the WDC and WDRC. The court granted liberty to the Respondent Bank to initiate fresh proceedings against the petitioner, provided it adheres to procedural norms and principles of natural justice.

Case review: *Petition Allowed.*

National Company Law Appellate Tribunal (NCLAT)

Shri Krishan and Anr. Vs. H.S. Oberoi Buildtech Pvt. Ltd. and Ors. Company Appeal (AT) (Insolvency) No. 128, 129, 130, 131 of 2025. Date of NCLAT's Judgement: March 07, 2025.

Facts of the Case

The present set of four appeals filed u/s 61 IBC 2016 arise out of a common order dated 24.10.24 passed by the Adjudicating Authority, in IA Nos. 112, 77, 599 & 89 of 2024 in CP(IB) No. 1768(ND)/2018. The AA refused to entertain the belated claims of the appellants, who are home buyers in the "Earth Iconic" project developed by Earth Infrastructure Ltd. (EIL). The appeals have been filed against the rejection of their claims by the Successful Resolution Applicant (SRA). The Appellants had booked units in the Earth Iconic project, received allotment letters on 31.06.12, and made payments in instalments. CIRP was initiated against EIL on 06.06.18, and later against Celestial Estate Pvt. Ltd. (CEPL) on 11.03.19, which was the landowner of the project. By order dated 15.03.21, the AA directed EIL to transfer the partly constructed structure of Earth Iconic project to CEPL, and most of EIL's creditors transferred their claims to CEPL. The appellants claim that they became aware of the CIRP proceedings only in November 2023, by which time the Resolution Plan had already been approved. They submitted claims to the SRA via email on 10.12.23, along with relevant documents, including payment receipts, but received no response. As a result, they filed IA No. 112 of 2024 before the AA, seeking directions to compel the SRA to accept their claims.

They contended that the RP failed to consider their claims, severely prejudicing their interests and those of other similarly placed homebuyers. However, the AA, in its order dated 24.10.24, rejected their applications, stating that their claims were filed belatedly and not part of the approved Resolution Plan. Aggrieved by this order, the appellants filed the present appeals before NCLAT, arguing that the RP failed to notify them individually, despite their names being reflected in the CD's CRM records, and instead only issued public notices in newspapers, which they claimed was insufficient. They further contended that the RP's failure to include their claims in the Information Memorandum led to their exclusion from the Resolution Plan, violating their rights as homebuyers.

The appellants also asserted that the provisions of the IBC were misused to extinguish the claims of bona fide creditors, unfairly benefiting the SRA. They sought relief from the NCLAT to direct the SRA to accept their claims and include them in the Resolution Plan, arguing that the resolution process was conducted unfairly to their detriment.

NCLAT's Observations

The Appellate Tribunal noted that the RP had issued a public notice on 27.03.19, with the last date for claim submission being 10.04.2019. Additionally, Form-G was published on 26.09.19, the Information Memorandum (IM) was issued on 05.10.19, and the Resolution Plan was approved by the CoC on 16.11.19 and by the AA on 15.03.21. The appellants submitted their claims only on 10.12.23, over four years and eight months after the deadline, and therefore, their claims were not reflected in the Information Memorandum. The Appellate Tribunal further held that the RP was not required to send individual notices to each creditor, as public notices complied with IBC and IBBI Regulations. The appellants' argument that their names were in the CD's CRM and should have been included in the IM was rejected. Citing *Ghanshyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd.* (2021), the Appellate Tribunal reaffirmed that once a Resolution Plan is approved, all claims not included are extinguished and cannot be reopened. The Appellate Tribunal also

distinguished the appellants' reliance on Puneet Kaur Vs KV Developers Ltd. 2022, stating that in that case, claims were filed within a year and before the Resolution Plan's approval, whereas in the present case, claims were submitted nearly three years post-approval. Referring to *RP Infrastructure Ltd. vs. Mukul Kumar & Anr.* (2021), the Appellate Tribunal emphasized that permitting such delayed claims would disrupt the insolvency resolution process.

