IBC Case Laws

Supreme Court of India

Sincere Securities Pvt. Ltd. & Ors. vs. Chandrakant Khemka & Ors. Civil Appeal No. 12812 of 2024, Date of Supreme Court Judgment: 05 August 2025.

Facts of the Case

The present Civil Appeal No. 12812 of 2024, u/s 62 of the Insolvency and Bankruptcy Code, 2016 (IBC), challenges the order dated 12.11.2024 of the National Company Law Appellate Tribunal (NCLAT), which allowed Company Appeal (AT) (Insolvency) No. 1064 of 2023 filed by Chandrakant Khemka (hereinafter referred as 'Respondent No. 1') and set aside the order dated 07.08.2023 of the National Company Law Tribunal (NCLT), Kolkata Bench in CP(IB) No. 1377/KB/2020, whereby possession of the disputed property was directed to be delivered to the appellants.

On 13.02.2019, Nandini Impex Pvt. Ltd. (later a Corporate Debtor under IBC), represented by Respondent No. 1, executed a Memorandum of Understanding (MoU) with Noble Dealcom Pvt. Ltd. along with Jodhpur Properties and Finance Pvt. Ltd. (Appellant Nos. 2 and 3) for financial assistance of ₹3 crores, secured by depositing title deeds of the rear portion of the ground floor of White House, Rani Jhansi Road, New Delhi. Another MoU dated 15.02.2019 was executed with Sincere Securities Pvt. Ltd. (Appellant No. 1) for a ₹3 crore loan, secured by title deeds of the front portion. Upon default, conveyance deeds dated 27.02.2020 transferred ownership of both portions to the appellants, but simultaneous Leave and License Agreements allowed Nandini Impex to retain possession at ₹6 lakhs monthly rent per portion. Following default in rent payments, the appellants terminated the agreements on 08.05.2020 and filed eviction suits. Meanwhile, UCO Bank (Respondent No. 3) filed a Section 7 IBC petition, admitted on 20.09.2022, initiating the Corporate Insolvency Resolution Process (CIRP), with the Respondent No. 3 as sole member of the Committee of Creditors (CoC). The appellants, as operational creditors, filed claims which were fully admitted.

On 06.04.2023, after the Resolution Professional's report, the CoC decided that the property was unnecessary and financially burdensome and requested its return to the appellants. Respondent No. 1 objected, leading to interlocutory applications before the NCLT, which on 07.08.2023 directed return of possession. On appeal, the NCLAT held that Section 14(1)(d) IBC barred recovery of property from the CD during CIRP and remanded the matter. The Supreme Court recorded that both the Resolution Professional including the new RP, and the CoC supported returning the property due to high rental costs and limited

operations, while Respondent No. 1 alone opposed it without offering to bear the cost.

Supreme Court's Observations

The Supreme Court emphasized that the "commercial wisdom" of the Committee of Creditors (CoC) holds paramount status during the (CIRP) and is non-justiciable. Referring to *K. Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150, it reiterated that once the CoC, after due deliberation, takes a collective business decision, the AA cannot question or evaluate its justness. The IBC framework was designed for a time-bound resolution process, replacing the earlier regime that allowed indefinite protection to debtors, and to accord primacy to informed, expertbacked decisions of financial creditors. In this case, UCO Bank, the sole CoC member, decided that retaining the property was not in the CIRP's interest due to its high rental cost and the CD's limited operations. Both the then RP and the new RP, supported this view, with the latter confirming by affidavit that retention was neither feasible nor necessary. The Apex Court noted that this was not a unilateral recovery attempt by the owner barred under Section 14(1)(d) IBC, but a decision by the CoC and the RP to return the property to avoid substantial financial burden. All stakeholders except Respondent No. 1, agreed to the return. His claim that rent would be secured under IBC provisions was found untenable, especially as he was unwilling to bear the costs. The Court held that his opposition appeared intended to stall the process for reasons unconnected to the CIRP, and there was no justification for the NCLAT's remand order. The CoC's decision, rooted in its commercial wisdom, was entitled to full respect and required immediate implementation.

Order: The Supreme Court set aside the NCLAT's order dated 12.11.2024 and restored the NCLT's order dated 07.08.2023 directing return of possession to the appellants. The RP was directed to implement the order expeditiously.

Case Review: *Appeal Allowed.*

IL & FS Financial Services Ltd. vs. Adhunik Meghalaya Steels Pvt. Ltd. Civil Appeal No. 5787 of 202, Date of Supreme Court Judgement: 29 July 2025

Facts of the Case

The present Civil Appeal No. 5787 of 2025 was filed by M/s IL & FS Financial Services Ltd. (hereinafter referred as Appellant) against M/s Adhunik Meghalaya Steels Pvt. Ltd. (hereinafter referred as Respondent) before the Hon'ble Supreme Court of India challenging the dismissal of a Section 7 application by Adjudicating Authority which was also upheld by the Appellate Tribunal on the ground that the application was barred by limitation under the Insolvency and Bankruptcy Code, 2016 (IBC).

