

IBC- NCLAT FORTNIGHTLY SUMMARY

(February 16, 2025 – February 28, 2025)

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 February 16, 2025, to February 28, 2025. 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 stage, Liquidation and Miscellaneous.

A. PRE CIRP

1. In [*Adhunik Corporation Limited v. Shivam India Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1427 of 2023\)*](#), the question before the NCLAT was whether refundable financial assistance given towards operationalization of the Corporate Debtor’s factory would qualify as financial debt, in absence of stipulation regarding payment of interest. While answering the query in affirmative, the NCLAT observed that for a debt to be considered a ‘financial debt’ under section 5(8) of the Code, interest on a loan is not the only binding criterion for determining the time value of money, and the definition of financial debt does not exclude interest-free loans. It went onto state that funds infused with the intent of earning profits (such as through sales commission), or enhancement of economic prospect in return for the funds disbursed, would constitute the time value of money, thus qualifying the financial assistance as financial debt.
2. In [*Malavika Hegde v. IDBI Trusteeship Services Limited \(Company Appeal \(AT\) \(CH\) \(Ins\) No. 295/2024\)*](#), the NCLAT held that proceedings under section 7 of the Code to be invalid on multiple procedural and substantive grounds. Firstly, the debenture trustee failed to comply with the procedure under clause 7 of the debenture trust deed, which required authorization by a majority resolution of debenture holders before initiating any insolvency proceedings. Secondly, the power of attorney holder lacked a valid authority as it had been superseded by a subsequent document, and the original powers were subject to specific authorization from the managing director, which was never granted. Thirdly, the application was barred by limitation because it failed to satisfy the requirements under section 238A of the Code. Fourthly, the proceedings were determined to be malicious and would consequently be barred under section 65 of the Code. The NCLAT emphasized that the debenture trust deed’s terms were binding on all parties, and the Government notification authorizing debenture trustees to file section 7 applications did not override the procedural requirements established in the deed.
3. In [*Navin Madhavji Mehta v. Jaldhi Overseas Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 792 of 2024\)*](#), the NCLAT held that a section 9 application cannot be admitted when there exists a pre-existing dispute regarding the operational debt. The NCLAT held that once a Corporate Debtor raises a plausible defence disputing that the debt that is not spurious, hypothetical, or illusory, the conditions for admission under section 9 are not fulfilled. The NCLAT emphasized that mere tentative acknowledgment to look into outstanding claims cannot be construed as categorical admission of debt liability. Following the principles laid down by the Supreme Court in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited (Civil Appeal No. 9405 of 2017)*, the NCLAT went onto clarify that proceedings under the Code cannot be utilized as debt recovery mechanisms, especially when there are genuine disputes regarding the existence, quantum, or liability of the operational debt. In such cases, the dispute needs to be investigated by a proper forum, which is beyond the scope of the Adjudicating Authority.