The Appellate Tribunal found no merit in the appellant's argument that the Resolution Plan was unfair for not considering their claims, noting that it had already provided extended periods for belated claims with additional charges, which the appellants failed to utilize. It reiterated that the SRA cannot be burdened with undisclosed liabilities due to creditors' inaction. Citing Ghanshyam Mishra and Sons Pvt. Ltd. 2021 the Appellate Tribunal reaffirmed that once a plan is approved, it is binding on all stakeholders, and unsubmitted claims stand extinguished.

Order: The Appellate Tribunal held that Since the Resolution Plan has already been approved by both the CoC and the AA, it cannot be reopened based on belated claims by the appellant, AA has committed no error in rejecting the appellant's request for claim admission. In view of these discussions, no cogent grounds exist to interfere with the impugned order, which does not suffer from any infirmities.

Case Review: *Appeals Dismissed.*

ILD Owners Welfare Association Vs. M/s. ALM Infotech City Private Ltd., Company Appeal (AT) (Insolvency) No. 2198 of 2024 & I.A. No. 8172 of 2024. Date of NCLAT Judgement: February 28, 2025.

Facts of the Case

The present appeal has been filed by ILD Owners Welfare Association (Appellant) against M/s ALM Infotech City Pvt. Ltd. (Respondent). This appeal arises from the impugned order dated 30.07.24 passed by the Adjudicating Authority/AA. The dispute pertains to a real estate project, ILD Trade Centre, Sector 47, Sohna Road, Gurgaon, which received its occupancy certificate on 19.11.10. Various unit holders booked their respective units, executed Builder Buyer Agreements (BBA), and subsequently received Conveyance Deeds in their favor from 2015 onwards. According to the Conveyance Deeds, each unit holder was required to pay ₹100 per square foot of the super area of their unit to the respondent towards Interest-Free Maintenance Security (IFMS). The IFMS was intended for maintaining common areas, services, facilities, and installations within the project. Over time, complaints regarding maintenance arose from both individual unit holders and the Appellant. On 08.09.22, the Appellant took over the maintenance of the project. Subsequently, on 06.10.23, the Appellant issued a demand notice for ₹2.95 crore to the Respondent, alleging a default on financial debt. This was followed by an application under Section 7 of the IBC in April 2024. The AA through its order dated 08.05.24, directed the Appellant to file an affidavit demonstrating that the amount in question qualified as financial debt under Section 5(8) of the IBC. In compliance, the Appellant argued that the Conveyance Deed dated 09.12.15 obligated the Respondent to refund the IFMS, and thus, it qualified as financial debt. However, the AA dismissed the Section 7 application, holding that IFMS does not constitute financial debt, prompting the present appeal before the Appellate Tribunal.

The main issue raised before the Appellate Tribunal is: (i) Whether the amount deposited as Interest-Free Maintenance Security (IFMS) by the allottees qualifies as financial debt u/s 5(8) (f) of the IBC 2016.

NCLAT's Observations

The Appellate Tribunal analyzed Clauses 26 and 27 of the Conveyance Deed, which specified that IFMS was collected for maintaining common areas, services, installations, and amenities, with maintenance charges payable to the maintenance agency.

The Appellate Tribunal considered whether this amount could be classified as financial debt. Referring to *Global Credit Capital Limited & Anr. vs. Sach Marketing Pvt. Ltd. & Anr.* (2024)., the Appellate Tribunal held that the classification of a debt depends on the nature of the transaction. It emphasized that a financial debt must involve disbursement for the time value of money, a necessary element u/s 5(8). Citing *Pioneer Urban Land*

and Infrastructure Limited & Anr. vs. Union of India & Ors. (2019), the Appellate Tribunal reaffirmed that financial debt requires disbursal for the borrower's use against consideration for the time value of money. The Tribunal further examined *Corab India Private Limited vs. Birendra Kumar Aggarwal* (2024), which dealt with whether a lease security deposit could be classified as financial debt. It upheld the AA's ruling that security deposits are not disbursed against time value of money and cited Anuj Jain, *Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Limited & Ors.* (2020)., which stressed that time value of money is a key condition for financial debt. Applying these principles, the Appellate Tribunal concluded that IFMS was collected for maintenance services and payable to the vendor or its maintenance agency, making it ineligible as financial debt. It further assessed whether IFMS could qualify as operational debt, which covers claims for goods, services, employment, or government dues. Citing *Consolidated Construction Consortium Ltd. vs. Hitro Energy Solutions Pvt. Ltd.* (2020), the Appellate Tribunal observed that operational debt must have a direct link to the provision of goods or services. Since IFMS was deposited for future maintenance services, it had characteristics of operational debt rather than financial debt.