The appellant had granted a term loan facility of ₹30 crores to the respondent under a Loan Agreement dated 27.02.15, secured by pledge of 8,10,804 shares of the respondent on 01.03.18, the loan account was classified as a Non-Performing Asset (NPA), and a recall notice was issued on 10.08.18. The default amount was ₹55,45,97,395/- at the time of filing the Section 7 application on 15.01.24. The appellant relied on acknowledgment of debt in the respondent's audited financial statements from 2015 to 2019-20, with the 2019-20 balance sheet signed on 12.08.20.

The appellant argued that the balance sheet entries constituted valid acknowledgment under Section 18 of the Limitation Act, thereby extending the limitation. Further, by excluding the period from 15.03.20 to 28.02.22 as per the Supreme Court's order dated 10.01.22 in Suo Moto Writ Petition (C) No. 3 of 2020, the limitation period extended to 27.02.25, making the application timely.

The respondent contended that the balance sheet did not mention the appellant's name or the pledged shares and, hence, could not be treated as acknowledgment of debt. The AA held that the application was barred as it should have been filed before 30.05.22. The Appellate Tribunal concurred, ruling that limitation commenced from the date of signing the balance sheet, i.e., 12.08.20, and that Para 5(III) of the 10.01.22 order governed the case, thereby rejecting the application.

Supreme Court's Observations

The Hon'ble Supreme Court extensively discussed the legal position regarding acknowledgment of debt under Section 18 of the Limitation Act and affirmed its applicability to IBC proceedings as per Section 238A. Referring to earlier judgments including *Khan Bahadur Shapoor Fredoom Mazda v. Durga Prasad Chamaria* (1961), *Lakshmirattan Cotton Mills v. Aluminium Corporation* (1971), and *Asset Reconstruction Co. (India) Ltd. v. Bishal Jaiswal* (2021), the Court reiterated that entries in balance sheets could constitute acknowledgment of debt depending on context, tenor, and surrounding circumstances.

The Court noted that the 2019-20 balance sheet, although it did not explicitly name the appellant, showed consistent entries of secured borrowings and cash flow patterns matching prior years. The Court found that the balance sheet reflected a subsisting liability and jural relationship between the parties, especially when viewed along with previous years' financial statements. It ruled that the absence of the creditor's name does not negate acknowledgment when the entries are traceable and consistent with past records.

Importantly, the Court held that Para 5(I), not Para 5(III), of the 10.01.22 Supreme Court order applied to this case. Since the acknowledgment occurred on 12.08.20, within the original limitation period (expiring 11.08.23), the entire period from 15.03.20 to 28.02.22 must be excluded. This made the application, filed on 15.01.24, well within limitation

Order: The Supreme Court set aside the judgments of the AA dated 16.05.24 and Appellate Tribunal dated 25.03.25 and held that the Section 7 application was filed within limitation. The matter was remitted to the AA to proceed in accordance with law, treating the application as maintainable.

Case Review: *The appeal is allowed. No order as to costs.*

HIGH COURT

M/s Mohota Industries Ltd. vs. Smt. Vibha w/o Mayank Agrawal Civil Revision Application No.42/2024, Date of Bombay High Court (Nagpur Bench) Judgement: 09th June 2025

Facts of the Case

The Civil Revision Application No. 42/2024 was filed by M/s Mohota Industries Ltd.(hereinafter referred as 'Applicant') against Smt. Vibha Agarwal (hereinafter referred as 'Respondent') challenging the order dated 23.11.23 passed by the Joint Civil Judge, Junior Division, whereby the trial court rejected the Applicant's application at Exh. 24 seeking rejection of plaint under Order 7 Rule 11 read with Section 151 of the Civil Procedure Code.

The Respondent had leased out a property measuring 42,000 sq. meters situated at Survey No.14/2 (kh), Mouza Burkoni, District Wardha to the Applicant company via a lease deed dated 28.03.07. The lease was subsequently terminated by notice dated 01.06.21, and the Applicant was asked to vacate the suit property. The

Respondent instituted Regular Civil Suit before the Civil Judge Junior Division, seeking declaration, recovery of possession, eviction, permanent injunction, and arrears of rent with regards to the property. The applicant-company was undergoing the CIRP u/s 9 of the IBC 2016, admitted by the Adjudicating Authority vide order dated 30.08.21, which imposed a moratorium under Section 14 of the Code. The order explicitly barred institution or continuation of any suits or proceedings, including recovery of possession of any property occupied by the CD. Despite the subsistence of moratorium, the Respondent filed the civil suit on 21.01.22. The Applicant contended that only 145 days had passed from the CIRP commencement when the suit was instituted and hence, the suit was barred by Section 14(1)(a) of the Code. The moratorium was in effect until the Resolution Plan was approved by AA on 19.05.23.

The trial court rejected the Applicant's application on the ground that the CIRP period of 180 days had lapsed before the filing of the suit. It concluded that since the moratorium was no longer in effect, the suit was not barred and could be adjudicated. The Applicant however argued that the very institution of the suit during the subsistence of the moratorium rendered it non-est, and thus the plaint was liable to be rejected. The Applicant further submitted that the claim relating to the lease ought to have been raised before the RP during the insolvency process as an operational debt, and civil courts had no jurisdiction to entertain such claims under Section 63 of the IBC.

