IBC Case Laws

Supreme Court of India

Kalyani Transco vs. M/s. Bhushan Power and Steel Ltd. & Ors. Civil Appeal No. 1808 of 2020, Date of Supreme Court Judgement: May 02, 2025.

Facts of the Case

This batch of appeals arose from the common impugned judgment and order dated 17.02.2020 passed by the Appellate Tribunal (NCLAT), concerning the Corporate Insolvency Resolution Process (CIRP) of M/s Bhushan Power and Steel Ltd. (BPSL)/CD. The lead appeal was filed by Kalyani Transco (hereinafter referred as Appellant), an operational creditor of CD, challenging the approval of the Resolution Plan submitted by JSW Steel Limited (hereinafter referred to as "JSW") and accepted by the Committee of Creditors (CoC) and the Adjudicating Authority/AA. Pursuant to the Reserve Bank of India's circular dated 13.06.2017 identifying the "dirty dozen" accounts, the CD was subjected to CIRP initiated by Punjab National Bank. The AA admitted the petition on 26.07.2017. Claims amounting to ₹4,72,04,51,78,073.88 were admitted for financial creditors and ₹6,21,37,61,735 for operational creditors. JSW, Tata Steel, and Liberty House submitted resolution plans. After multiple rounds of negotiations, JSW's revised and consolidated plan was approved by the CoC in October 2018 and subsequently by the AA on 05.09.2019, subject to conditions specified in para 128 of its judgment. Meanwhile, the Directorate of Enforcement (ED) passed a Provisional Attachment Order (PAO) on 10.10.2019 under Section 5 of the PMLA attaching the assets of the CD.

This was challenged by JSW and the CoC. The Appellate Tribunal stayed the PAO and declared the attachment illegal in its final order dated 17.02.2020. Several appeals were filed before the Supreme Court, including by Appellant, other operational creditors, and the State of Odisha, questioning the legality of the Appellate Tribunal's judgment, procedural irregularities in the approval of the Resolution Plan, and maintainability of JSW's appeal under Section 61 of the IBC.

Supreme Court's Observations

The Apex Court noted several procedural irregularities and raised substantial concerns about the maintainability and legality of the proceedings. The Apex Court reaffirmed that operational creditors and former promoters are "persons aggrieved" under Section 62 of the IBC and hence entitled to file appeals.

It referenced Glas Trust Company LLC v. Byju Raveendran & Ors. to confirm that insolvency proceedings

are collective in nature and open to all stakeholders. The Apex Court found that the appeal filed by JSW before the Appellate tribunal under Section 61 of the IBC was not maintainable as none of the conditions under Section 61(3) existed. Despite the Resolution Plan being approved by the AA, JSW had appealed against certain conditions, which were not permitted under the IBC scheme. The Appellate tribunal erred in entertaining and allowing this appeal. The Supreme Court pointed to serious lapses in disclosure by JSW, particularly regarding its Joint Venture Agreement with CD and Jai Balaji dated 05.03.2008. The Resolution Professional had failed to file the mandatory compliance certificate (Form H), and the contents of the affidavit concerning JSW's eligibility were neither verified nor disclosed. This raised doubts over JSW's eligibility under Section 29A of the IBC. The Appellate tribunal had declared the ED's Provisional Attachment Order (PAO) dated 10.10.2019 as illegal. The Supreme Court clarified that AA and Appellate tribunal, being forums under the Companies Act, cannot exercise judicial review over statutory authorities like ED under PMLA. It cited Embassy Property Developments Pvt. Ltd. v. State of Karnataka to state that such review lies outside their jurisdiction. Although JSW offered to deposit ₹19,350 crore in an escrow account and eventually implemented the plan, the Supreme Court emphasized that noncompliance with statutory provisions during the approval process could not be overlooked, especially when it relates to eligibility and disclosure norms

Order: The judgments dated 05.09.2019 (AA) and 17.02.2020 (Appellate tribunal) are quashed and set aside and the Resolution Plan of JSW, approved by the CoC, stands rejected for non-compliance with Section 30(2) read with Section 31(2) of the IBC. The Apex court directed the AA to initiate liquidation proceedings against the CD as per u/s 33(1) of the IBC and Article 142 of the Constitution of India and further said that the payments made by JSW to creditors and any equity infused shall

be dealt with as per the statement of the CoC's counsel recorded in the order dated 06.03.2020. The issue of EBITDA is left open as the Resolution Plan stands rejected.

Case Review: Civil Appeal Nos. 1808, 2192–2193, 2225 & 3020 of 2020, including 6390 of 2021 are allowed to the extent stated above and Civil Appeal Nos. 3784 of 2020 and 668 of 2021 (State of Odisha) are disposed of without expressing any opinion on the merits of the claims, pending applications, if any, are also disposed of.

VISA Coke Ltd. vs. M/S Mesco Kalinga Steel Ltd. Civil Appeal No. 357 of 2025, Date of Supreme Court Judgement: April 29, 2025.

