

IBC- NCLAT FORNIGHTLY SUMMARY (July 16, 2024 – July 31, 2024)

INTRODUCTION

The following is a snapshot of the important orders passed by the National Company Law Appellate Tribunal (“NCLAT”), under the Insolvency and Bankruptcy Code, 2016 (“Code”), during the period between June 16, 2024 – July 31, 2024. For ease of reference, the orders have been categorized and dealt with in the following categories *i.e.*, Pre-admission stage, Corporate Insolvency Resolution Process (“CIRP”) stage, Post CIRP, Liquidation and Miscellaneous.

A. PRE CIRP:

1. In [Sanjeeb Ranjeet Das v. Punjab National Bank \(Company Appeal \(AT\) \(Insolvency\) No.1278 of 2024\)](#) the NCLAT held that where the right of the Personal Guarantor to challenge the proposed revision to the date of default is not infringed, an application filed by the Financial Creditor to rectify and amend the date of default is his application under section 95 of the Code is maintainable.
2. In [K.M. Sebastine v. State Bank of India & Anr., \(Company Appeal \(AT\) \(Ins\) No. 1099 of 2024\)](#), the NCLAT held that where the guarantee had already been invoked previously and the right of the Financial Creditor to proceed against the Personal Guarantor is not barred by limitation, no further fresh notices were required for filing section 95 application.
3. In [Manishaas Infratecho Solutions Private Limited v. Bhonu Hulshi Real Estate Private Limited, \(Company Appeal \(AT\) \(Insolvency\) No. 1222 of 2024\)](#), NCLAT held that mere insertion of any date in the section 8 demand notice or in the section 9 application does not make that date of default valid and binding especially when there is no agreement between the two parties as to what shall constitute an event of default and the operational creditor needs to be put to strict proof to establish the date of default. Additionally, it was further held that, it is not the date of the invoice but the period when such invoice becomes payable which determines the applicability of the bar contained under section 10A of the Code.
4. In [Shraddha Enterprises v. Simplex Infrastructures Limited \(Company Appeal \(AT\) \(Ins\) No. 1661 of 2023 & I.A. No. 5990 of 2023\)](#), an earlier section 9 application was withdrawn basis settlement between the parties, where the settlement agreement itself contained a clause entitling the operational creditor to seek restoration of the withdrawn section 9 petition upon the breach of the settlement agreement. Despite the Adjudicating Authority not specifically granting a leave to restore the application, and subsequently refusing restoration of the application on the basis that a settlement cannot be restored/ revived, the NCLAT allowed such application for restoration to ensure that unscrupulous corporate debtors are prevented from cheating the gullible operational creditors by making them enter into settlement with the promise of subsequent payments and subsequently defaulting.
5. Whether an Adjudicating Authority has any discretion to refuse an application for section 10 when the application is complete in all respect elicited to different views from NCLAT on albeit in the context of relevant fact situations.

The NCLAT in [Shirani Motors Private Limited \(Comp. App. \(AT\) \(Ins\) No. 1196 of 2024\)](#), observed that, when an application is complete in all respects and there is no ineligibility under section 11, an application cannot be rejected solely on grounds that the liability of government dues exceeds the debts owed to the Operational Creditors.

On the other hand, in [Agroha Paper Industries Private Limited v. Bank of Maharashtra \(Company Appeal \(AT\) \(Insolvency\) No. 1342 of 2023\)](#), the NCLAT, upheld the decision of the Adjudicating Authority to reject a section 10 application by observing that, even when the application had been filed in due compliance with the statutory norms, if the bona fide of the application is doubtful and is seen to be a method to prevent recovery action initiated by the lenders, such rejection is justified.

6. In [Inkel Limited v. Shaji Mathew and Anr. \(TA \(AT\) No. 258/2021 Comp App \(AT\) \(Ins\) No.83/2021\)](#), the NCLAT had observed that, if in the determination of the appropriate Adjudicating Authority, a party is a *necessary party* to the proceeding, impleadment of such party does not require issuance of prior notice to such person for the impleadment to be effective.
7. In [Sh. Amit Katyal v. Ajay Kumar Jain \(Company Appeal \(AT\) \(Insolvency\) No. 1460 of 2024\)](#), the NCLAT held that a section 9 application cannot be denied admission on the basis of an OTS proposal given by the principal borrower which has not be fully implemented. However, the NCLAT noted that all liabilities that have been discharged need to be taken into consideration against the guarantor at the time of the final resolution plan.

