

IBC- NCLAT FORTNIGHTLY SUMMARY

(March 16, 2025 – March 31, 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 March 16, 2025, to March 31, 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, and Liquidation.

A. PRE-ADMISSION STAGE

1. In [*Aquarius H2O Dynamics Private Limited v. Riddhi Siddhi Metals \(Company Appeal \(AT\) \(Insolvency\) No. 39 of 2025*](#)), the NCLAT set aside the order of admission of the Corporate Debtor into CIRP by observing that, in the instant case, the threshold of Rs. 1 crore prescribed under section 4 of the Code was met by adding interest liability, which addition was inappropriate due to absence of any contractual provision or past practice of interest payment.
2. In [*IL&FS Financial Services Limited v. Adhunik Meghalaya Steels Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1379 of 2024*](#)), the NCLAT observed that an acknowledgment of debt in a balance sheet is calculated from the date of signing the balance sheet, and not from the date of its upload to the Ministry of Corporate Affairs portal.
3. In [*Madhubala Chauhan v. Phoenix Arc Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 604 of 2024*](#)), the NCLAT held that omission to mention a specific date of default in the section 7 application was not fatal when sufficient documentary evidence established the default. It was observed that while dealing with a section 7 application, neither the Adjudicating Authority nor the NCLAT is required to interfere with contractual terms of interest commercially agreed between the parties to ascertain whether the rate of interest was unreasonable or inflated, when the existence of debt and default had been established.
4. In [*Mukul Somany v. DBS Bank Limited \(Company Appeal \(AT\) \(Insolvency\) No. 999 of 2024*](#)), the NCLAT considered the effect of pendency of CIRP against the Corporate Debtor on the admission of insolvency resolution process in relation to a personal guarantor under section 95 of the Code and went onto observe that the Adjudicating Authority is not required to defer the proceedings under section 95 merely to await the outcome of the CIRP of the Corporate Debtor. It went onto further observe that the quantification or deduction of any amount received by a creditor from the Corporate Debtor, which may have a bearing on the liability of the personal guarantor, is a matter to be considered at the stage of finalizing the repayment plan, and not at the threshold stage of admitting the section 95 application. It may however be noted, the NCLAT eventually remanded the matter back to the Adjudicating Authority to examine if the guarantee was properly invoked, which was a *sine qua non* for issuance of notice under rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019.
5. In [*Rahee Jhajharia E to E JV v. MB Power \(Company Appeal \(AT\) \(Insolvency\) No. 2279 of 2024*](#)), the NCLAT observed that, due to lack of privity of contract, a section 9 application is not maintainable against a Corporate Debtor on account of dues owed by its sister concern, merely because the Corporate Debtor had tried to reconcile between the appellant-Operational Creditor and the sister group company against whom the invoices were raised, or on account of it signing work completion certificates as the project owner.

6. The NCLAT, in [Paresh Rastogi v. Omkara Assets Reconstruction Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 2053 of 2024\)](#), went onto observe that notices sent by way of a speed post to the last known or registered address as stipulated in the guarantee deed would constitute a valid service, even without proof of receipt, under section 27 of the General Clauses Act, 1897, and failure to update the address cannot invalidate such service. It was also observed that the failure of the personal guarantor to submit a repayment plan despite adequate opportunity can justify the termination application by the Resolution Professional.

B. CIRP STAGE

1. The NCLAT, in [Authum Investment and Infrastructure Limited v. Ashdan Properties Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 1566 of 2024\)](#), went onto observe that the decision of the Adjudicating Authority to direct the Committee of Creditors (“CoC”) to consider a resolution plan, the consideration of which was refused by the CoC on account of the Plan being received one day after the stipulated deadline under regulation 39(1B) of the CIRP Regulations, 2016, amounted to interference with the commercial wisdom of the CoC, which was not warranted.
2. In [Divyesh Desai v. Gujarat Industrial Development Corporation Bhuj \(Company Appeal \(AT\) \(Insolvency\) No.1103 of 2024\)](#), the NCLAT observed that the Adjudicating Authority had the jurisdiction to entertain a challenge to the termination of a lease agreement under which the Corporate Debtor had been granted a lease and the consequent issuance of eviction notices, during the moratorium period, as such action violated the provisions of section 14 of the Code.

