

IBC- NCLAT FORTNIGHTLY SUMMARY

(September 16, 2024 – September 30,
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 September 16, 2024 – September 30, 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-admission stage

1. In *Stressed Assets Stabilization Fund v. Suman Motels Limited (Company Appeal (AT) (Insolvency) No. 466 of 2023)*, the issue before the NCLAT pertained to the effect and consequence of Section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985. After referring to Section 22(5) of the SICA Act, the NCLAT went on to observe that a party would be entitled to seek exclusion of the limitation period to the extent that any such proceeding was barred under Section 22(1) of SICA.

In this decision, the NCLAT upheld the decision of the Adjudicating Authority to reject a Section 7 application for being barred by time by observing that while an acknowledgment in the balance sheet extends limitation, where such acknowledgment has been made after the expiry of initial period of limitation of three years, such acknowledgment cannot extend limitation any further.

2. The NCLAT, in [Amit Narang v. Narang Developers Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 684 of 2024\)](#) held that proceedings under Section 7 of the Code can be issued against a co-borrower as the obligation of the co-borrower is coextensive and coterminous with that of the primary borrower and hence a right or cause of action becomes available to the financial creditor to proceed against the primary borrower, as well as the co-borrower in equal measure in case of default.

The NCLAT further held that insufficiency of stamping requirement is an irrelevant ground in adjudicating upon the admissibility of a Section 7 application as the liability of a corporate debtor cannot be done away merely on the ground of stamping inadequacy in the facility agreement, which such technical deficiency can be cured.

The NCLAT also held that declaration of an account as NPA under the SARFAESI Act is an independent proceeding and cannot be adopted as a defense to obstruct a financial creditor from proceeding under the Code to initiate CIRP against the corporate debtor.

3. In [Samrat Restaurant v. Brewcrafts Microbrewing Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1409 of 2024 & I.A. No. 5117 of 2024\)](#), the NCLAT upheld the decision of the Adjudicating Authority to reject a Section 9 application by *inter alia* observing that the interest component can be included in ‘debt’ only when the same has been agreed by the parties and otherwise, only the principal amount shall fall within the definition of ‘claim’ for the purpose of calculating the default amount.

The NCLAT further held that where a default is committed prior to the Section 10A period and such default continues, a CIRP proceeding can be initiated on the basis of such breach post the Section 10A period. However, any dues and defaults falling within the protected period in accordance with Section 10A of the Code cannot form the basis for initiating CIRP and shall be excluded.

The NCLAT also held that as a date of default and acknowledgment are two different events, any subsequent acknowledgment, including an OTS agreement, cannot shift the date of default to nullify the protection offered by Section 10A.

B. CIRP Stage

1. In [*Dushyant Dave v. Gospell Digital Technology Company Limited \(Company Appeal \(AT\) \(Ins\) No. 656 of 2024 & I.A. No. 3315 of 2024*](#), where the interim resolution professional had prematurely admitted the claim of an entity as a financial creditor to induct them in the CoC to get the support of the CoC to appoint himself as the resolution professional, the NCLAT held that such conduct goes against the object of the Code as the conduct has not been neutral and impartial.

In the instant case, the NCLAT also observed that inclusion of one creditor as a financial creditor without proper verification as well as inclusion of creditors, whose claims are still under verification, in the CoC violates statutory provisions.

2. In [*Department of State Tax through the Deputy Commissioner of State Tax, v. Reliance Communications Limited and Anr. \(Company Appeal \(AT\) \(Insolvency\) No. 1344 of 2024*](#), the NCLAT agreed with the view of the Adjudicating Authority that a claim of the State tax department which was based on an assessment post the initiation of the CIRP was not admissible.

The aforesaid principle was again reiterated by the NCLAT in *Gujarat Urja Vikas Nigam Limited v. Mr. Udayraj Patwardhan (Company Appeal (AT) (Ins) No. 1183 of 2024*), where it was held that the resolution professional can only entertain claims due and filed as on the CIRP commencement date and not on a subsequent event, for which the claimant might have other legal remedies.