High Court's Observations

The Hon'ble high court held that the institution of the suit during the moratorium period was void ab initio under Section 14(1)(a) of the IBC. The Hon'ble high Court further noted that the AA's order initiating CIRP on 30.08.21 explicitly imposed a moratorium against institution or continuation of proceedings against the CD, including any suit for recovery or possession by a landlord. The suit filed by the respondent on 21.01.22 clearly fell within this prohibited period. The Hon'ble high Court emphasized the overriding effect of the IBC under Section 238 and the exclusive jurisdiction of the AA under Section 63 for matters relating to CIRP.

Relying on several Supreme Court decisions, including *Alchemist Asset Reconstruction Co. v. Hotel Gaudavan Pvt. Ltd.*, *Anand Rao Korada v. Varsha Fabrics Pvt. Ltd.*, *Electrosteel Steels Ltd. v. ISPAT Carrier Pvt. Ltd.*, and Appellate Tribunal's decisions like *Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd.*, the Court reiterated that any claim, including those relating to rent or possession, if not submitted to the RP as per the CIRP timeline, cannot be pursued separately. The Respondent should have filed a claim with the RP as an operational creditor. The Hon'ble Court also clarified that the plaint cannot be saved merely because a part of the claim sought declaration or arrears of rent, as the moratorium applied to all such proceedings. The Respondent's reliance on decisions like Embassy Property Development was held to be misplaced, as the present case involved no public law element.

Order: The High Court allowed the Civil Revision Application, quashing and setting aside the impugned order dated 23.11.23. The plaint in Regular Civil Suit No. 23 of 2022 was rejected under Order 7 Rule 11 read with Section 151 CPC, holding it barred by Section 14(1) (a) of the IBC.

Case Review: *The Revision Application is disposed of, and the plaint was rejected. No order as to costs.*

National Company Law Appellate Tribunal (NCLAT)

Mr. Harry Dhaul Vs. Regional PF Commr. - II, with Regional PF Commr., Delhi vs. Harry Dhaul and Ors. C.P. (IB) No. 2520/MB/V/201, Date of NCLAT Judgement:18 Sept. 2025.

Facts of the Case

The present appeal has been filed by Mr. Harry Dhaul, the Successful Resolution Applicant (SRA), against the Monitoring Committee of Global Energy Pvt. Ltd., challenging the common impugned order dated 03.07.2024 passed by the Adjudicating Authority (NCLT, Mumbai Bench) approving the Resolution Plan under I.A No. 2475 of 2023 in CP(IB) No. 2520/MB/V/2018. The SRA and the Employees Provident Fund Organization (EPFO) have filed cross appeals disputing the treatment of EPFO dues under the approved Resolution Plan.

The Corporate Debtor was admitted into CIRP on 02.12.2019, with claims invited by 22.06.2022. The EPFO failed to file its claim within the prescribed period and only submitted it on 06.03.2023, which was rejected by the Resolution Professional (RP). Despite the CoC approving the Resolution Plan on 23.03.2023, the EPFO contested the rejection via I.A No. 2332 of 2023, resulting in a direction to the RP to consider the claim lawfully.

The SRA subsequently undertook payment of EPFO, and the Resolution Plan was approved on 03.07.2024. Both parties have appealed against the treatment of EPFO dues. The SRA challenged the Adjudicating Authority's jurisdiction in admitting EPFO claims based on assessments conducted during the moratorium period, rendering such claims invalid as per the Tribunal's ruling in *EPFO vs. Jaykumar Pesumal Arlani*. Further, the AEOR report underlying EPFO's claims allegedly lacks correlation with identifiable beneficiaries and is premised on a non-existent establishment, rendering the claims unenforceable.

The SRA contends that its affidavit undertaking to pay was induced by misrepresentation since no Section 7A adjudication order existed, and that post-CoC approval admission of claims and modifications to the plan violated the CoC's commercial wisdom and the IBC framework.

The EPFO counters that it is entitled to the full claim amounting to ₹1,33,19,135/- including interest and damages as per the EPF Act, noting that the claim was submitted prior to CoC approval and was rightly directed to be considered by the Adjudicating Authority. EPFO asserts that the RP admitted the claim accordingly, and the SRA, having submitted multiple affidavits undertaking payment, cannot evade liability. Further, EPFO challenges the classification of ₹55,52,007/- as "tentative dues" under the Mamta Binani judgment, asserting its inapplicability and emphasizing that provident fund dues must be paid in priority. EPFO prays for setting aside the impugned order dated 03.07.2024.

NCLAT's Observations

The issue before the Tribunal is whether the EPFO could lawfully continue assessment proceedings under Sections 7A, 7Q, and 14B of the EPF Act after the imposition of moratorium under Section 14 of the IBC, and whether any claim based on such assessments conducted during the moratorium could be admitted by the Adjudicating Authority. The Tribunal relied on its earlier decision in CA Pankaj Shah Vs EPFO (2025) and the Supreme Court judgment in Rajendra K. Bhutta Vs Maharashtra Housing and Area Development Authority (2020) 13 SCC 208, which establish that the moratorium imposes a statutory freeze on actions affecting the corporate debtor, designed to allow the resolution process to proceed unhindered and protect the debtor's assets during the insolvency process.