Facts of the Case

The present appeal was filed by VISA Coke Ltd. (hereinafter referred as Appellant/Operational Creditor) challenging the final order dated 03.10.24 passed by the Appellate Tribunal. The Appellate Tribunal had dismissed the Appellant's appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the order dated 24.01.23 of the Adjudicating Authority, which had rejected the Appellant's Section 9 application seeking initiation of Corporate Insolvency Resolution Process (CIRP) against M/s MESCO Kalinga Steel Limited (hereinafter referred as Respondent/Corporate Debtor). The Appellant a manufacturer and seller of Low Ash Metallurgical Coke (LAM Coke), had entered into a supply contract with the Respondent on 11.10.19. Despite amendments extending delivery timelines, a part of the supply (1700 MT) was delivered on credit based on the Respondent's assurance of opening a Letter of Credit, which never materialized. The respondent acknowledged the debt through email on 25.11.2019. Since no payment was made, the appellant issued a demand notice dated 31.03.2021 in Form 3 under Section 8 of the IBC to the respondent's Key Managerial Personnel (KMP) at the registered office address, demanding payment of ₹4,19,77,245.17 (principal plus penal interest at 15%). The respondent neither replied nor paid the dues. Consequently, the appellant filed a Section 9 petition before the AA, which was dismissed on the ground that the statutory demand notice had not been addressed directly to the Corporate Debtor but only to its KMP, rendering the notice invalid. The NCLAT upheld this reasoning. Aggrieved by this order the appellant approached the Supreme Court.

The main issue raised before the Apex Court is:

(i) Whether the notice dated 31.03.21, served on the KMPs of the CD at its registered office, satisfied the requirements under Section 8 of the IBC and Rule 5(2) of the AA Rules, 2016.

Supreme Court's Observations

The Apex Court emphasized that the IBC mandates service of a demand notice on the CD, but this may be done via its KMPs at the registered office. The Apex court found that the subject and contents of the notice issued by the Appellant clearly identified the CD as the entity being addressed, and the KMPs were merely the addressees in their official capacity. The demand notice complied with the form and purpose prescribed under the IBC. Relying on precedents including Rajneesh Aggarwal v. Amit J. Bhalla, K.B. Polychem (India) Ltd. v. Kaygee Shoetech Pvt. Ltd., and Shubham Jain v. Gagan Ferrotech Ltd., the Apex Court held that service on the KMP at the registered address amounts to valid service on the CD. Furthermore, The Apex court criticized the AA and Appellate Tribunal for adopting a hyper-technical view, which defeated substantive justice. The Apex Court observed that the procedural irregularity alleged did not prejudice the CD, who was fully aware of the demand and even attempted settlement during the pendency of proceedings. Regarding the issue of default, the Apex Court noted that the AA and Appellate Tribunal had not delved into the question of whether the contract was novated or whether a default had occurred. The Apex Court clarified that this issue, being a mixed question of law and fact, required detailed consideration and should be decided by the AA upon remand.

Order: The Supreme Court set aside the orders of the AA and the Appellate Tribunal and remanded the matter to the AA for fresh consideration of the Section 9 petition on merits. The AA was directed to decide the petition after giving reasonable opportunity to both parties, without being influenced by its earlier observations. No order as to costs was made.

Case Review: *Appeal Allowed.*

Piramal Capital And Housing Finance Ltd. Vs. 63 Moons nologies Ltd. & OTechthers Civil Appeal No. 1632-1634 of 2022, Date of Supreme Court's Judgement: April 01, 2025.

Facts of the Case

The present appeal has been filed by Piramal Capital and Housing Ltd. (Piramal Capital), which is Successful Resolution Applicant (SRA) of the Dewan Housing Finance Corporation Ltd. (DHFL), challenging the common judgment and order dated 27.01.2022 passed by the NCLAT only to the extent that it modified the Resolution Plan (RP) by holding that the RP who permitted the SRA to appropriate recoveries, if any, from Avoidance applications filed under Section 66 of the IBC ought to be set aside and the Resolution Plan be sent back to the

Committee of Creditors (CoC) for reconsideration on that aspect. On an application filed by the Reserve Bank of India (RBI), the NCLT via an order dated 03.12.2019 initiated commencement of Corporate Insolvency Resolution Process (CIRP) of DHFL and confirmed the appointment of Administrator to perform all functions of the Resolution Professional under the IBC. Subsequently, the Administrator received the claims wort ₹82,247 Crores. He also appointed a firm for unearthing particulars of preferential, undervalued, fraudulent, and extortionate (PUFE) transactions entered by DHFL. The firm reported PUFE amounting ₹45,050/ Crores. Meanwhile, the Resolution Plan of Piramal Capital amounting ₹37,250 Crores was approved by the CoC with 93.65% to which Authorized Representative of 77 financial creditors including the 63 Moons Technologies Ltd. (63 Moons), the Respondent, voted in favour. The Resolution Plan mentioned a notion value of ₹1 against PUFE transactions. However, when the Plan was submitted for approval of the NCLT, 63 Moons challenged the provisions of the Plan

which provided that Section 66 (PUFE) Recoveries will go to the benefit of the SRA. The Adjudicating Authority rejected the petition of 63 Moons on the grounds that 77 financial creditors decided in its commercial wisdom to give away the Section 66 Recoveries to the SRA after a hard Bargain in exchange for a lump sum resolution amount of ₹37,250 Crores. Aggrieved with this order 63 Moons filed an appeal in the NCLAT which was allowed. This arises the preset appeal before the Apex Court.