3. In [*Uttarakhand Power Corporation Limited v. Shirdi Industries Limited and Ors. \(Company Appeal \(AT\) \(Insolvency\) No. 799 of 2024*](#), the NCLAT examined the provision of moratorium (*Section 14 of the Code*), and observed that once a moratorium has been declared, any amount, even if paid voluntarily by the corporate debtor, cannot be appropriated against any pre-CIRP dues.
4. In [*Lords Social Welfare Association v. New Okhla Industrial Authority \(Company Appeal \(AT\) \(Insolvency\) No. 506 of 2024*](#), the NCLAT observed that where the lease held by the corporate debtor had been cancelled and no further rent had been paid by the corporate debtor post such cancellation, mere making a request of restoration of such cancelled lease would not have any effect on the termination or convert the status of the corporate debtor as a tenant holding over, as is understood in terms of Section 116 of Transfer of Property Act, 1882. Based on the aforesaid observation, the NCLAT went on to observe that where the corporate debtor is no longer the lessee and nor is a tenant holding over, such plot cannot be included as an asset of the corporate debtor.
5. In *Mr. Manish Jaju vs. Malharshanti Enterprises and Ors. (Comp. App. (AT) (Ins) No. 545 of 2023 & I.A. No. 1768 of 2023*), the NCLAT was faced with a situation where the resolution professional and the appellant therein had gone ahead with the adjudication of the claims and have decided to offset the claims by raising a counter-claim against the Operational Creditor on its own. Deprecating such conduct, the NCLAT emphasized the role of the resolution professional as a neutral party and expressed its surprise on finding that the claim based on which the CIRP was initiated itself was rejected.

Finally, the locus of the resolution professional to maintain the appeal was rejected by

observing that a resolution professional could not have been an aggrieved person to maintain an appeal against an order allowing challenge to a rejection of claim by such resolution professional.

6. In [Saratvam Creators v. Sudhir Construction Infrapase Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1664 of 2024\)](#), the NCLAT observed that the appellant would not be considered as a 'related party' of the corporate debtor in terms of Section 5(24) of the Code when one of the partners of the appellant had a relationship of being a guarantor and electric contractor, apart from receiving money from the corporate debtor.

By observing that there can be no liability of a guarantor until the principal borrower is liable, the NCLAT also rejected the admission of a claim up to the entire sanctioned amount where only a part of the amount was disbursed to the principal borrower.

C. Post-CIRP Stage

1. In *Madhya Gujarat Vij Company Limited v. Mangallam Worldwide Limited (Comp. App. (AT) (Ins) No. 1761 of 2024)*, the NCLAT relied upon the judgement of the Hon'ble Supreme Court in *Southern Power Distribution Company v. Gadi Siddeswara Steels (India) Private Limited (Civil Appeal No. 9229 of 2023)* to apply the *clean slate* principle in the instant case and observed that a financial undertaking given by the corporate debtor prior to the CIRP would not bind the successful resolution applicant.

D. Liquidation Stage

1. In *Shantech International Private Limited v. Devendra Singh (Company Appeal (AT) (Insolvency) No. 1520 of 2024)*, the NCLAT had an occasion to examine the nature of reliefs and waivers that can be granted to a successful auction purchaser pursuant to the conclusion of a going concern sale during liquidation.

In this context, the NCLAT had observed that the successful auction purchaser cannot be granted reliefs and waivers which are not contemplated under the e-auction notice, nor can they waive any liabilities with regard to the dues of the corporate debtor to State or the Central government or statutory authorities which falls within the jurisdiction of such appropriate authorities. Finally, in the context of reliefs seeking extinguishment of liability up to the date of the sale, the NCLAT observed that such relief cannot be granted considering the claims itself are invited up to the liquidation commencement date.

