

IBC- NCLAT FORTNIGHTLY SUMMARY (April 16, 2025 – April 30, 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 April 16, 2025, to April 30, 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-ADMISSION STAGE

1. The NCLAT, in [*Deepak Mahadev Shirke v. Unity Small Finance Bank Limited \(Company Appeal \(AT\) \(Insolvency\) No. 490 of 2025\)*](#), after observing that the date of default mentioned in the Part IV of Form-1 becomes binding upon the filing of application under section 7, held that for an arbitral award to give rise to a fresh cause of action and reset the limitation period for filing an application under section 7 of the Code, the date of default in Part IV of Form-1 of the application should be formally amended to reflect the award date as the basis for default and that the Adjudicating Authority lacked the authority to *suo moto* revise such date merely basis the oral submissions.
2. Whether the Adjudicating Authority had the discretion to look into other aspects including the conduct of parties, to refuse a section 7 application where there is a case of debt and default, was examined in the case of [*Catalyst Trusteeship Limited v. Ecstasy Realty Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 467 of 2023\)*](#). Upholding the decision of the Adjudicating Authority of determining the real intent behind an application under section 7 to hold that the Code cannot be misused as a coercive tool for debt recovery when the true intent is not corporate resolution but to financially cripple a solvent debtor and facilitate asset takeover, the NCLAT held that when a moratorium is granted to a corporate debtor through clear communications and mutual understanding between the parties, no debt becomes due during the moratorium period, and CIRP cannot be initiated due to non-existence of any default. It emphasized that parties cannot renege on restructuring commitments after acting upon them and benefiting therefrom.
3. The NCLAT, in [*Shailendra Agarwal v. Asit Upadhyaya \(Company Appeal \(AT\) \(Insolvency\) No. 327 of 2025\)*](#), held that the continued failure of the corporate debtor to hand over possession or refund the amount to homebuyers constitutes a continuing default under section 22 of the Limitation Act, 1963. It clarified that allottees who have obtained recovery certificates or decrees under Real Estate Regulatory Authority continue to be financial creditors until possession is handed over or the refund is completed, and such applications are not barred under the Code nor do they attract section 65 in the absence of fraud. The NCLAT further affirmed that the conversion of a partnership firm into a company does not extinguish or absolve the corporate debtor of its pre-existing liabilities.
4. In [*Shitanshu Bipin Vora v. Shree Hari Yarns Private Limited \(Company Appeal \(AT\) \(Insolvency\) No. 2204 of 2024\)*](#), a 3-member bench of the NCLAT held that unlike financial debt, interest cannot form part of operational debt under the Code unless there is an explicit agreement between the parties. It observed that unilateral interest clauses in invoices that are vague, non-specific, and do not clearly stipulate the time period or terms cannot constitute a contractual obligation for interest payment without a formal agreement between the parties. The NCLAT further went onto observe that the Adjudicating Authority lacks the power to interpret such ambiguous clauses or convert them into specific obligations, thereby preventing operational creditors from inflating claims to meet the threshold under section 4 of the Code. It may be of interest to note that earlier in the year, a 2 member bench of NCLAT, with Justice Ashok Bhushan and Justice Barun Mitra being common to both the benches, in the case of *Chemical Suppliers*

India Private Limited v. GLS Films Industries Private Limited (Company Appeal (AT) (Insolvency) No. 157 of 2023) had upheld the claim of interest basis stipulation contained in the invoice by observing that when invoices were raised along with the delivery of goods which clearly stipulated interests on delayed payments, the terms and conditions contained in the invoices hold good.

B. CIRP STAGE

1. In [*Manjeera Majestic Commercial Owners Association v. Manjeera Retail Holdings Private Limited \(Comp App \(AT\)\(CH\)\(Ins\) No.406/2024*](#), the NCLAT held that unregistered agreements for sale cannot create validly conferred rights over immovable property or prove the handing over of possession, as such documents cannot be received and read in evidence for any transaction affecting such property or conferring such rights unless registered, under section 49 read with section 17 of the Registration Act, 1908. In the absence of conferment of title and possession of the premises by the corporate debtor, claims by the association of allottees for reimbursement of expenses such as property tax, installation of utilities or maintenance expenses, cannot be admitted in CIRP proceedings.
2. In [*Sadananda Maiya P v. Karnataka Bank Limited \(Company Appeal \(AT\) \(CH\) \(Ins\) No. 180/2025*](#), the NCLAT held that the personal guarantor cannot file an appeal under section 61 of the Code against the decision of the Adjudicating Authority to appoint a resolution professional, even where such appointment is alleged to be in contravention of the provision contained in section 97 of the Code, since it is purely an administrative and procedural step that does not constitute a final determination of rights. It was further observed that the only appropriate stage to raise substantive objections about the appointment of the resolution professional is when the Adjudicating Authority considers the admission of the insolvency resolution process under section 100 of the Code.

A similar view was also reiterated in the case of [*Rajesh Bhatia v. Canara Bank \(Company Appeal \(AT\)\(CH\)\(Ins\) No. 143/2024*](#), where the NCLAT held that a personal guarantor has no locus standi to challenge the appointment of a resolution professional under section 97 of the Code, when the appointment was made by the Adjudicating Authority in consultation with the financial creditor who filed the petition under section 95, since it is exclusively within the prerogative of the Adjudicating Authority and only involves administrative/investigative functions.

