

# IBC- NCLAT FORNIGHTLY SUMMARY

(September 1, 2024 – September 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 September 1, 2024 – September 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, Liquidation and Miscellaneous.

### A. Pre-admission Stage

1. In [Shiv Glitz Hotels and Resorts LLP v. Oravel Stays Limited, \(Company Appeal \(AT\) \(Insolvency\) No.577 of 2024\)](#), the NCLAT held that a Section 9 application cannot be dismissed citing defects without giving notice to the applicant to rectify the defect in line with the statutory provisions contained in the proviso to Section 9 (5), sub-section (ii) of the Code.
2. In [Sandeep Mittal v. ASREC \(India\) Limited, \(Company Appeal \(AT\)\(Insolvency\) No.37 of 2024\)](#), one of the questions before the NCLAT was, whether subsection (8) of Section 5 contemplates the disbursement of money alone for being treated as a financial debt or whether disbursement of property could also qualify as financial debt. In the course of addressing the issue, the [NCLAT held](#) that disbursement of property cannot substitute the requirement of disbursement of money which is essential for being treated as financial debt. It was also held that when the transaction is a sale and purchase of assets, the guarantee given for the recovery of balance purchase price would not constitute a financial debt.  
Finally, it was suggested that the nature of transaction is to be determined from the documents reflecting the transaction and that any subsequent letter or subsequent pleadings of the parties cannot alter such nature.
3. The NCLAT in [Meehika Buildcon LLP v. City Star Infrastructure Limited, \(Comp. App. \(AT\) \(Ins\) No. 47 of 2024\)](#), the NCLAT held that money advanced to the land-owner for clearing title for a project would not constitute a financial debt, even where the terms of such advance stipulated return of the money along with interest if the corporate debtor failed to meet the condition for such advance.
4. In [Imdadali Momin v. Pellucid Lifesciences Private Limited, \(Company Appeal \(AT\) \(Ins.\) No. 1145 of 2024\)](#), the NCLAT observed that where the presence of financial debt could not be established due to absence of a formal loan agreement covering the tenure of the loan, rate of interest prescribed and frequency of payment of interest, an application for initiation of CIRP would not lie solely for the recovery of interest payable in relation to such outstanding debt.
5. In [Saurabh Kumar Pandey v. Ambica Enclave Private Limited, \(Comp. App. \(AT\) \(Ins\) No. 1478 of 2024\)](#), the NCLAT held that the issue regarding related parties and their claims wrongly being included are issues which need to be raised by the appellant before the Adjudicating Authority by filing appropriate application under Section 60, sub-section (5) of the Code, and need not be part of the Section 7 proceeding.
6. The NCLAT, in [Terry E D’Souza v. Omkara Assets Reconstruction Private Limited, \(Company Appeal \(AT\)\(Insolvency\) No. 1473 of 2024 & I.A. No. 5362 of 2024\)](#), after observing that an asset reconstruction company was entitled to acquire the debts of a co-operative bank, held that a pending proceeding in the civil court challenging such assignment as fraudulent, cannot be a ground to postpone the consideration of a Section

7 application.

7. In [M/s Agarwal Foundries Private Limited v. POSCO E&C India Private Limited, \(Company Appeal \(AT\) \(Insolvency\) No. 1492 of 2024\)](#), the NCLAT, after observing that the operative requirement of operational debt is that the claim must bear some nexus with a provision of goods or services, held that in the absence of any privity of contract, one cannot be treated as operational creditor.
8. In [Sushil Kumar Bajaj v. Mandyati Dealcomm Private Limited, \(Company Appeal \(AT\) \(Insolvency\) No. 1540 of 2023\)](#), the NCLAT held that even where a debt is admitted, unless the debt is a financial debt, a Section 7 application is not maintainable. In the facts of the instant case, it was held that the element of disbursement for time value of money is an essential condition for proving existence of financial debt and loan given to family company to help out the other does not meet the criteria of being treated as financial debt.

## B. CIRP Stage

1. In [Commercial Tax Department v. Teena Saraswant Pandey, \(Company Appeal \(AT\) \(Ins.\) No. 1265 of 2022\)](#), the NCLAT observed that commercial tax department could not be treated as 'secured creditor' in relation to the taxes owed by the corporate debtor under Madhya Pradesh VAT Act, 2002 ("MPVAT"). To arrive at the conclusion, NCLAT relied on its earlier decision in *Zicom SaaS* (where a claim of the State tax authority of Maharashtra was not treated as secured charge - which we have covered [here](#)) and observed that Section 37 of the Maharashtra VAT Act (MVAT) and Section 33 of the MPVAT Act appeared to be *pari materia*.

However, in our humble opinion, the two provisions are not *pari materia*. A charge under Section 37 of MVAT is subject to any provision regarding the creation of first charge in any Central Act (which would include the Code), Section 33 of MPVAT Act only made the charge subject to provisions of Section 530 of the Companies Act, 1956. Whilst it is debatable as to whether making a charge subject to Central Act (or for that matter the Code) could have effect on the priority of the charge when such charge is only made subject to provisions of CA, 1956, such provision could not have any impact on determination of secured creditor status under the Code (i.e., if we decide to ignore the debate as to whether statutory dues could at all be secured debt).

But by painting two different provisions with the brush of *pari materia*, NCLAT achieved a parity which, in our humble view, was not warranted.