2. Admissibility of a claim which has arisen after the liquidation commencement date had also been considered by the NCLAT in the case of *SBS Holdings v. Mohan Lal Jain (Company Appeal (AT) (Insolvency) No. 624 of 2024)*. In the instant case, the claim arose on account of an arbitration which was continued on behalf of the corporate debtor by the resolution professional during the moratorium and the award against the corporate debtor was rendered post the commencement of liquidation. The issue was whether such a claim can be admitted by the liquidator. The NCLAT held that the liquidation process regulations do not permit the consideration of any claim which arises subsequent to the liquidation commencement date. While arriving at the conclusion, the NCLAT took note of Regulation 28 of Liquidation Process Regulations which deals with "*debt payable at future time*" and observed that Regulation 28 being the only regulation which deals with the payment not due on the liquidation commencement date and since the distribution has been provided in the manner provided in Regulation 28(2), no other claim which is not available on the liquidation commencement date can be considered. In other words, when a claim has not arisen on the liquidation commencement date, admission of such claims is not contemplated under the Liquidation Process Regulations.

3. The aforesaid principle of non-admissibility of any claim arising post liquidation commencement date was again reiterated by NCLAT in [Assistance Provident Fund Commissioner \(Legal\), EPFO v. Chandra Prakash Jain \(Company Appeal \(AT\) \(Insolvency\) No. 1743 of 2024\)](#) wherein the NCLAT upheld the decision of the liquidator refusing to entertain a claim based on an order passed post liquidation commencement date under Section 7A and 7Q of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 for the payment of interest for a period prior to the liquidation commencement date.
4. In [Times Innovative Media Limited v. Pawan Kumar Aggarwal \(Company Appeal \(AT\) \(Insolvency\) No.1139 of 2024\)](#), the NCLAT upheld the decision of the Adjudicating Authority by observing that an operational creditor cannot claim any priority in the distribution of assets of the corporate debtor vis-à-vis a related party of the corporate debtor who is identified as an unsecured financial creditor. To arrive at the conclusion, the NCLAT took note of the decision of the Supreme Court in *M.K. Rajagopalan v. Dr. Periasamy Palani Gounder and Anr. (Civil Appeal Nos. 1682-1683 of 2022)* wherein the Supreme Court had upheld differential payment to related parties under a resolution plan, but distinguished the decision by stating that such observations were made in the context of approval of the resolution plan by the CoC and has no application with respect of distribution under Section 53.

E. Miscellaneous

1. In [Tummla Sri Ganesh v. State Bank of India \(Company Appeal \(AT\) \(CH\) \(Ins\) No.315/2024\)](#), the NCLAT took note of the provisions contained under Section 118 (*Repayment plan coming to end prematurely*) to observe that in view of the self-contained deeming clause in Section 118, when there is a failure to make the payment as per the repayment plan, such approved plan ceases to have its life, enabling the resolution professional to initiate bankruptcy proceedings.

In this context, the NCLAT further observed that the payment of the initial instalments could not give a leverage or an excuse to commit subsequent default in the future repayment schedule given under the repayment plan.

2. In [Subhash Chander Chauhan v. M/s. Kaliber Associates Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 666 of 2024\)](#), the NCLAT observed that while a report of an information utility is relevant, the same cannot be a conclusive proof for the nature of a transaction. It was also held that long-term liabilities can be of different kinds and is not indicative of there being a financial debt. Finally, it was also observed that a refundable security deposit need not always qualify as a financial debt and the underlying transaction is required to be examined.
3. In *Era Labourer Union of Sidcul, Pant Nagar, through its secretary vs. Apex Buildsys Limited (Company Appeal (AT) (Insolvency) No. 1572 of 2024)*, in the context of ascertaining jurisdiction of the Adjudicating Authority to entertain a challenge against the closure and lockout notice of a plant which had taken place prior to the commencement of CIRP, the NCLAT had an occasion to examine the scope of residual jurisdiction under Section 60(5)(c) of the Code and went on to observe that the provision cannot be interpreted in such a liberal manner which would clothe the Adjudicating Authority with jurisdiction which it does not possess. In furtherance of the same, it also went onto observe that jurisdiction under Section 60(5) cannot be invoked in relation to issues which are not related to CIRP, such as the closure and lockout notice in the instant case which had taken place prior to the commencement of CIRP.

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