

IBC- NCLAT FORTNIGHTLY SUMMARY (October 1, 2024 – October 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 October 1 and October 15, 2024.

A. Pre-admission

1. In [Visa Coke Limited v. Mesco Kalinga Steel Limited \(Comp. App. \(AT\) \(Ins\) No. 247 of 2023\)](#), the NCLAT held that a Section 8 demand notice which was addressed to the Key Managerial Personnel (KMP) of the corporate debtor would not be a valid notice merely because the notice was delivered to the registered office of the corporate debtor, if the notice itself was not addressed to the corporate debtor.

2. In [Rahul H. Mehta v. Gajendra Investment Limited \(Company Appeal \(AT\) \(Insolvency\) No. 739 of 2022\)](#), the NCLAT held that even where the name of the financial creditor is not specifically stated in the balance sheet, if the disbursement can be proved otherwise, a written financial contract is not a pre-condition or an exclusive requirement for proving the existence of a debt.

In this case, it was further observed that while TDS cannot be the basis of a financial debt, the deduction of TDS on interest may indicate that the disbursement was against the time value to meet the criterion of financial debt.

Finally, it was reiterated that it is not for the Adjudicating Authority to decide on the quantum of debt but the only requirement for admission of a Section 7 application is to ensure that the minimum outstanding amount is more than the threshold prescribed under the Code.

B. CIRP Stage

1. In [Mr. Kailash Motilal Kakrania v. M/s Apurva Oil and Industries Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1257 of 2023 & I.A. No. 4433 of 2023\)](#), the issue before the NCLAT was whether the Adjudicating Authority was correct to reject a Section 7 application on the ground of the claimed amount being below the threshold amount for the maintainability of a petition, by allowing the corporate debtor to claim an adjustment of certain amounts owed by the petitioning financial creditor to the corporate debtor.

The appeal was allowed by the NCLAT by observing that the adjustments, apart from being made on the basis of certain self-serving ledger accounts provided by the corporate debtor, were also not reflected in the books of accounts of the corporate debtor.

C. Post-CIRP Stage

1. In [Aircastle \(Ireland\) Limited v. Mr. Ashish Chawchharia \(Comp. App. \(AT\) \(Ins\) No. 1178 of 2024\)](#), the NCLAT reviewed the law pertaining to the tribunal’s authority to review and recall its orders and went on to observe that while tribunals have inherent powers to recall their orders, they do not have any power to review them. It was further held that such review cannot be undertaken even in exercise of such inherent power available under Rule 11 of the NCLT Rules, 2016. Finally, in the context of assessing the correction of genuine mistakes made based on mistaken facts, the NCLAT observed the same would not amount to a review but would amount to recall.

2. The case of [Commissioner of Income Tax \(TDS-1\), Mumbai v. Mr. Sundaresh Bhat \(Company Appeal \(AT\) \(Insolvency\) No. 575 of 2023\)](#) dealt with the issue of delayed submission of a claim as well as the resolution professional's right to seek additional information for the substantiation of a claim.

Upholding the right of the resolution professional to seek additional information, the NCLAT went on to observe that beyond the stipulated period within which the claim can be filed, the CIRP Regulations do not provide any discretion to the resolution professional to admit a claim.

In the context of such admission as well as rejection, the NCLAT observed that the upload of an updated list of creditors, wherein the rejection of a claim has been indicated, would be a constructive notice of rejection of the claim and the claimant cannot shift the burden of their own negligence of not checking the website to ascertain the status of that claim. Finally, it reiterated that the provisions of Income Tax Act, 1961 do not create any security interest nor does it provide any foundational basis for making income tax department a secured creditor.

D. Miscellaneous

1. In *Southern Power Distribution Company of Telengana Limited v. Kalvakolanu Murali Krishna Prasad (Company Appeal (AT) (CH) (Ins) No.177 /2021)*, the issue before the NCLAT was, whether a person seeking to file an appeal under Section 61 of the Code can seek relaxation of the time period for obtaining a certified copy of the order to be appealed against, on the basis that it was not a party to the proceeding.

Rejecting such a contention, the NCLAT went on to observe that the expression 'person aggrieved' under Section 61 of the Code is wide enough to include any person who may be aggrieved by the judgment under appeal, and on account of such lack of distinction between a party to the proceeding and a stranger, the limitation period for applying for a certified copy would equally apply to a person who is a non-party to the proceeding.

In so far as the commencement of limitation for such application, the NCLAT reiterated that it is the date of the order and not the date of the proceedings which would be the starting point for the commencement of the limitation. Specifically in the context of the instant case, it was observed that the appellant, who was an attendee of the CoC proceedings, would be deemed to have knowledge of judicial proceedings for the assessment of limitation period.