Supreme Court's Observations

Relying on Supreme Court judgements in the cases of Arcelormittal India Pvt. Ltd. v. Satish Kumar Gupta and Others, (2019), Ebix Singapore Pvt. Ltd. v. CoC of Educomp Solutions Ltd. and Another (2022) and M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Another (2024), the Apex Court held that the legislature has given paramount importance to the "commercial wisdom" of CoC, and that the scope of the judicial review by the Adjudicating Authority (NCLT) is limited to the extent provided under Section 31, and that of the Appellate Authority (NCLAT) is limited to the extent provided under sub-section (3) of Section 61 of the IBC. Furthermore, the Court held that if the finality and binding force is not provided to the votes cast by the Authorized Representatives of a class of Financial Creditors, a plan of resolution involving large number of parties may never fructify. In the instant case, the vote cast by the Authorized Representative on behalf of the class of Financial Creditors he represented was binding on the 63 Moons and other Appellants before the NCLAT, and therefore they were stopped from raising any objection before the NCLT or NCLAT against the RP approved by the requisite majority of CoC. Regarding the notional value of ₹1 ascribed to Section 66 Applications under the Resolution Plan, the Apex Court held that it was made in response to the provision of RFRP issued by the Administrator. The NCLAT therefore has clearly transgressed its jurisdiction under Section 61 IBC, by interfering with the clause pertaining to the treatment to the recoveries from the Fraudulent and Wrongful trading under Section 66.

Order: The Supreme Court set aside the NCLAT order dated 27.01.2022 and upheld the order of NCLT dated 07.06.2021 granting its approval to the Resolution Plan. It also ordered the NCLT to decide all the Avoidance Applications separately. The recoveries/benefits that may follow from such Applications shall be appropriated in favour of the CoC in case of Avoidance Applications under Section 43, 45 and 50, and in favour of SRA in case of Applications under Section 66 of IBC.

Case Review: *Appeal Allowed.*

Vaibhav Goel & Anr. vs. Deputy Commissioner of Income Tax & Anr. Civil Appeal No. 49 of 2022, Date of Supreme Court's Judgement: March 20, 2025

Facts of the Case

The present appeal was filed jointly by resolution applicants (hereinafter, Applicants), who submitted a Resolution Plan for M/s Tehri Iron and Steel Casting Ltd. (Corporate Debtor or CD) dated January 21, 2019, urging the Supreme Court for declaring that the tax demands made by Deputy Commissioner of Income Tax (Respondent No. 1) pertaining to assessment years 2012-13 and 2013-14 should be declared invalid. The Appellants had submitted a Resolution Plan for the CD dated January 21, 2019, which was approved by the NCLT vide its order dated May 21, 2019. The Resolution Plan has mentioned "Contingent Liabilities" of the Respondent No. 1 amounting ₹16,85,79,469/- for the assessment year 2014-15 based on the demand dated 18th December 2017 which was rectified under Section 154 of the Income Tax Act, 1961. After approval of the Resolution Plan, Respondent No. 1 issued demand notices under the IT Act concerning assessment years 2012- 13 and 2013-14, respectively, in respect of the CD. These demands were not submitted before the Resolution Professional during the CIRP. The Monitoring Professional (Respondent No. 2) wrote a letter to the Respondent No. 1 contending that these demands were unsustainable in law. Subsequently, the Respondent No. 2 applied before the NCLT for declaring that the demands made by the Respondent No. 1 pertaining to assessment years 2012-13 and 2013-14 were invalid on the grounds that no claim in respect thereof was made before the Resolution Professional until

the Resolution Plan approved by the order dated May 21, 2019. However, the NCLT dismissed the application and imposed a cost of ₹1 lakh against the appellants and the second respondent. The NCLAT also dismissed the appeal via the impingement judgement dated November 25, 2021. The aggrieved appellants approached the Supreme Court.

Supreme Court's Observations

The Supreme Court observed that the Respondent No. 1 did not make any claim regarding Income Tax dues of the CD for the assessment year 2012-13 and 2013-14. The Applicants, therefore, proposed to pay all Statutory Liabilities as were appearing in the balance sheet of the CD.

It was also observed that the Income Tax liabilities for the assessment years 2012-13 and 2013-14 have not been shown as contingent liabilities under the Resolution Plan. Placing reliance on the Supreme Court judgement in the case of Ghanashyam Mishra and Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Ltd. (2021), the court said that once a Resolution Plan is duly approved by the Adjudicating Authority under Section 31 (1), the claims as provided in the Resolution Plan shall stand frozen and will be binding on the CD and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. Furthermore, the amendment to Section 31 of the IBC in 2019 is clarificatory and declaratory in nature and therefore will be effective from the date on which the IBC has come into effect. Thus, all the dues including the statutory dues owed to the Central Government, if not a part of the Resolution Plan, shall stand extinguished and no proceedings could not continue in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 of the IBC. Therefore, the additional demands made by the Respondent No. 1 will operate as roadblocks in implementing the approved Resolution Plan, and appellants will not be able to restart the operations of the CD on a clean slate.

Order: The demands raised by the Respondent No. 1 against the CD in respect of the assessment years 2012-13 and 2013-14 are invalid and can not be enforced. The orders of NCLT and NCLAT are set aside.