The Supreme Court in Rajendra K. Bhutta clarified that once the moratorium is imposed under Section 14 of the IBC, all proceedings, including recovery and assessment, against the corporate debtor are stayed to prevent depletion of assets and preserve value for all stakeholders. This freeze applies broadly to suits and proceedings affecting the corporate debtor's assets, as outlined in Section 14(1). While some submissions argued that assessment proceedings could continue during moratorium, the Tribunal emphasized that such proceedings are prohibited to ensure the debtor's revival and continuation, consistent with the protective intent of the Code as affirmed in *Swiss Ribbons (P) Ltd. v. Union of India* and *P. Mohanraj v. Shah Brothers ISPAT Pvt. Ltd*. Thus, orders of assessment passed during moratorium are impermissible, and claims based thereon cannot be admitted in the CIRP.

Order: The Tribunal held that assessment proceedings by the EPFO cannot be initiated or continued after the moratorium under Section 14(1) of the IBC, rendering any claims based on such assessments during the moratorium period unenforceable. While assessment may continue post-liquidation under Section 33(5), this does not apply during the moratorium. Applying this principle, the Tribunal found the EPFO's claim based on assessments conducted postmoratorium invalid, and despite the Resolution Applicant's affidavit undertaking to pay, set aside the Adjudicating Authority's order admitting these claims under Sections 7A, 14B, and 7Q, dismissing the EPFO's appeal and allowing the Resolution Applicant's appeal.

Case Review: *Appeal filed by SRA is allowed while appeal filed by EPFO is dismissed.*

Anil Singh vs. SREI Equipment Finance Ltd. & Anr. Company Appeal (AT) (Insolvency) No. 1069 of 2025, Date of NCLAT Judgement: 25 August 2025

Facts of the Case

The present appeal, was filed by Anil Singh (hereinafter referred as "Appellant") challenging the order dated 10.06.2025 passed by the Adjudicating Authority whereby the Intervention Petition (IBC)/1/GB/2024, filed in Section 7 proceedings initiated by SREI Equipment Finance Ltd. (hereinafter referred as 'Respondent No.1') against Kitply Industries Ltd./CD (hereinafter referred as Respondent No.2) was rejected.

Respondent No.1 had filed a Section 7 application on 04.05.2024 against the CD, which had previously undergone CIRP initiated by IDBI Bank Ltd., wherein a Resolution Plan was approved on 01.05.2018. The CD was taken over by Plytinum Marketing Ltd., for this a Special Purpose Vehicle formed and owned by Respondent no. 1. The Appellant, representing 130 workers of CD, filed the Intervention Petition under Section 65 of the IBC read with Rule 11 of the NCLT Rules, 2016, seeking dismissal of the Section 7 application on grounds of fraudulent and collusive initiation of CIRP.

The Appellant alleged that the loan claimed to be availed by the CD from Respondent No.1 was a part of fraudulent circular transactions. It was contended that the loans shown as disbursed from SEFL and SIFL (both related to the same parent) were routed back to SIFL on the same day, and the Appellant relied on the pending Section 66 application filed by the Administrator of Respondent No.1 which sought avoidance of such transactions. The AA rejected the intervention stating that only the Financial Creditor and the CD are necessary parties at the admission stage under Section 7 and those third parties, including workmen, do not have locus standi to raise objections regarding the fraudulent nature of transactions. Consequently, the Intervention Petition

was dismissed, prompting the Appellant to file this appeal before the NCLAT.

NCLAT's Observations

The NCLAT observed that the Appellant's petition was not merely for intervention but specifically invoked Section 65 of the IBC, which deals with penalties for fraudulent or malicious initiation of proceedings. The Tribunal noted that although the AA had referenced the petition under Section 60(5) read with Rule 11 of the NCLT Rules, it failed to recognize that it was also squarely a Section 65 application.

The Bench held that the AA erred in not adjudicating the serious allegations of fraudulent and collusive CIRP initiation on merits. The Appellant had submitted credible allegations and documentation supported by 129 other workmen of the CD, challenging the legitimacy of the financial debt claimed by Respondent No.1. The Appellant argued that transactions were circular in nature and only ₹1 crore was actually infused into CD, while the rest of the money was allegedly routed back fraudulently.

NCLAT distinguished the case from *Deb Kumar Majumdar v. SBI*, stating that while third-party interventions are generally not permitted at the admission stage, this rule does not apply when a stakeholder files an application under Section 65 citing fraudulent conduct. Citing *Beacon Trusteeship Ltd. v. Earthcon Infracon Pvt. Ltd*., the Tribunal reaffirmed that any allegation of fraudulent CIRP initiation must be examined by the AA before admitting the application under Section 7.

The Appellate Tribunal also referred to its earlier judgments, including *Airwill Intellicity Social Welfare Society v. Ascot Projects Pvt. Ltd*. and *Hytone Merchants Pvt. Ltd. v. Satabadi Investment Consultants Pvt. Ltd*., which emphasized that Section 65 applications can be entertained even before admission of Section 7/9 petitions and that stakeholders, including workmen, have locus if they raise bonafide allegations of fraud or collusion.

