



भारतीय दिवाला और शोधन अक्षमता बोर्ड
Insolvency and Bankruptcy Board of India

www.ibbi.gov.in



**Section-wise Jurisprudence
on IBC upto 30.09.2020**

PREFACE

One of the key functions of law is to ensure safety, security, and stability in the society. Law structures economic, social, and political interactions in a secure, stable and effective manner. It thus stipulates the mandate apropos acceptable and unacceptable behaviour in the society writ large. Stated simply, law channels the outcomes and allows the decision makers to anticipate likely outcomes and thereby, predicts the consequences of their actions. Clarity and certainty are, thus, strongly connected to the pursuit of the rule of law and suffuses an element of predictability for the stakeholders. Legal clarity and certainty, of course, also adds to the legitimacy of the judiciary while it fosters the rule of law. The Indian legal system has adopted a host of features that enhances legal certainty and clarity, chief of which is the adoption of the doctrine of stare decisis (binding nature of precedents). In fact, precedents convey information that allows the decision makers and stakeholders to predict, within certain bounds, the likely legal consequences of different choices and infer the possible range of outcomes of potential disputes and differences.

Legal discourse, in large part, determines the rules of the game and informs the players of those rules so that they can best seek out their potential within the confines of the law. Precedents serve as a primary source of legal research, insights and analysis, while stimulating the development of law. They illuminate on the interpretive strides made by the Courts when wading through the statutes. Legal research often begins with statutes or regulations, the primary law passed by the legislature or regulatory agency in the relevant jurisdictions. However, matters interpreting the terms and intent of the statute are invaluable source of law. It is essential to acquire familiarity with this body of law to determine the elements of a cause of action, the latest and updated stance of the Courts, and to increase an understanding of the litigation process.

In this milieu, this publication/compilation of Section-wise case laws is the sprouting of a seed long implanted, nurtured, and caressed by the Insolvency and Bankruptcy Board of India. It

is the culmination of a scholarly and professional journey that began with the enactment of the Insolvency and Bankruptcy Code in May, 2016. As a dynamic and progressive economic legislation, the Code has been interpreted by the judiciary with deference to legislative intent in economic matters. Judicial pronouncements under the Code are very important resources to understand the various provisions of this ever-evolving law. This publication is *unique*, as it represents the largest up-to-date account of the jurisprudential development into the nuances of corporate insolvency resolution and other processes. It is *topical*, since it delineates the pronouncements, as per the statutory provisions applied and interpreted by the judiciary in much simpler manner.

The overall idea of this compilation is to encourage and publish material that is of scholarly depth, precision and independence, and at the same time, readable and engaging. Understood as a whole, this publication attempts to cover the case laws emerged till 30th September, 2020 and raises as many new questions as it concomitantly provides answers to. The discourse will generate further fruitful debates, and will continue with every emerging jurisprudence; undoubtedly, challenging the best minds in the field. It is envisioned that this compilation serves as a worthy part of the changing face of insolvency and bankruptcy law in the country.

31st December, 2020.

Legal Affairs Division
Insolvency and Bankruptcy Board of India

Disclaimer: The contents of this publication are intended to provide inputs to the stakeholders more of academic value. The summary provided against each case law shall not be used as opinion of the IBBI before any court/tribunal/legal forum/other authority. The readers are advised to go through the original order/judgment as available on the concerned official websites for authentic usage. No claim or liability is to be cast on the IBBI for any spelling/typographical/other mistakes.