3. In [*Fabtech Projects and Engineers Private Limited v. Hindustan Petroleum Corporation Limited \(Company Appeal \(AT\) \(Insolvency\) No. 373 of 2025*](#), the NCLAT distinguished between claims that stand extinguished upon approval of a resolution plan and amounts already deducted as liquidated damages during the contract execution, to observe that liquidated damages already deducted from invoices during the CIRP period as per its terms cannot be refunded to a successful resolution applicant post the approval of a plan. The NCLAT clarified that the extinguishment of claims pursuant to a resolution plan affects only outstanding claims, not amounts that were already adjusted during the performance of the contract. The NCLAT also established that the extension of time granted for completion of ongoing projects in a resolution plan (12 months in this case) merely extends the completion period and does not automatically invalidate previously deducted liquidated damages or create an obligation for refund.

C. POST CIRP STAGE

1. In [*Bank of Baroda v. Formation Textile LLC \(Company Appeal \(AT\) \(Insolvency\) No. 983 & 984 of 2023*](#), the NCLAT held that the performance bank guarantee (“PBG”) provided by the successful resolution applicant does not form part of the equity infusion and if so required by the request for resolution plans should continue until full implementation of the resolution plan instead of

being adjusted against payment obligations under the plan. The NCLAT further held that non-sharing of the transaction audit report cannot be a ground to avoid implementation of the plan or invalidate the PBG. It also observed that the Committee of Creditors (“CoC”) cannot be said to be unjustly enriched by forfeiting the PBG in terms of the process documents. Lastly, it was held that the Adjudicating Authority cannot award unliquidated damages under section 60(5)(c) of the Code for breach of the resolution plan and may only direct payment as contemplated in the process memorandum.

D. LIQUIDATION STAGE

1. In [*Brihanmumbai Electric Supply And Transport Undertaking v. Ashok Kumar Golecha \(Company Appeal \(AT\) \(Insolvency\) No. 281 of 2025\)*](#), the NCLAT stated that the neither the liquidator, nor the Adjudicating Authority is expected to go into the underlying commercial intent in trying to interpret the contractual provisions in the agreements between the parties beyond a plain reading of the same. It went onto reject the concept of a floating charge in the absence of proper charge documentation in terms of regulation 21 of the IBBI Liquidation Process Regulations, 2016 and further observed that even if the requirement of registration of charge under section 77(3) of the Companies Act, 2013 is sidestepped, the need to possess documents of charge creating the security interest cannot be waived.
2. In [*IDBI Bank Limited v. Mathstraman Manufacturers and Traders \(Company Appeal \(AT\) \(CH\) \(Ins\) No. 183/2025\)*](#), the NCLAT held that action involving demarcation and survey of land entails adjudication of civil rights and such right cannot be claimed by the liquidator or be conferred upon it to enable the liquidator to undertake a re-survey of a property, where the survey report was already available. It went onto observe that the survey to be done by them is to be limited to identifying the properties of the liquidation estate of the corporate debtor which were supposed to be sold in the liquidation proceedings.

E. MISCELLANEOUS

1. In [*Star Maxx Properties v. Arunava Sikhdar \(Company Appeal \(AT\) \(Insolvency\) No. 338 of 2024\)*](#), the NCLAT held that an arbitral award restraining a corporate debtor from allotting, alienating or dealing with disputed properties does not create a security interest within the meaning of the Code, as such restraint is merely an injunction in nature and cannot be treated as creating any charge or lien on the assets. It was also observed that while the categorization of the financial creditor could not have been changed by the CoC, such restriction did not extend to modification of classification as a secured creditor. The NCLAT further observed that the financial creditor could not claim status as a homebuyer/financial creditor in class without a builder buyer agreement, especially when such claim was filed after the CoC had approved the resolution plan.
2. In [*Gajjala Yoganand v. Manjeera Retail Holdings Private Limited \(Company Appeal \(AT\) \(CH\) \(Ins\) No.131/2025\)*](#), the NCLAT held that the condonation of delay should be such that could stand the test of genuineness by virtue of application of a common human prudence and also that the reasonableness of the delay is required to be tested basis grounds taken for the purpose of seeking condonation. It went onto observe that even when the provisions for refiling are directory in nature, any inordinate delays cannot be condoned since the time period in proceedings under the Code plays a very pivotal role in deciding such proceedings.
3. In [*IDBI Bank Limited v. KRS Erectors Private Limited \(Company Appeal \(AT\) \(CH\) \(Ins\) No.211/2024\)*](#), the NCLAT went onto observe that an interlocutory application seeking an injunction against a non- party to the ongoing proceeding is not maintainable. The NCLAT held that statutory powers under the Code cannot be expanded to allow for orders against non-parties

who have not been properly impleaded in the main appeal. The NCLAT further observed that injunctions affecting civil rights cannot be granted without hearing the concerned party, and the overriding effect of the Code under section 238 does not extend to bypassing this fundamental principle of natural justice.

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