Order: The NCLAT set aside the order dated 10.06.2025 passed by the AA. The Intervention Petition (IBC)/1/GB/2024 filed by the Appellant and 129 other workmen were revived with a direction to the AA to hear and decide it on merits. It further directed that the Section 65 application can be heard simultaneously with the main Section 7 petition. The Tribunal did not express any opinion on the merits of the allegations and clarified that the decision must be taken independently by the AA.

Case Review: *The Appeal was disposed of.*

Masyc Projects Pvt. Ltd. vs. RP of Vadraj Cement Ltd. & Ors., C.R. Patel vs. Vadraj Cement Ltd., and Tushar Engineering vs. Vadraj Cement Ltd. Company Appeal (AT) (Insolvency) No. 831, 855, 856 of 2025, Date of NCLAT Judgement: 12th August 2025

Facts of the Case

The present appeals, Nos. 831, 855 and 856 of 2025, arise out of a common order dated 01.04.2025 passed by the Adjudicating Authority (AA) in I.A. Plan No. 11 of 2025 in CP(IB) No. 3528 (MB) of 2018. By this order the AA approved the Resolution Plan submitted by Nuvoco Vistas Corporation Ltd. the Successful Resolution Applicant (SRA), filed by Resolution Professional (RP) of Vadraj Cement Ltd./CD.

The appellants, who had filed claims in the CIRP process of CD as operational creditors, were proposed NIL payment under the approved Resolution Plan. The appellant in Appeal No. 831/2025, had filed a claim of ₹16,75,11,300/-, which was admitted to the extent of ₹16,72,07,044/- based on a consent award dated 10.09.2013 by an Arbitral Tribunal appointed by the Bombay High Court. In Appeal No. 855/2025, Chhotubhai Ramubhai Patel filed a claim of ₹2,99,87,605/- as an operational creditor for supply of equipment on hire basis, while in Appeal No. 856/2025, Tushar Engineering, represented through Chhotubhai Ramubhai Patel (HUF), filed a claim of ₹1,09,74,486/- for operational dues on account of equipment supplied on hire basis. All these claims were admitted by the RP and reflected in the list of creditors under operational creditors.

The Committee of Creditors (CoC), with 100% voting share, approved the Resolution Plan on 01.04.2025, which proposed NIL payout to operational creditors (other than employees, workmen, and government dues). The AA approved the Resolution Plan, and aggrieved by this, the appellants preferred these appeals before NCLAT.

NCLAT's Observations

The Appellants argued that the AA erred in approving the Resolution Plan without duly considering the claims of operational creditors. They relied on Regulation 38(1A) of the CIRP Regulations, 2016, contending that although their claims were admitted, the Plan arbitrarily proposed NIL payment and failed to balance stakeholder interests, citing cases of Hammond Power Solutions (2019), and Essar Steel (2020).

The Respondents maintained that NIL payment was justified under Section 30(2)(b) of the IBC since the liquidation value for operational creditors was NIL. As even secured financial creditors could not be fully discharged, operational creditors were not entitled to any payment. They emphasized that the Plan

was approved unanimously by the CoC, and under K. Sashidhar (2019) and Essar Steel, CoC's commercial wisdom cannot be interfered with unless statutory provisions are breached.

The Tribunal observed that Section 30(2)(b), as amended in 2019, requires operational creditors to receive not less than liquidation value. Since their liquidation value was NIL, the Plan met statutory requirements. The AA had considered all classes of creditors, and under heading "F," it recorded that operational creditors with admitted claims of ₹77,65,00,755/- would stand discharged without payment. Although harsh, the Code does not mandate payment where liquidation value is NIL.

Referring to Swiss Ribbons (2019) and Essar Steel (2020), the Tribunal reiterated that financial and operational creditors are not similarly placed, and operational creditors are entitled only to liquidation value. While acknowledging Hammond Power, where plans were rejected for lack of reasoning, the present case was distinguished as the Plan expressly dealt with operational creditors, though proposing NIL payment. It further noted that non-payment is harsh, as observed in Damodar Valley Corporation, but any change lies with Parliament and the IBBI. Since the CoC approved the plan with 100% voting and no breach of statutory provisions was shown, the NCLAT declined interference.

Order: The NCLAT held that there was no ground to interfere with the order of the AA approving the Resolution Plan of Vadraj Cement Ltd. Accordingly, all the appeals were dismissed, and the Resolution Plan as approved by the AA was upheld.

Case Review: *All the appeals are dismissed.*

Mr. Anil Kohli, RP for Dunar Foods Ltd. vs. ED & Shri Amit Gupta, SRA Company Appeal (AT) (Ins.) No. 389 of 2018 Date of NCLAT Order: 03rd July 2025

Facts of the Case

The Present appeal was filed u/s 61(1) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Resolution Professional (RP) of Dunar Foods Ltd./Corporate Debtor (hereinafter referred as 'Appellant') arising out of the impugned order dated 21.05.18 passed by the Adjudicating Authority (AA), against Directorate of Enforcement (ED) & Mr. Amit Gupta, Successful Resolution Applicant (SRA) (hereinafter referred as Respondent no.1 & 2) respectively. The RP challenged the refusal order of the AA to direct the Respondent no. 1 to release the provisionally attached properties of the CD.

