

IBC- NCLAT FORNIGHTLY SUMMARY

(August 1, 2024 – August 15, 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 August 1, 2024 – August 15, 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 and Miscellaneous.

A. PRE CIRP

1. In [UV Asset Reconstruction Company Limited v. Manmohan Kumar Khanduja \(Company Appeal \(AT\) \(Ins\) No. 1049 of 2022 & I.A. No. 3047 & 3048 of 2022](#), the NCLAT held that application under section 95 can be filed against a personal guarantor where the approved resolution plan proposing extinguishment of the liability of the personal guarantor was not wholly satisfied by the resolution applicant and a liquidation order was subsequently passed in respect to the corporate debtor.
2. The NCLAT, in [Devashree Developers Private Limited & Ors. v. Aravali Cylinders Private Limited \(Comp. App. \(AT\) \(Ins\) No. 1406 of 2023 & I.A. No. 5032 of 2023\)](#) held that application filed under section 65 (*fraudulent or malicious initiation of proceedings*) of the Code is maintainable after the application is filed either under section 7, 9 or 10 of the Code and is not dependent upon the admission of the application.
3. In [Hari Singh Thakur v. Sandeep Kumar Bhatt \(RP\) & Ors. \(Company Appeal \(AT\) \(Insolvency\) No. 732 of 2024\)](#), the NCLAT held that mentioning incorrect amount of debt in the application, cannot be a ground to reject application under section 95 of the Code and such admission cannot be questioned on the ground of valuation of assets.
4. In [Neon Laboratories Limited v. Mayank Shah & Another \(Comp. App. \(AT\) \(Ins\) No. 1622 of 2023 & I.A. No. 5860, 5861, 5862 of 2023\)](#), a section 95 application was filed on the basis of a guarantee deed which provided for a payment period of 60 days from the date of invocation. Noting that the application was filed even prior to the expiry of such payment period, a collusion between the personal guarantor and the Operational Creditor was found and the application was rejected with costs. On being challenged, the grounds relied upon by the Adjudicating Authority was upheld by the NCLAT.
5. In [Pramod Kumar Chaubey v. Mr. Praveen Kumar Jain and Another \(Company Appeal \(AT\) \(Insolvency\) No. 1470 of 2023\)](#), the NCLAT while upholding the challenge against admission of a section 9 filed by an erstwhile employee, noted that where there are claims and counter claims with respect to the amount to be paid, such dispute cannot be considered as spurious and would amount to the pre-existence of dispute. It was also reiterated that LPC, EL encashment, and such other welfare benefits and claims arising out of other welfare and service benefits would not amount to an operational debt and cannot be the basis for determining default.
6. In [Dheeraj Wadhawan v. Union Bank of India & Ors. \(Comp. App. \(AT\) \(Ins\) No. 863 of 2024 & I.A. No. 3115, 3116, 3117 of 2024\)](#), the NCLAT held that an application under Section 95 of the Code can be filed by a single financial creditor or jointly with other creditors, and it is not mandatory for all creditors in a consortium to file the application collectively.
7. In [Khushbu Dye Chem Private Limited v. Chemical Suppliers India Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 664 of 2024\)](#) the NCLAT reiterated that

unilateral stipulation of interest by the Operational Creditor without any agreement or understanding between the parties cannot be considered towards operational debt under the Code and such interest cannot be added to the principal amount of the operational debt to meet the section 4 threshold.

In this case, the NCLAT Had also observed that there was no bar in undertaking contractual set off during the pendency of CIRP application.

8. In [NBCC India Ltd. v. Jalesh Kumar Grover \(Company Appeal \(AT\) \(Ins.\) No. 59 & 60 of 2024 & I.A. No. 187 & 188 of 2024\)](#), the NCLAT interfered with the direction of the Adjudicating Authority to make the payment under the bank guarantee only after reconciliation of the work done by the Corporate Debtor by allowing the contention by the Operational Creditor that invocation of the performance bank guarantee cannot be made conditional upon such reconciliation activity.
9. In [Mr. Nishit Patel vs. Manjulaben Mahdulal Karelia and Another \(Company Appeal \(AT\) \(Insolvency\) No.543 of 2022\)](#) the NCLAT held that, where the amount outstanding continues to be reflected in the balance sheet, mere omission of the name of the creditor would have no consequence and would continue to be treated as acknowledgment of debt.