The Appellate Tribunal also examined the Appellant's argument based on Section 6(6) of the Haryana Apartment Ownership Act, 1983, which mandates the association's role in maintenance. However, it held that this statutory obligation does not convert IFMS into financial debt, as the provisions merely define rights over common areas.

Order: The Appellate Tribunal upheld the AA's decision rejecting the Section 7 application, ruling that IFMS does not meet the essential elements of financial debt u/s 5(8) of IBC. Reaffirming that security deposits for maintenance purposes cannot be classified as financial debt under IBC.

Case Review: *Appeal Dismissed.*

Amrit Rajani Vs. Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd. Company Appeal (AT) (Ins) No. 375 of 2023 & I.A. No. 1261, 1262 of 2023. Date of NCLAT Judgement: January 23, 2025.

Facts of the Case

The present appeal was filed u/s 61(1) of the IBC 2016 by Amrit Rajani erstwhile Director of CD (Appellant) against M/s Pegasus Assets Reconstruction Pvt. Ltd. & Shri Balaji Entertainment Pvt. Ltd./CD (Respondent no. 1 and 2) respectively, challenging the impugned order dated 03.02.23 passed by the Adjudicating Authority (AA). The case originated when Respondent No. 1 initiated insolvency proceedings against Respondent No. 2 u/s 7 of the IBC, alleging a default of ₹35,90,56,629. The financial creditor claimed that the CD's account was classified as a Non-Performing Asset (NPA) on 02.12.2019, with default occurring on 01.06.19. The CD was both a co-borrower and corporate guarantor for a loan taken by M/s Universal Textile Waterproof Company (India) (UTWC), originally sanctioned by SVC Co-operative Bank Ltd., which was later assigned to Respondent No. 1.

The AA admitted the Section 7 application, imposed a moratorium, and ordered commencement of the CIRP on 20.04.22. A Committee of Creditors (CoC) was constituted, with Respondent No.1 holding 79% voting rights and NKGSB Co-operative Bank Ltd. holding 21% voting rights. Despite publishing Form-G for Expression of Interest (EoI) on 22.06.22, no resolution applicant submitted bid before the deadline of 07.07.22. After four CoC meetings, the CoC unanimously voted for liquidation with a 100% voting share. The RP filed an application under Section 33(1) (a), 33 (2) and 34 (1) of IBC, which was allowed by the AA, leading to the CD's liquidation.

The Appellant challenged the liquidation order, arguing that the CoC did not take meaningful steps to revive the CD, which contradicts the spirit of the IBC. It was further alleged that the RP accepted financial creditors' claims without proper verification, amounting to negligence and misconduct. The Appellant also contended that the introduction of the SVC Bank ledger account harmed the CD and violated natural justice principles.

NCLAT's Observations

The Appellate Tribunal observed that the definition of financial debt u/s 5(8) of the IBC 2016 requires disbursal against the consideration for time value of money. In the present case, the financial agreements and ledger accounts from SVC Bank provided evidence of the CD's obligations as a co-borrower and corporate guarantor for the loan availed by M/s Universal Textile Waterproof Company (India) (UTWC). The Appellate Tribunal further observed that the CoC exercised due diligence by following the prescribed procedure under the IBC. Form-G (Expression of Interest) was issued on 22.06.22 to invite potential resolution applicants, but no EoI was received by the deadline of 07.07.22, despite sufficient time being provided. The CoC also noted concerns over the non-availability of corporate assets, discrepancies in financial records, and the absence of a viable resolution plan. Based on these factors, the CoC resolved that liquidation was the only practical and legally sound recourse. The Appellate Tribunal also examined the applicability of Section 33(2) of the IBC, which mandates that if the CoC, with at least 66% voting rights; resolves to liquidate the CD, the AA must pass a liquidation order. Since the CoC's decision to liquidate was unanimous with 100% approval, the Tribunal held that the statutory framework leaves no room for deviation once the required threshold is met. Further, the Appellate Tribunal considered the Appellant's claims of forged documents and negligence in the verification of financial claims but found no substantive evidence to support these allegations.