This case also dealt with an interesting issue of whether the appellant would be entitled to claim the benefit of the Supreme Court's *suo motu* extension of limitation on account of Covid, where the period of limitation for procuring the certified copy had expired prior to the start of the extended period of limitation, but the 15 days of extension was yet to expire when the extended period of limitation came into effect. Observing that filing of an application for a certified copy of the order is not just a technical requirement for the computation of limitation but is also an indication of the diligence of the aggrieved party, the NCLAT went on to deny the benefit of the extended limitation period for the appellant not being diligent enough to apply for the certified copy within the time period as well as for failure to file an application for condonation of delay in time.

The principle that the limitation starts from the date of the pronouncement of the order and not from the date when the same was uploaded was reiterated in *Tarandeep Kaur Ahluwalia v. One City Infrastructure Private Limited (Comp. App. (AT) (Ins) No. 1898 of 2024 & I.A. No. 7020, 7024 of 2024)*.

2. In *Vantage Point Asset Management Pte. v. Ashish Arjun Kumar Rathi (Company Appeal (AT) (Insolvency) No. 1619 & 1620 of 2024)*, by observing that providing the highest offer does not create any vested right in being selected as the successful resolution applicant, the NCLAT re-established the key principle that the commercial decisions of the CoC regarding the feasibility, viability, and maximization of the debtor's assets cannot be interfered with by the judiciary unless there is a clear violation of legal provisions. This judgment reinforced the limited scope of judicial review of CoC-approved resolution plans, consistent with prior rulings such as *Essar Steel India Limited through authorized signatory v. Satish Kumar Gupta* and *K. Sashidhar* and underscored that courts should not modify or second-guess the CoC's commercial decisions. It was further observed that providing clarification to the queries asked in relation to the plan does not amount to modification of the same.

3. In *Sidharth Bharatbhushan Jain & Anr. v. State Bank of India & Anr. (Comp. App. (AT) (Ins). 242 of 2024)*, the NCLAT addressed whether the "look-back period" under Section 43 of the Code could be extended beyond two years for related parties in a CIRP. The Adjudicating Authority had initially allowed an extension of this period to capture transactions beyond the statutory two years. However, the NCLAT overturned this decision, holding that Section 43(4) clearly limits the look-back period to two years for related parties and one year for others.

4. In [*Ramesh Kumar Chugh v. Assets Care and Construction Enterprises Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1726 of 2024\)*](#), the issue before the NCLAT was whether an interim moratorium under Section 96, applicable vis-à-vis a personal guarantor, would bar enforcement proceedings against the assets of a partnership firm in which the personal guarantor is a partner. After considering the language of the Section 96 of the Code, NCLAT went on to observe that such moratorium relates only to specific debt, and not to a debtor. Further, by observing that assets held in the name of the partnership firm is not the personal property of a partner, the NCLAT went on to observe that such moratorium would not bar enforcement proceedings against the assets of such a partnership firm.

5. In [*Hero Exports v. Mr. K. Vasudevan \(Company Appeal \(AT\) \(Ins\) Nos.1048 & 1049/2020\)*](#), the two-member Bench of the NCLAT at Chennai held that the appeal provision contained under Section 61 of the Code being a self-contained provision, the time period for filing an appeal could not be extended by relying upon Section 14 of the Limitation Act, 1963.

In our understanding, the decision is a *per incuriam* for its failure to take into account the decision of a three member Bench of the NCLAT (Principal Bench) rendered in the case of *Isolux Corsan India Engineering & Constructions Private Limited v. Shailesh Verma (I.A. No. 3349 of 2022 in Company Appeal (AT) (Insolvency) No. 1124 of 2022)*, wherein the Bench was pleased to note that the principal underlying Section 14 of the Limitation Act, 1963 was even applicable in the context of a proceeding under the Code.

Contributed by:



**Arka Majumdar
Partner**



**Juhi Wadhvani
Senior Associate**



**Aakriti Garodia
Associate**



**Vikram Chaudhuri
Associate**

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knowledgecentre@argus-p.com

Mumbai | Delhi | Bengaluru | Kolkata

www.argus-p.com



MUMBAI

11, Free Press House
215, Nariman Point
Mumbai 400021
T: +91 22 67362222

DELHI

7A, 7th Floor, Tower C, Max
House,
Okhla Industrial Area, Phase 3,
New Delhi 110020
T: +91 11 69044200

KOLKATA

Binoy Bhavan
3rd Floor, 27B Camac Street
Kolkata 700016
T: +91 33 40650155/56

BENGALURU

68 Nandidurga Road
Jayamahal Extension
Bengaluru 560046
T: +91 80 46462300

www.argus-p.com | communications@argus-p.com