4. In [*Krishan Kumar Jajoo v. Piramal Enterprises Limited \(Company Appeal \(AT\) \(Ins\) No. 1601 of 2024 & I.A. No. 5835 of 2024*](#), the NCLAT had an occasion to examine the effect of lack of privity of the beneficiary of a guarantee to invoke the same when the guarantee deed was executed only with the security trustee. While upholding such right, the NCLAT observed that such guarantee could be invoked by non-signatory creditor, as long as the creditor is the ultimate beneficiary under the guarantee arrangement through a security trusteeship. It was further observed that as the liability of a personal guarantor is co-extensive with the Corporate Debtor, a creditor is not required to first proceed against the principal borrower before initiating proceedings against the guarantor, even if adequate securities are available to recover the outstanding debt from the principal borrower.
5. In [*Pramod Kumar Jain v. Aryan Ispat and Power Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 617 of 2024\)*](#), the NCLAT held that an application under section 9 of the Code for merely interest claims is not maintainable when the principal amount has already been paid. The NCLAT emphasized that the spirit of the Code is for 'resolution of debt' and not for 'recovery'. Furthermore, the NCLAT went on to observe that interest can only be claimed as part of an operational debt when there is an express agreement between the parties regarding interest payment. A mere boilerplate interest clause in an invoice, particularly one that is vague and does not specify payment terms (such as due dates), cannot be enforced in the absence of formal agreement or acceptance by the debtor. The NCLAT followed earlier precedents in establishing that invoices containing interest clauses which were not part of a formal agreement are unenforceable, and thus set aside the impugned order that had admitted the application solely for interest recovery.
6. In [*State Bank of India v. Deepak Kumar Singhania \(Company Appeal \(AT\) \(Insolvency\) No. 191 of 2025\)*](#), the NCLAT held that for initiating an insolvency resolution process against a personal guarantor under section 95 of the Code, the guarantee must first be formally invoked as per the terms of the deed of guarantee before issuing a demand notice under rule 7(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**PIRP Rules**"). The NCLAT took note of the definition of guarantor under rule 3(1)(e) of the PIRP Rules to observe that the word 'and' in the definition adds the two conditions, namely, the debtor must be a personal guarantor to a corporate debtor, and the guarantee must have been invoked by the creditor and remain unpaid in full or part, and must be read conjunctively and not disjunctively as 'or'. By noting that personal guarantor becomes a debtor only when the guarantee is invoked according to the contractual terms, making them liable to make payment to the lender, it clarified that a demand notice issued under rule 7(1) of the PIRP Rules in Form-B cannot be considered as a notice for invocation of guarantee, and a default by the guarantor must exist on the date when such notice is issued.

B. CIRP

1. In [*Brand Steel and Power Private Limited v. Avishek Gupta \(Company Appeal \(AT\) \(Insolvency\) No. 194 & 195 of 2025\)*](#), the NCLAT held that extension of timeline for submission of Expression of Interest ("**EoI**") and Resolution Plan by the Committee of Creditors ("**CoC**") does not necessarily require publication of a fresh Form G when such extension is contemplated in the original invitation for EoI itself. The NCLAT distinguished between 'modification' of the terms of EoI (which requires fresh Form G) and mere 'extension of timeline' (which does not).

The NCLAT further held that where a name of the resolution applicant appears in the final list of prospective resolution applicants after timeline extension, there is no violation of regulation 39(1-B) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”). Additionally, the NCLAT also went on to observe that a resolution applicant who participates in the extended process, takes advantage of the extension to make its plan compliant, and raises no objection until after voting commences cannot later challenge the process on grounds of procedural irregularity. It emphasized that all actions taken by the Resolution Professional were with the approval of the CoC, and the scope of interference with the CoC's commercial wisdom is minimal under section 61(3) of the Code.

2. In [*Ajay Vij v. Abhishek Dutta \(Company Appeal \(AT\)\(Ins\) No. 726 & 728 of 2021\)*](#), the NCLAT held that the Adjudicating Authority lacks jurisdiction to convict a person for an offense under section 68 of the Code, as section 236(1) of Code explicitly provides that such offenses shall be tried only by special courts established under Chapter XXVIII of the Companies Act, 2013. The NCLAT determined that no act of perjury was committed by filing an incorrect declaration in Form 18 filed before the Registrar of Companies because it was not material to the conversion from a company to LLP, since section 58(4)(b) of the LLP Act, 2008 provides that such conversion does not affect pending proceedings against the company. Even if perjury had been committed, the NCLAT ruled that the order of the Adjudicating Authority permitting the liquidator to file a complaint under section 340 of the Criminal Procedure Code, 1973 was unsustainable because it was not ‘*expedient in the interest of justice*’. The NCLAT further clarified that not every incorrect statement warrants prosecution, and courts should exercise judicial discretion considering all relevant circumstances when determining expediency.
3. In [*Amit Sangal v. Kairav Anil Trivedi \(Company Appeal \(AT\) \(Ins\) No. 916 of 2023 & I.A. No. 1662 of 2024\)*](#), the NCLAT held that material irregularities and procedural violations during the CIRP can invalidate an approved resolution plan, even if it was sanctioned by the CoC and the Adjudicating Authority. The NCLAT found that the Resolution Professional, was improperly appointed by the CoC and engaged in misconduct, including misrepresentation, violation of IBC regulations, and fraudulent conduct during the CIRP. The NCLAT emphasized the importance of procedural safeguards under the Code to ensure fairness and transparency, asserting that material deviations from these procedures cannot be justified by the outcome. It further ruled that the CoC’s approval of a resolution plan does not absolve the resolution professional of accountability for any procedural violations or misconduct during the CIRP. As a result, the NCLAT set aside the impugned orders approving the resolution plan and directed the parties to appear before the Adjudicating Authority for further proceedings.
4. In [*Maharashtra State Electricity Distribution Company Limited v. Ravi Sethia Resolution Professional of Morarjee Textiles Limited \(Company Appeal \(AT\) \(Insolvency\) No. 56 of 2025\)*](#), the NCLAT held that electricity constitutes an ‘essential supply’ under section 14(2) of the Code read with regulation 32 of the CIRP Regulations, which cannot be terminated, suspended, or interrupted during the moratorium period, even if payment is not made. The NCLAT clarified that section 14(2) and section 14(2A) operate differently, with section 14(2) providing absolute protection to essential supplies (including electricity when it is not a direct input to production), while section 14(2A) covers supplies deemed critical by the Resolution Professional with the caveat that non-payment during moratorium can justify disconnection. Since the Resolution Professional in this case specifically relied on section