It reiterated that mere allegations, without material proof, cannot override statutory procedures. It was also noted that the CoC had exhausted all avenues for resolution, providing adequate time for potential applicants to submit plans, but none emerged, making liquidation a rational and compliant decision under the IBC. Finally, the Tribunal reinforced that while the IBC prioritizes resolution over liquidation, in cases where a CD has no assets or viable business prospects, liquidation remains the only feasible course. Forcing a resolution process in the absence of a prospective applicant would only delay the inevitable and impose unnecessary financial burdens on creditors.

Order: The Appellate Tribunal upheld the AA's order, affirming that the CoC's decision to liquidate the CD was valid and in compliance with the IBC. It ruled that the Appellant's claims were unsubstantiated and lacked merit.

Case Review: *Appeal Dismissed.*

Anil Kumar (RP) Vs. Mukund Choudhary (Personal Guarantor) Company Appeal (AT) (Insolvency) No. 38 of 2025. Date of NCLAT Judgement: January 22, 2025.

Facts of the Case

The present appeal has been filed by the Resolution Professional/RP (hereinafter referred as 'Appellant') in the Personal Insolvency Resolution Process (PIRP) of the Personal Guarantor Mukund Choudhary (hereinafter referred as 'Respondent'), challenging the order dated 04.12.2024, passed by the Adjudicating Authority/ AA in I.A. No. 5719/2024. The appeal arises from an application filed under Section 94(1) of the IBC 2016 by the Respondent on 08.04.2021 through which the AA declared an Interim Moratorium u/s 96 of the IBC and appointed the Appellant as the RP. The RP filed a report under Section 99, which was considered and by order dated 30.04.2024, the Section 94 application was admitted, initiating the PIRP against the Personal Guarantor and a moratorium was imposed under Section 101 for 180 days. Following this, the Appellant made a public announcement on 03.05.2024 and the Personal Guarantor submitted a draft repayment plan. A meeting of creditors was convened under Section 106(2)(c) which was rescheduled to 23.10.2024, where creditors discussed the repayment plan and sought modifications. On 28.10.2024, the Appellant was authorized to seek an extension of the PIRP by 90 days beyond 180 days, leading to the filing of I.A. 5719/2024. The AA granted a 90-day extension for the PIRP but did not extend the moratorium. Aggrieved by this, the Appellant filed the present appeal, arguing that a PIRP without a moratorium would be ineffective, allowing creditors to initiate recovery actions and enforce security interests. The Appellant contended that the AA had jurisdiction to extend the moratorium beyond 180 days, relying on *Vikas Gautamchand Jain,* (2024) and *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.* (2021). The Respondent

supported the appeal, submitting that the 180-day limit under Section 101 was directory not mandatory, and the AA had the power to extend it and also said that without extension of moratorium proceeding under personal Gurantor shall not yield any favorable results. The main issue raised before the Appellate Tribunal was: (i) Whether the moratorium under Section 101 of the IBC could be extended beyond 180 days?

NCLAT's Observations

The Appellate Tribunal examined Section 101(1) of the IBC, which states that a moratorium shall commence upon admission of the application under Section 100 and shall cease to have effect at the end of 180 days or on the date the AA passes an order on the repayment plan u/s 114, whichever is earlier. The provision clearly defines both the commencement and cessation of the moratorium, leaving no discretion for its extension. The Appellant contended that the 180-day period under Section 101(1) is directory and can be extended by the AA to ensure an effective resolution process, but the Tribunal rejected this argument, emphasizing that a statutory timeframe with a specified consequence must be interpreted as mandatory.