Case Review: *Appeal Allowed.*

National Company Law Appellate Tribunal (NCLAT)

Mr. Sunil Gutte Vs. Mr. Avil Menezes, DPRS Infra Developers Pvt. Ltd., Rayon Infrastructure Pvt. Ltd, Navneesh Traders Pvt. Ltd., Shreehari Associates Pvt. Ltd. & Mr. Harshavardhan Kaushik, Company Appeal (AT) (Insolvency) No. 515 of 2025, Date of NCLAT Judgement: May 30, 2025.

Facts of the Case

The present appeal was filed u/s 61 of the Insolvency and Bankruptcy Code, 2016 by Mr. Sunil Gutte, Promoter and Suspended Director of M/s Sunil Hitech Engineers Ltd./ C/D (hereinafter referred as 'Appellant'), challenging the order dated 04.02.25 passed by the Adjudicating Authority. The AA had allowed M.A. No. 1833 of 2019 filed by the Resolution Professional (hereinafter referred as 'Respondent No. 1') and set aside certain transactions made by the Appellant and Respondent No. 6 (CFO of the CD) with Respondents Nos. 2 to 5, declaring them in violation of the moratorium u/s 14 of the IBC. These transactions, amounting to ₹11.01 crore, were made post-commencement of CIRP which had been admitted on 07.09.18, and the moratorium declared effective from 10.09.18. The Respondent no. 1 discovered that unauthorized payments had been made to Respondents Nos. 2 to 5 in two phases first between 10.09.18 and 14.09.18 (nine RTGS transactions), and second between 06.10.18 and 08.10.18 (three cheque encashments). These payments were made from the CD's HDFC Bank account, not from the designated account under the IRP's control. The Appellant argued that the payments were necessary to run the company as a going concern and that the cheques were dated prior to the moratorium. The Respondent no. 1 contended that all such payments were in clear breach of the moratorium provisions, made without IRP's approval, and therefore sought reversal of the transactions.

The AA held that the Appellant and Respondents Nos. 2 to 6 were jointly and severally liable to refund the amounts, and the matter was also directed to IBBI for consideration under Section 74(1) of IBC. Aggrieved by this, the Appellant approached the Appellate Tribunal. The main issues raised before the Appellate Tribunal is whether the payments made by the Appellant after commencement of CIRP constituted a breach of the provisions of moratorium and whether there was any infirmity in the impugned

order directing the reversal of the impugned transactions by the Appellant and Respondent No. 2 to 6 to the assets of the CD.

NCLAT's Observations

The Appellate Tribunal noted that as per Section 5(12) of the IBC, the insolvency commencement date is the date of admission of a CIRP application. Section 14(1)(b) mandates a moratorium on transferring or disposing of any assets of the CD post-admission. It observed that 9 out of the 12 impugned transactions occurred via RTGS between 10.09.18 and 14.09.18, i.e., after the effective date of moratorium. Although the remaining three cheque transactions were dated before the moratorium, they were encashed only afterward. The Appellate Tribunal held that the IRP had not authorized these payments and that the suspended management acted in violation of the moratorium provision. It further emphasized that the objective of Section 14 is to maintain the status quo of the CD' assets during CIRP, and even a well-intentioned payment by the suspended management cannot override statutory prohibitions.

The Tribunal rejected the Appellant's argument that these payments were in the ordinary course of business and essential for maintaining the going concern status of the CD. It cited that any such post-CIRP payments must be made under IRP supervision and authorization. With regard to the three cheque transactions, the Tribunal relied on its earlier ruling in SREI Equipment Finance Ltd. v.

Amit Gupta (2019), holding that even if the cheque is dated before moratorium, its encashment after moratorium breaches the law. The Appellant's reliance on the Pratim Bayal case (2013) was rejected, as the facts were distinguishable and no credible evidence was provided regarding the actual handover date of the cheques. The Tribunal also rejected the argument of discriminatory treatment, stating that parity cannot be claimed in illegal acts and any oversight by the Respondent no. 1 in other cases does not justify non-compliance in the instant case.

Order: The Appellate Tribunal dismissed the appeal and upheld the AA's order, holding that an amount of ₹11.01 crore had been illegally transferred from the CD's account to Respondent Nos. 2 to 5 in violation of the moratorium. The Appellant and Respondent Nos. 2 to 6 were held jointly and severally liable to refund the said amount within 30 days. The matter was rightly referred to IBBI for action under Section 74(1) of IBC. However, liberty was granted to Respondent Nos. 2 to 5 to file their claims before the RP/Liquidator.

Case Review: The Appeal is dismissed with no order as to costs.

Mr. Ramprasad Vishvanath Gupta Vs. Mr. Dinesh Kumar Deora, Kotak Mahindra Investments Ltd. & M/s Neel Builders & Developers, Company Appeal (AT) (Insolvency) No. 442, 474 & 559 of 2025, Date of NCLAT Judgement: May 21, 2025.

Facts of the Case

The present Appeal Nos. 442, 474, and 559 of 2025 were filed by Mr. Ramprasad Vishvanath Gupta, a homebuyer (hereinafter referred to as the 'Appellant'), challenging three separate orders passed by the Adjudicating Authority (AA) dated 24.01.2025, 28.01.25, and 12.02.25 in the Corporate Insolvency Resolution Process (CIRP) of M/s Snehanjali and S.B. Developers Private Limited. The CIRP commenced on 07.03.24 based on an application filed by Mr. Santosh Ananda Shetty and 66 other homebuyers, classified as Financial Creditors in class. Following admission, a public announcement was made, and the CoC was constituted on 26.03.24 and later reconstituted. Transaction Auditor and Registered Valuers were appointed, and Form G was published inviting EOIs. After receiving multiple EOIs, the Resolution Professional (RP) issued the Request for Resolution Plan (RFRP), with the last date of submission extended beyond 20.07.24. In the 6th CoC meeting on 25.09.24, four resolution plans were opened.