2. In [Rajat Metaal Polychem Private Limited v. Subhash Bhati & Ashok Kumar Bhati, \(Company Appeal \(AT\) \(Insolvency\) No. 1063 of 2022\)](#), the NCLAT held where the liquidation value for operational creditors is NIL, a resolution plan that offers no payment to them would not be violative of the Code as it stands today, even though it may be harsh.
3. In [Paresh Govindbhai Hirpara v. Prabhat Jain, \(Company Appeal \(AT\) \(Insolvency\) No. 362 of 2024\)](#), the NCLAT held that filing of an incorrect form is not a deciding factor for the rejection of the claim, where the claim is supported by sufficient evidence and is not disputed.

## C. Post CIRP Stage

1. In [Yogesh Kelkar v. Resolution Professional of Anudan Properties Private Limited, \(Company Appeal \(AT\) \(Insolvency\) No. 751 of 2023\)](#), the NCLAT compared the principle



of approval of scheme of arrangement *vis-à-vis* the approval of a resolution plan by the Committee of Creditors (“CoC”) and observed that principles of corporate democracy are duly met where a duly constituted CoC approves a resolution plan by a requisite majority after due deliberation. Noting that the Code was a self-contained one, it went on to observe that the principles of approval of scheme of arrangement cannot be applied to approval of a plan by the CoC, nor can a decision which is taken with requisite vote, be challenged on the basis that the CoC comprised of only a sole member.

In the context of challenges to the contents of the plan, the NCLAT rejected challenges premised on the plan providing differential treatment between secured and unsecured financial creditors as well as challenge on the basis of grievance regarding a proposed haircut.

#### **D. Liquidation Stage**

1. In [\*NIFE Fire Systems Private Limited v. Canara Bank, \[Company Appeal \(AT\) \(CH\) \(Ins\) No. 314/2024 \(IA No. 835/2024\)\]\*](#), the NCLAT held that an order directing the dissolution of the corporate debtor on merits under Section 54 of the Code cannot be recalled under Rule 11 of the NCLT Rules, 2016 on grounds of non-remittance of the liquidator’s fee.
2. In [\*Truvisory Insolvency Professionals Private Limited v. Employees’ Provident Fund Organisation, \[Company Appeal \(AT\) \(Ins.\) No. 580 of 2023\]\*](#), the NCLAT relied upon its earlier decisions to reiterate that contributions under Section 7A, interests under Section 7Q and damages under Section 14 of the Employee Provident Fund Act, 1952 (EPF Act) all constitute provident fund (PF) dues in terms of the EPF Act and correspondingly do not constitute a part of the liquidation estate in terms of Section 36 of the Code. Accordingly, it was held that such PF dues be paid in priority from the funds available in the bank accounts of the corporate debtor attached by the PF department and in case the amount available is not sufficient, the same to be made from the disposal of assets of the corporate debtor.

#### **E. Miscellaneous**

1. In [\*Savita Dagar Solanki v. One City Infrastructure Private Limited, \(Company Appeal \(AT\) \(Insolvency\) No. 1544 of 2024\)\*](#), the NCLAT held that where the plan itself provides for dealing with claims submitted by allottees after the cut-off date, such plan would be binding on the resolution applicant who would be required to deal with the claims accordingly.
2. In [\*Office Banz Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1725 of 2024\)\*](#), the NCLAT observed that a Section 10 application is not maintainable based on a default arising out of the time period prescribed in Section 10A of the Code, on the ground that such debt continues to exist.
3. In [\*George Varkey, Liquidator of M/s. Propyl Packaging Limited v. Deputy Commissioner \(Assessment\), SGST, \[Company Appeal \(AT\) \(CH\) \(Ins\) No.343/2023\]\*](#), the NCLAT held that limitation period prescribed under Section 42 of the Code can be extended by the Adjudicating Authority.
4. In [\*Mr. Jagdishchandra Mansukhani v. STCI Finance Limited, \[Company Appeal \(AT\) \(Insolvency\) No. 1439 of 2024\]\*](#), the NCLAT held that, a letter issued in response to a notice issued under Section 13(2) of SARFAESI Act, mentioning that borrowers were at an advanced stage at discussion and the loan was expected to be closed shortly, constituted an acknowledgement within the meaning of Section 18 of Limitation Act, 1963.

5. In [Punjab National Bank v. Deepankur Sharma, \[Comp. App. \(AT\) \(Ins\) No. 1683 of 2024\]](#), the NCLAT upheld the decision of the Adjudicating Authority wherein, despite the security interest being duly registered with the Registrar of Companies, the appellant was not recognized as a secured creditor on account of disposal of the stock over which the security was created prior to the initiation of CIRP.

**Contributed by:**



**Arka Majumdar**  
**Partner**



**Juhi Wadhwani**  
**Senior Associate**



**Aakriti Garodia**  
**Associate**



**Vikram Chaudhuri**  
**Associate**

**DISCLAIMER**

This document is merely intended as an update and is merely for informational purposes. This document should not be construed as a legal opinion. No person should rely on the contents of this document without first obtaining advice from a qualified professional person. This document is contributed on the understanding that the Firm, its employees and consultants are not responsible for the results of any actions taken on the basis of information in this document, or for any error in or omission from this document. Further, the Firm, its employees and consultants, expressly disclaim all and any liability and responsibility to any person who reads this document in respect of anything, and of the consequences of anything, done or omitted to be done by such person in reliance, whether wholly or partially, upon the whole or any part of the content of this document. Without limiting the generality of the above, no author, consultant or the Firm shall have any responsibility for any act or omission of any other author, consultant or the Firm. This document does not and is not intended to constitute solicitation, invitation, advertisement or inducement of any sort whatsoever from us or any of our members to solicit any work, in any manner, whether directly or indirectly.

**You can send us your comments at:**

**[knowledgecentre@argus-p.com](mailto:knowledgecentre@argus-p.com)**

Mumbai | Delhi | Bengaluru | Kolkata

[www.argus-p.com](http://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