The Appellate Tribunal distinguished this case from Vikas Gautamchand Jain (2024), where Section 54D concerning Pre-Packaged Insolvency Resolution Process (PPIRP) was considered, noting that Section 101(1) mandates an automatic cessation of the moratorium after 180 days unlike Section 54D, which does not specify automatic termination. Similarly, reliance on *P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd.* (2021) was misplaced, as that case dealt with the moratorium under Section 14 in relation to proceedings under the Negotiable Instruments Act and did not address the issue of extending the moratorium under Section 101.

The Appellate Tribunal held that when statutory language is clear, courts must adhere to its plain meaning without interpretative extensions by placing its reliance on *Dilip B. Jiwrajka vs. UOI* (2021). Since Section 101(1) explicitly limits the moratorium period and does not permit any extension, the AA was correct in not extending it beyond 180 days. Consequently, no further extension could be granted, and the appeal was unsustainable in law.

Order: The Appellate Tribunal affirmed that the moratorium u/s 101 automatically ceases after 180 days and cannot be extended. The extension granted for the PIRP does not imply an automatic extension of the moratorium, and creditors can proceed with legal actions beyond the 180-day period.

Case Review: *Appeal Dismissed.*

M/S Transline Technologies Ltd. (Through Its Authorized Representative) Vs. Experio Tech Pvt. Ltd. CP IB NO. 236/(ND)/2023. Date of NCLT Judgement: January 08, 2025.

Facts of the Case

The petition was filed by M/s Transline Technologies Limited in the capacity of Operational Creditor (OC) through its authorized representative Mr. Munish Kumar Goyal (Applicant) against M/s Experio Tech Private Limited/CD (Respondent) under u/s 9 of the IBC, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 wherein the Applicant sought initiation of CIRP against the CD for recovery of outstanding dues amounting to ₹3,87,90,800/-. The CD engaged in software and hardware-related IT and electronics manufacturing, had entered into an agreement (MoU) dated 03.09.2021 with the Applicant/OC, through its ex-director, Mr. Niraj Kumar Gupta. Under this agreement, the CD was obligated to procure raw materials and sell all finished products exclusively through the Applicant/OC. Thus, transline was conferred with the monopoly to carry out supplies to Experio Tech. The terms also included a profit-sharing arrangement between the parties. Disputes arose when the Applicant/OC claimed outstanding dues from the CD for electronic items supplied under five invoices. The CD however, denied the claims, stating that the parties were not in a debtor-creditor relationship but joint business partners sharing profits and losses.

The primary issue before the AA was to determine:

(i) Whether there is an operational debt exceeding ₹ 1 crore as defined u/s 4 of the IBC?

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

NCLAT's Observations

The AA noted that the relationship between the parties, as evidenced by the MoU dated 03.09.2021, reflected integrated business operations rather than a debtor-creditor relationship. The OC and CD agreed to share profits equally, and their transactions involved joint responsibilities for sales and distribution, which is not covered under the definition of "Operational Debt" as per Section 5(21) of the IBC. The terms of the MoU granted monopoly rights to the Operational Creditor for supplies to the CD, obligating the CD to procure raw materials and sell finished products exclusively through the Operational Creditor. These provisions indicated a joint business arrangement rather than a simple goods-and-services relationship.

The AA emphasized that profit-sharing agreements disqualify Transline Technologies from being considered as "Operational Creditor" within the meaning of Section 5 (20) of the IBC due to the deviation from a typical creditor-debtor structure. Relying on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.* (2018), the AA held that it must ascertain the existence of an operational debt and its payable status. The profit-sharing clauses in this case prevented the establishment of a straightforward operational debt. The AA also referred to *Prashanth Shekara Shetty v. Alcuris Healthcare Pvt. Ltd.* (2022), whereby the Hon'ble NCLAT held that joint business arrangements with shared profits and liabilities lack the characteristics of operational debt. The AA considered the CD's contention regarding the Purchase Order dated 07.09.2021, where delays in supplies by the Operational Creditor led to tender cancellations by Gujarat Police, forfeiture of ₹16,47,475/- as Earnest Money Deposit (EMD), and additional disputes over debit notes worth ₹2,27,98,393/- for returned goods. These disputes rendered the claim untenable under Section 9.