The CD engaged in the business of processing and exporting basmati rice, had defaulted in repayments to a consortium of banks led by SBI, amounting ₹758.73 crore leading to the initiation of CIRP u/s 7 of IBC on 22.12.17. A moratorium u/s 14 came into effect from the same date. Four days later, on 26.12.17, the Respondent no. 1 passed a Provisional Attachment Order (PAO) u/s 5(1) of the PMLA, attaching assets worth ₹177.33 crore, alleging the money to be proceeds of crime traced through an investigation against M/s PD Agroprocessors Pvt. Ltd., an associate concern of the CD. The Appellant sent representations to Respondent no. 1 requesting de-attachment citing moratorium u/s 14 and overriding effect u/s 238, but received no relief. Subsequently, the Appellant approached the AA through MA No. 129/2018, seeking quashing of the PAO and release of assets, contending that the attachment obstructed CIRP and resolution prospects. The AA dismissed the plea, holding that PMLA proceedings are distinct, and the action of Respondent no. 1 does not fall under the purview of Section 14 moratorium.

Aggrieved by this, the Appellant filed the present appeal before the NCLAT reiterating that continuation of attachment is in violation of moratorium and frustrates the object of value maximization under IBC. He also placed reliance on Section 32A introduced by way of amendment in 2020 and several Supreme Court rulings to support his claim.

The main issues raised before the Appellate Tribunal are:

(i) Whether the attachment under PMLA violates the Moratorium under Section 14 of the IBC?

(ii) Whether Section 238 of the IBC overrides PMLA in case of any inconsistency?

(iii) Whether the NCLT/NCLAT possess jurisdiction to issue directions concerning attachment orders passed and confirmed under PMLA?

NCLAT's Observations

On the first issue, the Tribunal held that although the PAO was issued post-CIRP initiation, the PMLA proceedings were based on an earlier ECIR registered in 2013, and the attached properties were allegedly proceeds of crime. As such, the Moratorium under Section 14, which protects lawful assets for resolution, would not apply to assets already under the adjudicatory process of PMLA.

On the second issue, the Appellate Tribunal noted that while Section 238 of the IBC contains a non-obstante clause granting it overriding effect over inconsistent laws, such an override can only apply where both laws operate in the same domain and are irreconcilably inconsistent. The IBC is an economic legislation aimed at resolution of distressed companies, whereas PMLA is a penal statute dealing with confiscation of criminal proceeds. These legislations operate in different fields. Consequently, the NCLAT found no direct inconsistency that would warrant overriding of PMLA by IBC. NCLAT also cited Delhi High Court judgement in the case of Deputy Director, ED vs Axis bank, 2019

wherein it was held that "tainted assets cannot be considered part of the resolution estate under the IBC". Furthermore, Section 32A, which provides immunity to CD's post-resolution, could not be invoked in the present case, as the ED's attachment was pre-resolution and already confirmed before the resolution plan was approved.

On the third issue of jurisdiction, the Tribunal referred to the Supreme Court's ruling in *Kalyani Transco v. Bhushan Power and Steel Ltd*. (2020), which clarified that AA and Appellate Tribunal lack jurisdiction to review or interfere with attachment orders passed by statutory authorities under the PMLA. It emphasized that challenges to PMLA attachments must be addressed before the Appellate Tribunal under the PMLA framework and not through insolvency forums.

Order: The Appellate Tribunal, after analyzing all submissions and considering binding precedents, held that the provisional attachment under PMLA did not violate the Section 14 moratorium of IBC, and Section 238 of IBC does not override valid attachments under PMLA. It further held that the AA and Appellate Tribunal have no jurisdiction to direct release of such attached properties.

Case Review: *The appeal was dismissed.*

National Company Law Tribunal (NCLT)

Vidya Devi Chowdhury Vs. Vimla Fuels & Metals Limited C.P. (IB) No. 211/9/AHM/2025, Date of NCLT Judgement: 06 October 2025.

Facts of the Case

This Company Petition is filed by the Applicant, Ms. Vidya Devi Chowdhury, Proprietor of BDHCCI Coal Coke Minerals and Metal Enterprises, (hereinafter referred to as 'Operational Creditor'/OC) against the Respondent- Vimla Fuels and Metals Limited (hereinafter referred to as 'Corporate Debtor'/CD) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiation of Corporate Insolvency Resolution Process (CIRP for having defaulted in payment of the outstanding operational debt of ₹1,43,93,688/- including interest.

The OC alleged that they had been engaged in a commercial relationship with the CD for approximately 6-7 years, built on mutual trust and industry practices prevalent in the coal and coke sector, where suppliers often require advance payments to secure raw materials and manage production cycles. The OC would typically make advance payments to the CD, who, in turn, would supply LAM Coke within a stipulated period of two months based on mutually agreed conditions. However, when the CD failed to supply LAM Coke equivalent to approximately 375 tonnes, the OC issued a statutory demand notice under Section 8 of the IBC. The OC argued that the CD's acknowledgement of debt, no notice of dispute, and default on supplies to its sister concerns against the advance payments as ground to admit the insolvency petition.