B. CIRP STAGE

1. In [Greater Noida Industrial Development v. Anand Sonbhadra \(Comp. App. \(AT\) \(Ins\) No. 868 of 2021\)](#), the NCLAT, while observing that secured creditor status is not determinant of the status as Financial Creditor or Operational Creditor, held that Greater Noida Industrial Development Authority (GNIDA) a statutory Authority, constituted under the provisions of the U.P. Industrial Area Development Act, 1976, could not claim to be a Financial Creditor solely on the basis of its status as a secured creditor but would be considered as an Operational Creditor.
2. In [Mistubishi Heavy Industries Limited v. Punj Lloyd Limited and Ors. \(Company Appeal \(AT\) \(Insolvency\) No. 1479 of 2023\)](#), the NCLAT reiterated that section 14 of the Code does not impact the right to invoke the bank guarantee during moratorium and went on to observe that when the bank guarantee is unconditional and irrevocable, any dispute raised against such invocation or for the fact that the company is undergoing insolvency, would not have any impact on such invocation.
3. In [Ram Ratan Modi v. Sammelan Tea and Beverages Private Limited & Ors. \(Company Appeal \(AT\) \(Insolvency\) No. 593 of 2022 & I.A. No. 3712 of 2022\)](#), in relation to leasehold property, NCLAT held that where leasehold rights are subsisting, they would be considered to be assets of the corporate debtor which are to be controlled by the resolution professional under section 18(1)(f) and section 25 of the Code and possession of such leasehold property could not be taken away from the Corporate Debtor during the moratorium. Conversely, where the lease had expired before the commencement of CIRP, the moratorium does not bar taking possession of such leasehold property.
4. In [Siddharth Satish Katariya, Superfine Profile and Extrusions Private Limited v. Central Bank of India and Ors. \(Company Appeal \(AT\) \(Insolvency\) No. 78 of 2024\)](#), the NCLAT held that the issuance of subsequent guarantees or sanction letters does not, by itself, nullify or replace prior corporate guarantees, which are considered continuing securities unless there is a clear and explicit novation of the contract.

5. In [Wind World \(India\) Limited v. Indian Renewable Energy \(Company Appeal \(AT\) \(Insolvency\) No.175 of 2023\)](#), an agreement was entered into between the Corporate Debtor and its subsidiary company to use, operate and maintain a facility without paying any facility use charges. The NCLAT held that such engagement to undertake operation and maintenance of the facility did not amount to an occupation of the facility in terms of section 14(1)(d) of the Code and replacement of the Corporate Debtor as the O&M contractor during such moratorium was not violative of section 14(1)(d) of the Code.
6. In [Virender Bagai v. Punjab and Sind Bank & Another \(Company Appeal \(AT\) \(Insolvency\) No.529 of 2024 & I.A. No. 1871 of 2024\)](#), the NCLAT held that the acknowledgment of debt and default in repayment via a letter, even if not for the full amount, was sufficient to extend the period of limitation period under section 18 of the Limitation Act. It further observed that a dispute regarding the quantum of debt was to be considered by the Resolution Professional after claims were filed and such a dispute cannot bar admission of a section 7 application.

C. POST CIRP

1. In [Strigopal Choudhary v. Srei Equipment Finance Limited \(I.A. No. 2256 of 2024 in Company Appeal \(AT\) \(Insolvency\) No. 626 of 2024\)](#), the NCLAT was posed with the issue of whether a delay of 209 days in filing an appeal against an interlocutory application for the removal of the resolution professional could be condoned under Section 14 of the Limitation Act, 1963. Observing that the exclusion was claimed on the basis of a recall application under Rule 11 read with Rule 49 of the NCLT Rules, 2016, the NCLAT refused to allow exclusion by observing that the essential condition for invoking section 14 of the Limitation Act, being defect of jurisdiction, was absent here.
2. In [Vantage Point Asset Private Limited v. Gaurav Misra \(Company Appeal \(AT\) \(Insolvency\) No.1495 of 2024\)](#), the Adjudicating Authority had, while approving the resolution plan of the resolution applicant, denied the prayer for the release of assets attached by the Enforcement Directorate under the Prevention of Money Laundering Act, 2002. Upon being appealed, the NCLAT took note of the provision contained under section 32A of the Code and observed that the Adjudicating Authority has the jurisdiction to use its judicial discretion to adjudicate upon the release of the attachment.
3. In [B. P. Kushwaha v. Max Heights Township & Projects Private Limited & Others \(Company Appeal \(AT\) \(Insolvency\) No. 1365 of 2024 & I.A. No. 4961 of 2024\)](#), the NCLAT held that, an allottee who has been handed over possession and has filed claim as *other creditor* for seeking interest on delayed possession could not be treated as an unsecured financial creditor.
4. The NCLAT, in [Lalit Gulati v. Sanjeev Mahajan & Others \(Comp. App. \(AT\) \(Ins\) No. 1550 of 2024 & I.A. No. 5622 of 2024\)](#), held that an Operational Creditor cannot file an appeal challenging rejection of an application filed by the ex-promoter of the Corporate Debtor.

D. MISCELLANEOUS

1. In [Flores Tiles v. M/s. Crystal Ceramic Industries Limited. \(Company Appeal \(AT\) \(Insolvency\) No.1488 of 2024\)](#), it was noted that Order 23 Rule 1(3) CPC restricts withdrawing a suit with the option to refile unless there are valid reasons or formal

defects. The NCLAT emphasized that while the Adjudicating Authority can permit withdrawal, it must ensure that granting permission to file afresh is justified by substantial reasons to prevent misuse and uphold procedural efficiency.

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