Order: The AA concluded that the application failed to meet the criteria for initiating CIRP under Section 9 of the IBC, as the applicant could not establish its status as an Operational Creditor under Section 5(20) of IBC. AA observed that the relationship between the parties was that of joint suppliers and not one of debtor and creditor.

Case Review: *CIRP Application Dismissed.*

Sumati Suresh Hegde & Ors. Vs. Anand Sonbhadra, RP of Champalalji Finance Pvt. Ltd. & Ors. Company Appeal (AT) (Ins) No. 884 of 2024. Date of NCLAT Judgement: January 09, 2024.

Facts of the Case

The present appeal involves Sumati Suresh Hegde & Ors. (Appellants') against the Resolution Professional (RP) of Champalalji Finance Pvt. Ltd. and others (Respondents). The appeal arises from the impugned order dated 05.04.2024, passed by the Adjudicating Authority (AA), directing the RP to take possession of the property, Villa Mohindra Outhouse, Khar (W), Mumbai, u/s 60(5) r/w Section 25(2)(a) of the Insolvency and Bankruptcy Code (IBC), 2016. The Corporate Debtor (CD), M/s Champalalji Finance Pvt. Ltd., entered in CIRP on 17.03.2023 following an application u/s 7 of the IBC by Edelweiss Asset Reconstruction Company Limited.

During the first Committee of Creditors (CoC) meeting held on 26.04.2023, the Interim Resolution Professional (IRP) was confirmed as the RP. The property in question Villa Mohindra Outhouse, was occupied by the Appellants, legal heirs of Late Shri Suresh Padmanabha Hegde, who claimed tenancy rights rooted in a decree dated 26.11.2009 by the Small Causes Court. The decree declared Shri Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999, restraining the landlord from dispossessing him without due legal process. The property was later purchased by the CD from its original landlords, Prem Mohindra and Dilip Mohindra, along with the tenancy. On 23.12.2016, the CD filed RAE Suit No. 149 of 2011 before the Small Causes Court, seeking eviction on grounds of bona fide requirement to demolish the existing structure. This suit was pending when CIRP was initiated but was dismissed for non-prosecution on 16.11.2024. Despite this, the RP filed I.A. No. 4632 of 2023 under Section 60(5) read with Section 25(2)(a) of the IBC, seeking control and custody of the property. The Appellants contested this, arguing their tenancy rights were protected and the AA lacked jurisdiction to order eviction. The Respondent contended that, under Section 18(1)(f) of the IBC, it was his duty to take possession of all assets of the CD, including the property. The AA, in its order dated 05.04.2024, ruled in favor of the RP, stating that Section 238 of the IBC

(non-obstante clause) overrides the Maharashtra Rent Control Act, 1999, and directed eviction. Aggrieved, the Appellants filed the present appeal before the Appellate Tribunal, asserting that their tenancy rights were being disregarded and emphasizing the distinction between tenancy and lease. They argued that their rights were perpetual unless altered through due process of law under the Rent Control Act

NCLAT's Observations

The NCLAT observed that the tenancy rights of the Appellants were established through a 26.11.2009 decree by the Small Causes Court, declaring Late Shri Suresh Padmanabha Hegde a monthly tenant under the Maharashtra Rent Control Act, 1999 and restraining eviction without due process of law. The CD acquired the property with the tenancy and filled the RAE Suit No. 149 of 2011 for eviction on bona fide grounds that were dismissed for non-prosecution. The Appellate Tribunal highlighted the distinction between tenancy and lease, emphasizing that tenancy continues unless altered by contract or law. While the RP is empowered under Section 18(1) (f) and Section 25(2) (a) of the IBC to take possession of CD assets, such powers do not override tenancy protections. Referring to *Embassy Property Developments Pvt. Ltd. v. State of Karnataka* (2020), the Appellate Tribunal noted that tenancy disputes fall outside the jurisdiction of the NCLT/NCLAT. In *Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta* (2021), the Supreme Court cautioned against overreach by NCLT/NCLAT into non-insolvency matters. It also cited *Vishal N. Kalsaria v. Bank of India* (2016), which held that tenancy rights under rent control laws cannot be overridden by non-obstante clauses and also placed reliance on K. L Jute Products Pvt. Ltd. vs Tirupati Jute Industries Ltd. (2020) and said that the AA is not empowered to pass an eviction and it is for an aggrieved party to move the appropriate forum for redressal of its grievances in accordance with law." The Appellate Tribunal further relied on *Raj Builders v. Raj Oil Mills Ltd.* (2018), stating that eviction orders must follow due legal process, and on Devendra *Padamchand Jain v. Sandhya Prakash* (2018), affirming that the RP cannot evict tenants without approaching the proper forum.