B. POST CIRP:

1. In [Swan Energy Limited v. Chandan Prakash Jain, RP of E-Complex Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 313 of 2024\)](#), the NCLAT held that while a successful Resolution Applicant can nominate a person to infuse equity in terms of the approved plan it cannot allow its substitution as resolution applicant by a person who has not participated in any stages of the CIRP process nor whose name is included in the list of the prospective resolution applicants, for the purpose of the implementation of the plan.
It was further observed that, while CoC has no power to modify a plan it can seek deletion of a provision which is non-compliant with the provisions of law to make the plan compliant.
2. In [Sankriti Allottee Welfare Association and Ors. v. Gaurav Katiyar and Anr. \(Company Appeal \(AT\) \(Insolvency\) No. 878 of 2023\)](#) the NCLAT observed that Resolution Professional has a responsibility to discharge payment obligation towards essential services supplied during the CIRP period (such as the maintenance charges) and the period of moratorium does not bar payment of such dues. It was further observed that the Resolution Professional was entitled to seek approval of CoC to increase maintenance fees for recovery of pending dues including electricity charges.
3. In [Sikkim Power Investment Corporation Limited vs Umesh Garg and Anr. \(Company Appeal \(AT\) \(Insolvency\) No.1006, 1007 & 1008 of 2024\)](#), the RFRP dated May 21, 2018 contained a stipulation regarding submission of performance bank guarantee and upon the failure of the successful Resolution Applicant to provide the same, the plan was rejected by the CoC. Upholding such an action by the CoC, the NCLAT noted that, while Regulation (4A) was added to Clause 36B of the CIRP Regulations with effect from January 24, 2019, the same only made it mandatory for the RFRP to provide a performance security within time specified therein but did not affect a stipulation already contained in a RFRP issued prior to the amendment coming into effect.
4. In [Jet Aircraft Maintenance Engineers Welfare Association vs. Mr. Ashish Chhawchharia \(Company Appeal \(AT\) \(Insolvency\) No.1705 of 2023 & I.A. No. 6137 of 2023\)](#) the NCLAT dismissed the appeal filed against the Resolution Professional of

Jet Airways, by observing that the Resolution Professional was not personally liable for payments made with the approval of the CoC.

C. MISCELLANEOUS:

1. In [Jaldhara Properties and Trading Private Limited v. Sudhal Industries Limited and Anr. \(Company Appeal \(AT\) \(Ins\) No. 707 of 2023\)](#), the NCLAT observed that an application under section 7 that was already pending before the enactment of the Insolvency and Bankruptcy Code (Amendment) Act, 2021, that had introduced the pre-packaged insolvency resolution process, should have been given priority of consideration over the application under section 54C as specified under section 11A(4). Under section 11A of the Code, the Adjudicating Authority is required to pass an order to admit or reject an application under section 54C before considering the application of the same corporate debtor under section 7. Further, section 11A(4) provides an exception to the applications filed and pending at the date of commencement of this Amendment. Consequently, the resolution plan that followed from this process was also invalidated.
2. In [M/S BRS Refineries v. Mr. Supriyo Kumar Chaudhari \(Company Appeal \(AT\) \(Insolvency\) No. 1477 of 2023\)](#), the NCLAT upheld the decision of the liquidator to forfeit the earnest money deposited by the successful auction purchaser by observing that a delay in the issuance of the sale certificate which was subject to the orders of the tribunal cannot be an excuse for non-payment of the remainder payment in the e-auction for sale of assets under the insolvency proceedings as per the terms of the binding e-auction process document despite reminders.
3. In [M/s. C Mahendra Exports Limited v. Bank of Baroda, \(Company Appeal \(AT\) \(Insolvency\) No. 1407 of 2024\)](#) NCLAT observed that the Adjudicating Authority has the authority to direct any party to produce relevant documents, as per Rule 43 of the NCLT Rules, 2016 and section 424 of the Companies Act, 2013 and upheld the direction given by the Adjudicating Authority to the Corporate Debtor to produce annual report of a previous year.
4. In [C. Sivasami v. Mr. A.R. Ramasubramania Raja and Anr. \[Company Appeal \(AT\)\(CH\)\(Ins\) No.246/2024 \(IA No. 651/2024\)\]](#) the NCLAT took note of section 60(5) of the Code and held that while the provision refers to only the NCLT, the said reference of NCLT has to be given its logical interpretation to extend the application to even NCLAT. Accordingly, it was held that NCLAT too can extend its powers under section 60(5) to meet out the ends of justice in order to avoid liquidation of the Corporate Debtor.
5. Whether for the purpose of ascertaining if the appeal filed was within the limitation period if the initial filing to be treated as valid filing in the eyes of law or whether only the date of re-filing of appeal after curing the defects would need to be considered was answered by NCLAT in the decisions of [Innovators Cleantech Private Limited v Pasari Multi Projects Private Limited \(Company Appeal \(AT\) \(Insolvency\) No.115 of 2024\)](#) and [Commercial Tax Department v Naveen Kumar Sood & Anr. \(Company Appeal \(AT\) \(Insolvency\) No.280 of 2024\)](#).

In both the cases, the NCLAT was faced with the issue of whether a dummy and skeleton filing, which would otherwise be a *non est* filing could be considered to be the date of actual filing. Rejecting such assertions, the NCLAT held that for computing the limitation period, the date of e-filing is considered the actual date of filing, not the date

when defects are cured. The principle established is that the limitation period starts from the date of e-filing.

Separately, in *Innovators Cleantech Private Limited v Pasari Multi Projects Private Limited (Company Appeal (AT) (Insolvency) No.115 of 2024)* the two judge bench of NCLAT held that as all orders are uploaded on the website of the Adjudicating Authority and NCLAT, appeal filed without applying for a certified copy of the order in terms of Rule 22(2) of the NCLAT Rules, cannot be dismissed solely on the ground that the appellant has not applied for the certified copy of the order.

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