The Resolution Plan submitted by La Mer Developers Ltd. and Neel Builders & Developers was approved with 83.46% voting share, and a Letter of Intent was issued on 12.10.24. The RP filed IA No. 102/MB/2024 for approval of the Resolution Plan. Meanwhile, the Appellant filed IA No. 22/MB/2025 u/s 43 of the IBC seeking declaration of certain transactions as preferential; IA No. 24/MB/2025 challenging the Resolution Plan; and IA No. 269/MB/2025 along with four other homebuyers under Section 60(5) of the IBC, seeking quashing of RFRP conditions, replacement of RP and AR, and disclosure of Zoom recordings and e-voting details. All were rejected by the AA. By order dated 24.01.25, the AA dismissed IA No. 22/MB/2025 holding that a homebuyer lacks authority under Section 43 and imposed a cost of ₹50,000/-. On 28.01.25, IA No. 24/MB/2025 was rejected, noting that the Appellant, holding only 2.14% of voting share among approximately 600 homebuyers, lacked locus to challenge the CoC-approved Resolution Plan. On 12.02.25, the plan was approved as compliant with Section 30(2) of the IBC, providing for delivery of units to all 297-unit holders including non-claimants. Aggrieved by these orders, the Appellant approached the Appellate Tribunal alleging procedural irregularities, statutory violations, fraudulent conduct, and collusion between the RP and SRA, along with repeated prayers for rejection of the Resolution Plan

and replacement of professionals involved in the CIRP.

NCLAT's Observations

The Appellant, a single homebuyer, challenged three orders of the AA rejecting his applications u/s 43 of IBC objecting to, and approving the Resolution Plan of La Mer Developers Ltd. and Neel Builders & Developers. He alleged procedural impropriety, collusion, and sought deletion of the ₹50,000/- cost imposed. The Respondents argued he lacked locus, holding only 2.14% voting share, as the plan was approved with 83.46% CoC votes, citing Jaypee Kensington (2022) 1 SCC 401, which bars individual homebuyers from challenging a majority-approved Resolution Plan. The Appellate Tribunal noted that similar reliefs had already been rejected in IA No. 269/MB/2025 and not challenged, rendering the allegations against the RP and AR not open to reconsideration. Referring to the same judgment, the Appellate Tribunal reiterated that dissent by a few cannot override the majority, and the principle of democratic decision-making within a creditor class must prevail. Regarding the application u/s 43 filed by the Appellant, the Appellate Tribunal concurred with the AA that only the RP or Liquidator is empowered under the statute to file such applications.

While upholding the rejection of the application, the Appellate Tribunal deleted the cost of ₹50,000/- imposed on the Appellant. In respect of the challenge to the Resolution Plan, the Appellate Tribunal affirmed the AA's view that individual homebuyers, despite divergent opinions, are bound by the class vote exercised by the AR. The Appellate Tribunal relied on K. Sashidhar v. Indian Overseas Bank, Kalpraj Dharamshi v. Kotak Investment Advisors Ltd., Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, and Ghanshyam Mishra and Sons Pvt. Ltd. v. Edelweiss ARC, emphasizing that the AA has no power to interfere with the CoC's commercial wisdom once the plan satisfies Section 30(2). It was further observed that the approved Resolution Plan provided for delivery of units to all 297-unit holders and complied with legal requirements.

Order: The Appellate Tribunal reinforces the principle that collective decisions taken by the CoC's, especially in the case of financial creditors in class (like homebuyers), bind all members, and individual objections post-approval of the Resolution Plan are unsustainable. The Appellate Tribunal also clarifies the statutory scheme regarding who can initiate avoidance transactions under Section 43 of the IBC.

Case Review: The Appellate Tribunal dismissed all three appeals. However, the cost of ₹50,000/- imposed by the NCLT in IA No. 22/MB/2025 was set aside. The rest of the findings and decisions of the AA were upheld.

Indian Bank Vs. Anjanee Kumar Lakhotia, State Bank of India, and Roshan Lal, Company Appeal (AT) (Insolvency) No. 458 of 2025, Date of NCLAT Judgement: May 21, 2025.