It was also observed that, while the Adjudicating Authority had the jurisdiction to interfere with the decision of the CoC approving the resolution plan or remit the plan for making it compliant with section 30(2) of the Code, such remission was not allowed without identifying any specific non-compliance of section 30(2) of the Code.

3. In [Findoc Finvest Private Limited v. Surendera Raj Gang \(Company Appeal \(AT\) \(Insolvency\) No.249 of 2025\)](#) and [Sagar Stone Industries v. Sajjan Kumar Dokania \(Company Appeal \(AT\) \(Insolvency\) No. 524 of 2025\)](#), the NCLAT considered the issue of whether a CoC could be faulted for not adopting Swiss Challenge Mechanism for improving the value being offered by the prospective Resolution Applicants, and went onto observe that Swiss Challenge Mechanism being a discretionary mechanism and considering regulation 39(1A) of CIRP Regulations, 2016 (prohibits modification of resolution plans more than once) does not impose an obligation to permit modifications, the CoC cannot be faulted for not allowing the prospective Resolution Applicants to enhance the financial offer after the revised resolution plan had been finally submitted.

Additionally, in *Sagar Stone Industries* the NCLAT held that the mere absence of written communication regarding the rejection of a resolution plan does not affect the decision of the CoC to approve another resolution plan. It further clarified that regulation 39(1A) of the CIRP Regulations, 2016 binds only the Resolution Professional and not the CoC, which retains an unfettered right to request plan revisions or negotiate with resolution applicant multiple times.

C. POST CIRP STAGE

1. In [State Bank of India v. Santoshi Hyvolt Electricals Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 62 of 2025\)](#), the NCLAT upheld the decision of the Adjudicating Authority, confirming that a resolution plan cannot be sent back for reconsideration once it has been submitted for approval, following a decision of the CoC. This ruling was based on regulation 18(2) of the CIRP Regulations, 2016, which prohibits CoC meetings from making decisions that would affect resolution plans already submitted to the Adjudicating Authority. The NCLAT emphasized that upon submission, the resolution plan becomes binding between the CoC and the successful Resolution Applicant. While the plan cannot be remitted back, parties can still raise concerns about its viability and implementability during the review process of the Adjudicating Authority. Additionally, once the plan is submitted to the Adjudicating Authority, no decision can be taken that affects the plan, including any prayer to send it back for reconsideration.
2. In [RBL Bank Limited v. Sical Logistics Limited \(Company Appeal \(AT\) \(CH\) \(Ins\) No.36/2024\)](#), the NCLAT held that where the resolution value exceeded the liquidation value, the dissenting Financial Creditor was entitled to receive its proportionate share of the resolution value rather than the liquidation value, as this was deemed fairer and more equitable. Regarding priority in payment, the NCLAT clarified that 'priority' means that whenever funds are distributed, the dissenting Financial Creditors must be paid first before assenting Financial Creditors, although payments may still occur in installments.
3. The NCLAT, in [Phoenix Arc Private Limited v. KS Oils Limited \(Company Appeal \(AT\) \(Insolvency\) No. 592 of 2024\)](#), went on to observe that the obligation of the secured creditor to make the payment of the amount payable under regulation 21A(2) of the IBBI (Liquidation Process) Regulations, 2016 is not dependent upon the sharing of an estimate by the liquidator, nor does the failure of the liquidator to send such estimate constitute a defence for the secured creditor who had failed to make the relevant payment within the prescribed time limit of 90 days, especially when the secured creditor never requested for such estimate or took any steps under regulation 37. It was further observed that failure to make payment of share of cost within the stipulated timeline results in the secured assets becoming a part of the liquidation estate.

D. LIQUIDATION STAGE

1. In [Rajabhau Shinde v. S.M. Electric Works \(Company Appeal \(AT\) \(Insolvency\) No. 826 of 2024\)](#), the NCLAT held that the mandatory time period for payment prescribed under clause 12 of schedule 1 of the Liquidation Process Regulations, 2016 (cancellation of a sale if payment is not received within 90 days) can be extended by the Adjudicating Authority, under its inherent powers under section 35 of the Code read with rule 11 of the NCLT Rules, 2016, upon showing sufficient cause.

Contributed by:



Arka Majumdar
Partner



Vikram Chaudhuri
Senior Associate



Aakriti Garodia
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

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

20th Floor, SKAV 909,
Lavelle Road
Bengaluru – 560001
T: +91 80 46462300