Order: The Appellate Tribunal set aside the impugned order dated 05.04.24 passed by the AA deeming it legally erroneous and held that, the RP cannot evict tenants under IBC without pursuing the appropriate legal process under tenancy laws and the tenancy rights of the Appellants remain valid, and eviction is permissible only through due legal procedure as per the Maharashtra Rent Control Act.

Case Review: *Appeal Allowed.*

National Company Law Tribunal (NCLT)

M/s. Canara Bank Vs. M/s. DAAJ Hotels & Resorts Private Limited, Company Appeal (AT) (CH) (Ins) No.390/2022. Date of NCLAT Judgement: December 20, 2024.

Facts of the Case

The present appeal is filed by M/s Canara bank (Appellant) against M/s. Daaj Hotels & Resorts Pvt. Ltd. (CD or Respondent). The case revolves around a financial arrangement where the CD sought funding for the construction of a five-star hotel with an estimated project cost of ₹101.31 crores. For this purpose, the CD secured financial assistance from a consortium of banks, comprising State Bank of India (SBI), State Bank of Hyderabad (SBH), and the Appellant. SBI sanctioned ₹40 crores, SBH extended ₹10 crores, and the Appellant contributed ₹30 crores towards the project. However, the CD encountered financial difficulties, leading to a shortfall in project funding. Consequently, an additional term loan of ₹25 crores was sought from the consortium to meet the escalated project costs. Despite the consortium's efforts to restructure the financial assistance mechanism, the CD failed to achieve its financial objectives. This resulted in the declaration of its account as a NPA on 01.10.12. Subsequent to this, proceedings under the Recovery of Debts and Bankruptcy Act, 1993, were initiated on 18.08.17, before the Debt Recovery Tribunal (DRT), with a claim of ₹131.88 crores. During these proceedings, the CD acknowledged its dues and proposed a One-Time Settlement (OTS) of ₹80 crores. However, the OTS proposal was not honored, leading the consortium to withdraw from the settlement on 04.02.19. The Appellant subsequently issued a demand

notice on 29.08.19, seeking repayment of ₹30 crores, along with additional amounts, but no payments were made by the CD. As the financial distress persisted, the Appellant filed an application u/s 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) on 19.07.19, to initiate a CIRP. However, the AA, dismissed the application on 28.02.22 citing limitation issues and the binding nature of the default date as 1.10.12. The present appeal was filed against this dismissal.

NCLAT's Observations

The Appellate Tribunal noted that the date of default was 01.10.12 when the CD's account was classified as a Non-Performing Asset (NPA). It clarified that acknowledgment of debt under Section 18 of the Limitation Act must occur within the three-year limitation period to extend the timeline. Subsequent acknowledgments by the CD fell outside this statutory window, rendering them insufficient to revive the limitation period. The issuance of notices under Section 13(2) of the SARFAESI Act on 01.10.12 provided a clear and undisputed date of default. Applying Section 137 of the Limitation Act to Section 7 applications under the IBC, the Appellate Tribunal emphasized a three-year limitation period starting from the default date. Citing its previous verdict in the mater of *Bijnor Urban Co-Operative Bank Limited Vs. Meenal Agarwal & Others,* the NCLAT held that OTS schemes or acknowledgments beyond the limitation period cannot revive time-barred debts. Referring to the judgement of Adjudicating Authority in the matter of Asset Reconstruction Company Limited, the Appellate Tribunal reiterated that the declaration of an account as an NPA marks the starting point for limitation. The Tribunal rejected arguments for reckoning default from subsequent correspondence or the compromise decree of 03.01.20, as they occurred beyond the limitation period. It held that SARFAESI notices merely establish the timeline for default and reaffirmed the binding nature of the 01.10.12 default date. The Appellate Tribunal further concluded that limitation cannot be extended once the statutory period has lapsed. Thus, the Section 7 application filed on 19.07.20 was barred by limitation.