LIST OF ABBREVIATIONS

Abbreviation	Full Form
AA	Adjudicating Authority
AA Rules	The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016
Board / IBBI	Insolvency and Bankruptcy Board of India
CCI	Competition Commission of India
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CIRP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016
CoC	Committee of Creditors
Code	Insolvency and Bankruptcy Code, 2016
Constitution	The Constitution of India, 1950
DRT	Debts Recovery Tribunal
ED	Enforcement Directorate
FC	Financial Creditor
FSP	Financial Service Provider
HC	High Court
ICD	Insolvency Commencement Date
IP	Insolvency Professional
IP Regulations	The Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016
IPE	Insolvency Professional Entity

IRP	Interim Resolution Professional
IU	Information Utility
Liquidation Process Regulations	The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016
MSME Act	The Micro, Small and Medium Enterprises Development Act, 2006
NBFC	Non-Banking Financial Company
NCLAT	National Company Law Appellate Tribunal
NCLT	National Company Law Tribunal
NCLT Rules	National Company Law Tribunal Rules, 2016
OC	Operational Creditor
PMLA	The Prevention of Money-Laundering Act, 2002
RBI	Reserve Bank of India
RP	Resolution Professional
SC	Supreme Court of India
SEBI	Securities Exchange Board of India
UNCITRAL Legislative Guide	UNCITRAL (United Nations Commission on International Trade Law) Legislative Guide on Insolvency Law
UP RERA	Uttar Pradesh Real Estate Regulatory Authority

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
Long title					
1	Objectives of Code	The Code is a beneficial legislation which puts the CD back on its feet and is not a mere recovery legislation for creditors. The interests of the CD have, therefore, been bifurcated and separated from that of its promoters/those who are in management. The defaulter's paradise is lost. In its place, the economy's rightful position has been regained.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
2		One of the important objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the objective of speeding up the insolvency process.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
3		CIRP is not a recovery proceeding to recover the dues of the creditors. The Code is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues.	Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017]	NCLAT	18.08.2017
4		To get conversant to new law and to see fruits of it, it will take time, but just for the sake of this reason, we cannot wish away the mandate of this nation which has come through Parliament.	DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/1 & BP/NCLT/MAH/2017]	NCLT, Mumbai	10.04.2017
5		In view of Statement of Objects and Reasons of the Code read with section 53, the Government cannot claim first charge over the property of the CD.	Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]	NCLAT	19.12.2019
6		What is sought to be achieved in the Code is not shutting down of the CD,	V Hotels Ltd. Vs. Asset Reconstruction Company (India)	NCLT, Mumbai	01.05.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		but reviving it by ousting the defaulter promoters/directors who were in control and management of the CD.	Ltd. [MA 693/2018 in CP No. 532/IBC/NCLT/MB/MAH/2018]		
7		The object of the Code is no doubt to protect the genuine CD with a view to maximise its value of assets and find out a resolution plan to revive the CD.	Bharatbhai Vrajlalbhai Selani Vs. State Bank of India [C.P. (IB) No. 63/10/NCLT/AHM/2017]	NCLT, Ahmedabad	21.08.2017
8		The proceedings under Code are independent and have an object different from the one envisaged under the scheme of liquidation provided in the company law. The former aims for resolution by way of revival in a manner that benefits all stakeholders, the creditors as well as the CD.	Action Ispat & Power Pvt. Ltd. Vs. Shyam Metalics & Energy Ltd. & Ors. [Co. App 11/2019 & CM No. 31047/2019, CM No. 34726/2019]	HC, New Delhi	10.10.2019
	2	Application			
9		Section 2(e) of the Code, which was brought into force on 23.11.2017 would, when it refers to the application of the Code to a personal guarantor of a CD applies only for limited purpose contained in sub-sections (2) and (3) of section 60. This is what is meant by strengthening the CIRP in the Statement of Objects and Reasons of the Insolvency and Bankruptcy Code (Amendment) Act, 2018.	State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595 of 2018 with 4553 of 2018]	SC	14.08.2018
	3	Definitions			
10		The CD cannot use the provisions of section 3, as a blanket cover to claim exclusion from proceedings under the Code on the ground that it is a financial service provider.	Apeejay Trust Vs. Aviva Life Insurance Co. India Ltd. [(IB)-1885(ND)2019]	NCLT, New Delhi	04.11.2019
	3(6)	Claim			
11		'Claim' under section 3(6) of the Code means a right to payment, even if it is disputed.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
12		'Claim' gives rise to 'debt' only when it is due and 'default' occurs only	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil)	SC	25.01.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		when debt becomes due and payable and is not paid by the debtor.	Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]		
13		The different claim(s) arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt, as the cause of action is separate.	International Road Dynamics South Asia Pvt. Ltd. Vs. Reliance Infrastructure Ltd. and D. A. Toll Road Pvt. Ltd. [CA (AT) (Ins.) No. 72 and 77 of 2017]	NCLAT	01.08.2017
14		The tribunal cannot go in to roving enquiry into the disputed claims of parties as the object of the Code is to ensure reorganization and insolvency resolution of corporate persons, individuals, etc., in a time bound manner for maximisation of value of assets.	K. K. V. Naga Prasad Vs. Lanco Infratech Ltd. [CP (IB) No. 9/9/HDB/2017]	NCLT, Hyderabad	21.02.2017
	3(7)	Corporate Person			
15		National Highway Authority of India (NHAI) is a statutory body which functions as an extended limb of the Central Government and performs Governmental functions which obviously cannot be taken over by an RP, or by any other corporate body nor can NHAI ultimately be wound up under the Code. For all these reasons, it is not possible to either read in, or read down; the definition of 'corporate person' in Section 3(7) of the Code to include NHAI.	Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No. 1074 of 2019 with other Civil Appeals]	SC	27.11.2019
	3(10)	Creditor			
16		The parties who have entered into agreement, for purchase of flat or shop or any immovable property, which contains a clause of assured or committed returns are 'financial creditors' under the Code.	Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 7 of 2017]	NCLAT	21.07.2017