Facts of the Case

The appeal was filed by Indian Bank (hereinafter referred as 'Appellant') against the order dated 24.01.25 passed by the Adjudicating Authority/AA which had rejected its application under Section 95(1) of the IBC for initiating corporate insolvency resolution process (CIRP) against the Personal Guarantor, Mr. Anjanee Kumar Lakhotia, suspended Director of M/s MBL Infrastructure Ltd, State bank of India, and Roshan Lal Jain/RP (hereinafter referred as Respondent no: 1,2,3) respectively. The case originated from financial facilities extended by a consortium of banks led by Respondent No. 2, with a deed of guarantee executed by Respondent 1 on 17.02.16 in favour of the lead bank. The CD's accounts were declared NPA on 21.12.16 and admitted to CIRP on 30.03.17 by AA. The Appellant filed its claim and was part of the CoC. The RP submitted a Resolution Plan dated 22.11.17, approved by CoC with 78.50% vote share and by AA on 18.04.18. This plan was upheld by the Hon'ble Supreme Court on 18.01.22 in Civil Appeal No. 8411 of 2019, noting infusion of ₹63 crores and the CD's status as an ongoing concern. To implement the approved Plan, a new Deed of Guarantee dated 04.07.24 was executed by the RP in favour of SBICAP Trustee Company Ltd. The Appellant, being a dissenting financial creditor, did not support the Resolution Plan and was entitled to receive liquidation value. It filed the present Section 95(1) application, opposed by Respondent No. 2, which led the new working capital consortium. The Respondent No. 2 argued that the debt was restructured via the Resolution Plan and a new personal guarantee was executed. It contended that a dissenting creditor could not initiate personal insolvency against a guarantor who submitted and implemented the courtapproved Resolution Plan.

The AA observed that post-approval, the loan was effectively restructured and the original guarantee dated 17.02.16 was extinguished. The new guarantee dated 04.07.24 was executed along with other documents including the Working Capital Consortium Agreement, Security Trustee Agreement, Debenture Trust Deed, and Inter-se Agreement. These documents formed part of the implementation mechanism of the approved Resolution Plan. The tribunal noted that the assets and liabilities of the Personal Guarantor, including his net worth of

₹18.37 crores as on 31.03.17, were already factored into the Resolution Plan. Therefore, the fresh Section 95 application was deemed not maintainable.

NCLAT's Observations

The Appellate Tribunal held that although the general proposition laid down by the Hon'ble Supreme Court in Lalit Kumar Jain v. Union of India (2021) was that the approval of a Resolution Plan does not ipso facto extinguish a personal guarantee, the facts of the present case were distinguishable. Here, it was the Personal Guarantor himself who had submitted and implemented the Resolution Plan. The Plan included a fresh personal guarantee, which replaced the earlier one. The restructuring, security extinguishment, and other components of the Plan were acknowledged by the Supreme Court and Appellate tribunal in earlier rounds of litigation.

The Appellate Tribunal further referred to the Resolution Applicant's letter dated 22.11.17 to the Respondent no. 3, where amendments, restructuring of debts, modification of security interests, and issuance of securities for claims were detailed, reinforcing that all prior securities, including the personal guarantee, had been subsumed under the new structure. Thus, relying on the extinguished guarantee for initiating personal insolvency under Section 95 was impermissible. The Court reiterated that approval of a Resolution Plan does not ipso facto extinguish a guarantee, but where a new guarantee is executed under a Plan approved by all statutory forums including the Supreme Court, the previous guarantee ceases to exist.

Order: The Appellate Tribunal upheld the findings of the AA and concluded that the application under Section 95(1) filed by the Appellant was not maintainable. The Tribunal held that no grounds were made out to interfere with the impugned order dated 24.01.25 passed by AA.

Case Review: *Appeal Dismissed.*

Consortium of Ms. Karishma Jain, M/s. Jupiter City Developers (I) Ltd., & M/s. Adwaita Navigations Pvt. Ltd. Vs. NSE, BSE, CDSL, NSDL & Mr. Vijay Pitamber Lulla, I.A (IBC) No. 1726 of 2024 in C.P (IB) No.16/7/HDB/2023, Date of NCLAT Judgement: May 02, 2025.

Facts of the Case

The instant application, I.A. No. 1726 of 2024 in CP (IB) No. 16/7/HDB/2023, was filed before the Adjudicating Authority/AA, by the Consortium of Ms. Karishma Jain, M/s. Jupiter City Developers (India) Ltd., and M/s. Adwaita Navigations Pvt. Ltd., acting as the Successful Resolution Applicant/SRA (hereinafter referred as Applicant) for M/s. XL Energy Ltd., a corporate debtor/CD, against National Stock Exchange of India Limited , Bombay stock exchange & Central depository Service India Ltd., National Securities depositories Ltd. & Mr. Vijay Pitamber Lulla (hereinafter referred as 'Respondent No. 1,2,3,4,5 respectively). The application sought directions for the relisting of equity shares of the CD and activation of its credentials necessary for implementing the Resolution Plan approved on 19.04.2024. XL Energy Ltd., a formerly listed company, was delisted by the NSE due to non-compliance with SEBI (LODR) Regulations, 2015, and non-payment of fines. The delisting order was passed on 19.07.2021 under the SEBI Delisting Regulations, 2009. Later, CIRP was initiated against the CD on 27.03.2023 based on a petition filed by Invent Assets Securitisation and Reconstruction Pvt. Ltd., and Mr. Vijay Pitamber Lulla was appointed as the RP. The SRA's Resolution Plan, approved by the CoC with 73.68% voting, proposed the relisting of the CD as an integral part of revival. The request for relisting was denied by NSE citing Regulation 40(1)(b) of the SEBI Delisting Regulations, 2021, which bars relisting within 10 years of delisting. The application was filed under Section 32A and 60(5) of IBC read with Rule 11 of NCLT Rules, 2016, arguing that the denial of relisting contradicts the clean slate principle under IBC and Section 238, which provides overriding effect to IBC.