Conversely, the CD contended that the petition suffers from suppression veri and suggestio falsi highlighting the concerns, firstly, that the claim does not constitute an "operational debt" under Section 5(21) of the IBC but mere advances without direct linkage to the provision of goods and services. Secondly, the CD contended that the demand notice is invalid, as it was issued by an advocate without the power of attorney. Labelling the advance payments made by the OC as "borrowed" amounts, the current petition is a tool for recovery rather than genuine insolvency resolution, and therefore contrary to the spirit of the IBC.

The Tribunal decided to adjudicate the matter on five legal questions—whether the claimed amount qualifies as an operational debt, whether it exceeds the statutory threshold, the validity of the demand notice under Section 8, the existence of any pre-existing dispute, and whether the petition was filed within the limitation period.

NCLT's Observations

After duly hearing both the parties, the NCLT firstly analyzed whether the claimed amount qualifies as an "operational debt" per Section 5(21) of the IBC. Relying on the documents presented, the longstanding relationship and industry practice, the NCLT found that the claimed amount was in fact an operational debt in accordance with the IBC. Thereafter, to satisfy the threshold of ₹1 crore set by Section 4 of the IBC, the NCLT noted that the balance sheet entries and undisputed communications between parties confirm the OC's principal debt of ₹1,18,46,827/- duly meets the said threshold. Regarding the validity of the demand notice issued by the OC, the NCLT relied on the Supreme Court judgement in the case of *Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd*, (2017), wherein it was held that that a notice sent on behalf of an operational creditor by a lawyer would be in order. Since the notice was in compliance with Form 3 along with all details and was served properly, it is valid. Lastly, the NCLT noted that the absence of any pre-existing dispute, the preclusion of any bona fide challenge, and the filing of the petition within the limitation period satisfy the legal requirements and the statutory mandate for its admission.

Order: Accordingly, in light of the above facts and circumstances, the NCLT admitted the CD in CIRP as per Section 9(5) of the IBC. As a consequence, thereof, an Interim Resolution Professional (IRP) was appointed, and a moratorium issued under Section 14.
Case Review: *CIRP application was admitted.*

Gagandeep Dudh Sankalan Kendra Vs. Kute Sons Dairys Limited C.P. (IB)/161/MB/202,5 Date of NCLT Judgement: 15 September 2025

Facts of the Case

The present application was filed by Mr. Pramod Anandrao Gawade, Sole Proprietor of M/s Gagandeep Dudh Sankalan Kendra, (hereinafter referred as 'the Operational Creditor') against M/s Kute Sons Dairys Limited, (hereinafter referred as 'the Corporate Debtor (CD)') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (CIRP). The Applicant claims a default amount of Rs. 1,55,84,847/- with a default date of 03.05.2024

The Applicant, engaged in supplying milk, has been regularly providing goods to the Corporate Debtor (CD), which is involved in dairy product manufacturing. The Applicant had 26 post-dated cheques from the CD, totaling ₹1,30,00,000/-, issued between 15.01.2024 and 26.03.2024, which were dishonored despite being recorded as cleared in the CD's ledger. Additionally, Milk Supply Bills issued by the CD incorrectly reflect full payments for goods supplied, although the Applicant has only received partial payments, with some ledger entries showing payments that were never received. The CD acknowledged the outstanding debt in a letter dated 18.04.2024, promising repayment within 15 days, but failed to do so. A Demand Notice was issued on 23.10.2024, which was refused by the CD. The Applicant, having filed its Income Tax Return for the FY 2023-2024, claimed the default amount and considered 09.11.2024 as the date of default due to the CD's failure to settle the dues. Furthermore, the Applicant filed multiple affidavits to clarify that the correct date of default is 03.05.2024, correcting earlier typographical errors where they were mistakenly stated as 09.11.2024, and submitted an amended Form 5 along with a CA certificate confirming outstanding dues.

The Applicant claims that cheques issued by the CD to secure payment were dishonoured, yet the CD's ledger falsely records them as paid. Despite partial payments, the CD's records inaccurately show full settlements, supported by the Applicant's bank statements and a Chartered Accountant's certificate. The CD contests the claim, arguing the Applicant failed to provide crucial documents such as invoices and delivery notes, and highlights discrepancies in ledgers, leading to a pre-existing dispute. The CD further disputes the date of default, the acknowledgment of debt, and the statutory threshold required for maintaining the application, citing several judgments, including *SFO Technologies Pvt. Ltd. v. Vanu India Pvt. Ltd*. and *Sabarmati Gas Ltd. v. Shah Alloys Ltd*., among others.

NCLT's Observations

After reviewing the documents and hearing both parties, the Tribunal found that the Applicant had been regularly supplying milk to the CD from 2019 to 2024 and held 26 post-dated cheques issued by the CD's group company, M/s Tirumalla Trademarts India Pvt. Ltd., to secure payment. The CD failed to file its reply by the deadline and was set ex-parte on 07.05.2025. The Applicant's claim that the CD's ledger falsely recorded payments based on dishonoured cheques was supported by bank statements and a Chartered Accountant's certificate. The Tribunal found the CD's dispute unsubstantiated, stating that vague, after-the-fact disputes cannot be considered "pre-existing" under Section 8(2)(a) of the IBC.