14(2) rather than section 14(2A), the electricity supplier was obligated to continue supply irrespective of payment.

C. POST CIRP

1. In [*Punjab State Power Corporation Limited v. Akums Lifesciences Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1258 of 2023\)*](#), the NCLAT held that section 238 of the Code overrides the provisions the Electricity Act, 2003, and an electricity distribution company cannot demand payment of pre-CIRP dues from a successful resolution applicant after the approval of a resolution plan, especially when the electricity company failed to file a claim during the CIRP. The NCLAT further affirmed that the Adjudicating Authority has jurisdiction under section 60(5)(c) of Code to decide issues related to pre-CIRP electricity dues, as such matters directly arise from the approval and implementation of the resolution plan.

D. LIQUIDATION

1. In [*Asean International Limited v. Sanjeev Maheshwari \(Company Appeal \(AT\) \(Insolvency\) No. 1647 of 2023\)*](#), the NCLAT held that once the claim of a creditor is rejected during liquidation proceedings due to late filing, that creditor cannot circumvent the specific remedy provided under section 42 of the Code by later invoking section 60(5). It went onto observe that the proper recourse is to challenge that decision within 14 days as prescribed under section 42 of the Code, and failure to do so results in the rejection acquiring finality. The NCLAT also observed that a creditor cannot unilaterally add interest claims after their initial claim has been filed without interest, especially when such interest claims are made significantly after the liquidation commencement date.

E. MISCELLANEOUS

1. In [*BSE Limited v. Mrudula Brodie \(Company Appeal \(AT\)\(Insolvency\) No. 1862 of 2024\)*](#), the NCLAT established two key principles regarding limitation periods for filing appeals under the Code. First, the court held that the condonable period of 15 days under section 61(2) proviso is not a 'prescribed period' for limitation purposes, and therefore when this 15-day condonable period expires on a day when the NCLAT is closed, the period cannot be extended to the next working day under either section 4 of the Limitation Act, 1963 or rule 3 of the NCLAT Rules, 2016. Second, the NCLAT determined that for computing the standard 30-day limitation period under section 61, if the 30th day falls on a day when the NCLAT is closed, that day and any succeeding days when the NCLAT remains closed shall be excluded from the computation, and the appeal can be filed on the day the NCLAT reopens.
2. In [*Dhanlaxmi Bank Limited v. Ritu Rastogi \(Company Appeal \(AT\) \(Insolvency\) No. 2131 of 2024\)*](#), the NCLAT held that in proceedings under the Code, which are intended to be time-bound, delays in refiling appeals under section 61 of the Code must be supported by sufficient cause that demonstrates reasonable and justifiable explanations for each such day of delay. If the appeal is not filed within the time period prescribed, the NCLAT would not have any power to condone the delay beyond that time period.

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