NCLAT's Observations

The Tribunal noted that XL Energy Ltd. was listed with NSE from 28.12.2006 until trading was suspended on 09.01.2020 due to non-compliance with Regulation 31 of the SEBI LODR Regulations and non-payment of fines. Despite notices, the CD failed to respond, leading to delisting on 19.07.2021 under SEBI Delisting Regulations, 2009.

It reiterated that a Resolution Plan approved under Section 31(1) of the IBC binds all stakeholders, including statutory authorities. Citing Essar Steel India Ltd. v. Satish Kumar Gupta and Ghanashyam Mishra and Sons Private Limited v. Edelweiss Asset Reconstruction Company Limited, the Tribunal emphasized that a Resolution Plan grants the CD a "clean slate" and that no stakeholder may impose conditions inconsistent with the Plan. Relisting was held to be an integral part of the approved Resolution Plan, critical for revival. Denial by NSE citing Regulation 40(1)(b) of the SEBI Delisting Regulations, 2021, ignored the overriding provisions of Sections 32A and 238 of IBC. The Tribunal clarified its jurisdiction under Section 60(5)(c) of IBC to adjudicate matters relating to CIRP and Plan implementation, referencing State Bank of India v. Consortium of Mr. Murari Lal Jal and Mr. Florian Frsitsch and Ghanashyam Mishra and Sons Private Limited v.

Edelweiss Asset Reconstruction Company Limited, and Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. decisions.

Further, Regulation 40(2)(a) read with 40(3) of the 2021 SEBI Regulations permits relisting pursuant to a Resolution Plan. Since the delisting was due to the acts of the erstwhile management, and not the new SRA, the denial of relisting amounted to mechanical rejection, contrary to the clean slate principle. The Tribunal reaffirmed that past regulatory dues extinguished upon Plan approval cannot be enforced against new management. Section 238 grants IBC overriding effect in case of inconsistencies with other laws. As such, Respondent No. 1's reliance on Regulation 40(1)(b) to deny relisting was contrary to the IBC's objectives and the SEBI Regulations themselves, which allow exemptions in such cases.

Order: The AA allowed the application and issued directions to Respondents Nos. 1 to 4 to facilitate relisting of the CD's shares within 30 days from receipt of the order.

Case Review: Application allowed.

National Company Law Tribunal (NCLT)

State Tax Officer vs. Vinod Tarachand Agrawal (IRP for M/s Jay Formulations Limited & Ors), M/s Jay Formulations Private Limited and Shri Vishal Shah (SRA) M/s Aquatic Remedies Limited, IA/435 (AHM) 2025 in CP (IB) No. 123/NCLT/AHM/2022, Date of NCLT Order: 05th May 2025.

Facts of the Case

The present application was filed under Section 60(5) of the IBC, 2016 read with the relevant provisions of the IBBI Regulations, 2016 and Rule 11 of the NCLT Rules, 2016. The application was filed by the State Tax Officer of the State Tax Department (hereinafter referred as "the Applicant") against the Resolution Professional, Corporate debtor & SRA (hereinafter referred as Respondent No. 1, 2 & 3 respectively) seeking recognition of its claim as that of a 'Secured Creditor'. The Applicant was aggrieved by the failure of the CD to discharge its statutory tax liabilities for multiple financial years. Specifically, the CD defaulted in payment of tax dues under the GVAT Act and the CST Act for the Financial Year 2014–15, amounting to ₹1,82,47,705/-, and further defaulted under the GST Act, 2017 for the financial years 2017–18 to 2020, with dues aggregating to approximately ₹81 lakhs. Cumulatively, the Applicant sought recognition of dues amounting to ₹2,00,15,482/- comprising ₹1.82 crore under GVAT, ₹1.65 crore under CST, and ₹9.75 crore under GST. To recover these dues, the department had issued several attachments to the bank accounts of the CD, followed by continued appeals to the office of the Deputy Commissioner, Division 1, Ahmedabad. In many such instances, the authorities granted interim stays, preventing effective recovery. Despite the department's repeated assertion that these tax dues constitute a statutory charge, and therefore should be treated as secured debt, the RP only partially admitted the claim and classified the Applicant as an 'Operational Creditor'.

The list of stakeholders prepared and submitted by the RP accordingly reflected the Applicant's status as an operational creditor, not a secured creditor. Aggrieved by this treatment, the Applicant made a special civil application before the Hon'ble High Court of Gujarat. In its pleadings, the Appellant emphasized that statutory tax dues, by virtue of provisions under the GVAT Act and relevant case law, create a charge on the assets of the CD, thereby qualifying the Department as a 'Secured Creditor'. The Applicant placed heavy reliance on the landmark judgment of the Hon'ble Supreme Court in the matter of State Tax Officer v. Rainbow Papers Ltd.

NCLT's Observations

The AA acknowledged that the GVAT dues constituted a statutory charge under Section 48 of the Gujarat Value Added Tax (GVAT) Act, a position upheld by the Hon'ble Supreme Court in State Tax Officer v. Rainbow Papers Ltd.. However, the AA made a clear distinction in the treatment of CST and GST dues. The AA further emphasised that unlike GVAT, CST and GST dues do not create any statutory charge and, therefore, do not qualify as secured debt. Instead such dues fall under Section 53(1)(e)(i) of the Insolvency and Bankruptcy Code (IBC), which categorizes them as government dues ranking lower in priority during distribution of assets. In reaching this conclusion for CST dues, the AA relied on the precedent set in Paschimanchal Vidyut Vitran Nigam Ltd., affirming that these are merely government dues without secured status. With respect to GST, the AA specifically referred to Section 82 of the Central Goods and Services Tax (CGST) Act, clarifying that although it speaks of a first charge, it is expressly made subject to the provisions of the IBC. Consequently, the AA held that in case of any conflict, the IBC would prevail over the GST Act, reinforcing the supremacy of the Code in insolvency proceedings.