Order: The Appellate Tribunal dismissed the appeal and upheld the AA's order dated 28.02.22, which rejected the Section 7 application on the grounds of limitation. NCLAT reaffirmed that the limitation period for initiating CIRP is non-negotiable and must be calculated from the actual date of default, which was 01.10.12 in this matter.

Case Review: *Appeal Dismissed.*

Himatsingka Seide Ltd. vs. Textile Professional LLP CP (IB) No. 886/MB/2022. Date of NCLT's Judgement: March 21, 2025.

Facts of the Case

The present case concerns an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Himatsingka Seide Limited (hereinafter referred as 'Operational Creditor') seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Textile Professional LLP (hereinafter referred as Corporate Debtor).

The application, filed on 27.07.2022, was premised on the alleged default in payment of ₹1,29,07,257.60, which includes interest of ₹8,78,383.60 at 18% per annum from due dates till 12.05.2022. This claim arises out of five unpaid invoices raised by the Operational Creditor between December 2021 and January 2022 for supply of cotton fibre to the CD. The dispute traces back to an arrangement wherein the OC agreed to supply cotton fibre and bear the conversion charges to be processed by Shree Gajanan Sahakari Soot Girni Ltd., the consignee nominated by the CD. As per the agreed terms, payments were to be made within 30 days of invoice dates, failing which interest at 18% per annum would apply. Despite several invoices being raised, the CD defaulted on payment, prompting the issuance of a demand notice on 13.05.2022.

In response, the CD refuted the debt, alleging a pre-existing dispute over both the qualities of goods supplied and unresolved conversion charges, asserting that it had acted merely as a facilitator. It claimed the goods were of inferior quality and that it had to bear the cost of conversion due to a default by the OC. It also claimed that mediation was attempted, with a meeting held on 06.04.2022, minutes of which were drafted (though unsigned), and legal proceedings were subsequently

initiated by the CD in other forums, including a case under the Maharashtra Cooperative Societies Act and a writ petition before the Bombay High Court. The main issue raised before the Adjudicating Authority is: (i) Whether there is preexisting dispute between the parties?

NCLT's observations

The AA noted that the crux of the matter lay in determining whether a pre-existing dispute existed prior to the issuance of the demand notice. Despite the Operational Creditor's assertion that the CD accepted the goods without demur, the AA found on record several email correspondences dating back to January 2022 indicating dissatisfaction over the quality of goods and delays in resolving payment issues with the consignee. The AA acknowledged that while the CD's reply to the demand notice was received after the statutory 10-day period, such delay did not bar the Debtor from substantiating pre-existing disputes through other records. It relied on precedent from *Brand Realty Services Ltd. v. Sir John Bakeries India Pvt. Ltd* (2020)., wherein the Hon'ble NCLAT held that absence of a timely reply under Section 8(1) IBC does not preclude the CD from producing evidence of pre-existing disputes before the AA. Furthermore, the AA observed that the CD had promptly initiated parallel proceedings (including civil recovery claims and writ petitions) and had furnished uncontroverted communications showing that the parties had engaged in a mediation process. The OC neither denied nor effectively refuted these developments. Consequently, the AA held that a genuine and pre-existing dispute had been raised prior to the application under Section 9.

Order/Judgement: The AA dismissed the application filed by Operational Creditors on the grounds of a preexisting dispute. It clarified that the order would not prejudice the Operational Creditor's right to pursue its claims before any other judicial forum.

Case Review: *CIRP Application Dismissed.*