Further, the Tribunal dismissed the CD's argument about the statutory threshold of ₹ 1 crore, as the Applicant's own ledger and documents proved the debt exceeded the threshold. The CD's reliance on its inaccurate ledger was found to be unreliable. The Tribunal also clarified that the date of default was properly established as 03.05.2024, based on a consistent course of dealings and the Applicant's affidavits. Additionally, the Tribunal held that minor clerical errors, such as the misnaming of the CD, were not fatal to the Application. As a result, the Application was admitted under Section 9 of the IBC, 2016.

Order: The Tribunal has admitted the CIRP application filed by Gagandeep Dudh Sankalan Kendra (OC) against Kute Sons Dairys Limited (CD) under Section 9 of the IBC, 2016. A moratorium has been imposed, halting legal actions, asset transfers, and recoveries against the CD. The OC is required to deposit Rs. 3,00,000 to cover the initial CIRP costs, which will be repaid from the Committee of Creditors' funds.

Case Review: *CIRP Application allowed.*

Canara Bank vs. M/s. S. S. Aluminium Pvt. Ltd. C.P (IB) No.18/CB/2024 Date of NCLT Judgement: 09 September 2025.

Facts of the Case

The present application was filed by Canara Bank (hereinafter referred as 'Petitioner/Financial Creditor') against S.S. Aluminium Pvt. Ltd. (hereinafter referred as 'Respondent/Corporate Debtor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

The Financial Creditor had sanctioned various credit facilities for the modernisation and expansion of the Corporate Debtor's aluminium extrusion unit at Haldiapada. These included a Cash Credit limit of Rs. 3,50,00,000 and Term Loan-I of Rs.

5,44,00,000. Later, an additional Term Loan-II of Rs. 88,64,000 was sanctioned on 11.07.2015, followed by an enhancement in the Cash Credit facility to Rs. 5,00,00,000 on 23.03.2016. Further, a Bank Guarantee of Rs. 50,00,000 was issued in favour of M/s National Small Industries Corporation Ltd., which was invoked for Rs. 53,99,430(including interest), and this amount was debited from the respondent's Cash Credit account.

On 29.06.2019, a Debt Restructuring Agreement was executed, and further facilities were sanctioned — including Term LoanIII of Rs. 17,33,000 and a Working Capital Term Loan of Rs. 1,50,00,000. Additionally, the Financial Creditor sanctioned a Covid Funded Interest Term Loan of Rs. 34,32,390 and Rs. 2,00,00,000 under the GECL scheme. Despite these accommodations, the Corporate Debtor defaulted in payment of instalments and interest. The loan accounts were declared NonPerforming Assets (NPA), and a Loan Recall Notice was issued on 04.11.2021, demanding repayment of Rs. 13,48,00,000. Recovery action under the SARFAESI Act was initiated with notices under Sections 13(2) and 13(4). Subsequent auction attempts failed due to lack of bidders. The Bank also filed writ petitions before the Hon'ble High Court of Orissa seeking directions for registration of the Sale Certificate and disposal of pending SARFAESI applications.

The respondent, in its reply and written submissions, has challenged the Section 7 application, citing discrepancies in loan details. It questioned the issuance of two Section 13(2) SARFAESI notices on different dates, creating ambiguity about the date of default and NPA. Allegations of fraud have been made, including forgery of the mortgagor's signature. The respondent disputes the loan amount and claims protection under Section 10-A of the IBC and the Limitation Act, 1963. It also asserts that its MSME status required compliance with the statutory revival framework which was not followed.

NCLT's Observations

The Tribunal observed that the primary issue was whether the debt extended by the financial creditor qualified as a financial debt and whether the respondent had defaulted. Despite the respondent's FIR alleging fraud, this could not serve as grounds to reject the application under Section 7 of the IBC, 2016, as a pre-existing dispute does not bar the admission of such an application. The tribunal noted that the respondent's default was established through loan account statements and an acknowledgment of debt, with no dispute raised by the respondent during the proceedings. The default occurred after the Section 10A period, and thus, the application was not affected by this provision.

The respondent's late claim of MSMEs status was rejected as it was introduced only in the written submissions without supporting evidence. Additionally, the tribunal found no merit in the respondent's argument about discrepancies in the SARFAESI notices, as the respondent had previously acknowledged the debt through multiple One-Time Settlement proposals. Consequently, the tribunal concluded that the respondent had defaulted on a debt exceeding Rs. 1 crore and that the application was filed within the limitation period, making it admissible.

The NCLT rejected the respondent's argument regarding the default occurring during the Section 10A period, referring to the NCLAT judgment in *NuFuture Digital (India) Ltd. v. Axis Trustee Services Ltd*. (2023). It was held that any default occurring after the Section 10A period should not be considered for exclusion. In this case, the loan account statement showed that the default happened after the Section 10A period, with the NPA date being 11.05.2021. Therefore, the default did not fall within the Section 10A timeframe, and the application was not barred by this provision of the IBC.

Order: The Adjudicating Authority ordered the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016. A moratorium is declared, prohibiting various actions against the Corporate Debtor. The IRP is directed to make public announcements, protect the assets, and ensure smooth conduct of the CIRP, with periodic reports to be submitted to the Adjudicating Authority.

Case Review: *CIRP Application allowed.*