Order:

(a) Allowed: GVAT dues of ₹15,90,276 are to be treated as secured debt under Section 53(1)(b)(ii) of IBC.

(b) Rejected: CST dues of ₹1,65,87,840 and GST dues (₹8,30,90,029 and ₹81,20,284) are not considered secured creditors claim and treated under Section

53(1)(e)(i) as government dues. The AA rejected the claim that the RP erred in rejecting CST and GST dues as secured.

Case Review: The case was partly allowed and IA No. 435 of 2025 in CP(IB) 123 (AHM) 2022 is disposed of accordingly.

Sandeep Mahajan Vs. Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, & Mr. Sachin Manohar, Deshmukh, I.A. No. 5026/2023 in C.P. NO. 800(IB)/MB/2022, Date of NCLT Judgement: May 02, 2025.

Facts of the Case

In the Corporate Insolvency Resolution Process (CIRP) of Neptune Ventures and Developers Pvt. Ltd. (Corporate Debtor), the IRP (hereinafter referred as 'Appellant') filed an IA under Section 14(1) read with Section 68(i)(b) of the Insolvency and Bankruptcy Code (IBC), 2016, seeking directions against Mr. Nayan Thakrashi Shah, Mr. Nayan Ashok Bheda, and Mr. Sachin Manohar suspended directors of the CD (hereinafter referred as 'Respondents'). The Appellant sought refund of ₹5,91,41,405/-, which was transferred from three bank accounts of the corporate debtor—HDFC Bank and two Axis Bank accounts—after the CIRP commenced on 17.07.2023, alleging violation

of the moratorium under Section 14. The IRP submitted that the management failed to cooperate in providing vital information such as assets, financial records, and property keys, and that unauthorized transactions were carried out post-moratorium. Emails dated 18.09.2023 and 24.09.2023 were sent requesting reversal of these amounts, but the Respondents (suspended directors) did not comply.

The Respondents, in a common affidavit, claimed that the instruments (cheques, manager's cheques, demand drafts, fund transfers) were issued before the insolvency commencement date and thus did not violate the moratorium. They stated the payments were for legitimate dues of homebuyers and operational creditors to avoid litigation and denied any fraudulent intent or wrongful gain. They also cited lack of access to company records as the reason for not submitting the original instruments. In his rejoinder, the IRP refuted these claims, asserting that the instruments were processed and debited only after 17.07.2023, thereby breaching the moratorium. He further noted that the Respondents failed to provide proof of contractual obligations or that the transactions occurred in the ordinary course of business. He also alleged deliberate misrepresentation and falsification of records, invoking Section 68(i)(b) of the Code.

The main issue raised before AA is:

(i) Whether there is breach of moratorium by the respondents and the monies so debited in the bank accounts of the CD after declaration of moratorium, without the authority of the IRP are required to be restored back to the CD.

NCLT's Observations

The Tribunal perused the bank account statements, pleadings, and documents. It noted that as per Section 17 of the IBC, once the IRP is appointed, the management of the CD vests with him and the suspended board must cooperate and disclose all relevant information. In this case, the Respondents failed to respond to IRP's emails and withheld critical financial details. The Tribunal held that the defense of the respondents that payments were made to homebuyers and operational creditors is immaterial, since any transaction after declaration of moratorium without the IRP's approval violates Section 14. The records revealed that most transactions particularly from the HDFC Bank account were effected on or after 18.07.2023, either via Manager's Cheques (MCs), Fund Transfers (FT-DR), or electronic RTGS, none of which were proven to be initiated before the CIRP. The account balance as on 14.07.2023 was only ₹14,43,886.71/-, and massive inflows and outflows occurred post-moratorium. Cheques were issued and cancelled to prioritize select parties, indicating use of discretion in violation of the Code. Notably, the Tribunal emphasized that the Respondents' submissions lacked evidentiary support.

They failed to show that payments were made under ECS mandate, auto-debit instructions, or valid pre-CIRP obligations. The claim that SAP software holding records had crashed was found unconvincing. Payments made via RTGS and electronic transfer on 18.07.2023 and later clearly established post-CIRP disbursal. The only transaction that was considered a CIRP cost was ₹64,541 paid to Vodafone Idea Ltd. for telephone/internet usage. All other payments, totalling ₹6,02,73,500/-, were declared unauthorized and violative of Section 14 of the IBC.

Order: The Tribunal concluded that there was a clear breach of the moratorium under Section 14 of the IBC, and that the transactions were executed without authority. Accordingly, it directed the suspended directors to jointly and severally repay ₹6,02,73,500/- along with interest at 9% per annum, calculated from the date of unauthorized transfers till the actual date of repayment. The payment was ordered to be completed within two months from the date of the order.

Case Review: *Interlocutory Application was allowed.*