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	3(11) and 3(12)	Debt and Default			
17		When the definitions of 'operational debt', 'debt' and 'default' are read together, it can be said that the definition of 'debt' as defined under the Code does not mean 'operational debt' only, rather it includes 'financial debt' as well as liability or obligation in respect of a claim, which is due from any person, and 'default' means non-payment of 'debt', but in order to trigger section 9 of the Code, an OC is required to establish a 'default' for non-payment of 'operational debt' as defined under section 5(21) of the Code and if a person fails to establish that, they cannot initiate CIRP.	Brand Realty Services Ltd. Vs. Sir John Bakeries India Pvt. Ltd. [(IB)1677(ND)/2019]	NCLT, New Delhi	22.07.2020
18		It is latently and patently clear that once the 'debt' is converted into 'capital', it cannot be termed as 'financial debt'.	Rita Kapur Vs. Invest Care Real Estate LLP and Ors. [CA (AT) (Ins.) No. 111 of 2020]	NCLAT	02.09.2020
19		The 'debt' is disputed so long as the 'debt' is 'due' i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the AA, that it may reject an application and not otherwise.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
20		Existence of an undisputed 'debt' is <i>sine qua non</i> of initiating CIRP.	Transmission Corporation of Andhra Pradesh Ltd. Vs. Equipment Conductors and Cables Ltd. [Civil Appeal No. 9597 of 2018]	SC	23.10.2018
21		If in terms of any agreement, interest is payable to the OC or the FC, then 'debt' will include interest, otherwise, the principal amount is to be treated as 'debt' which is the liability in	Krishna Enterprises Vs. Gammon India Ltd. [CA (AT) (Ins.) No. 144 of 2018 and other appeals]	NCLAT	27.07.2018

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		respect of the 'claim' which can be made from the CD.			
22		Mere fact of 'debt' being due and payable is not enough to justify the initiation of CIRP at the instance of the FC, unless the 'default' on the part of the CD is established.	Park Energy Pvt. Ltd. Vs. Syndicate Bank and Anr. [CA (AT) (Ins.) No. 270 of 2020]	NCLAT	24.08.2020
23		'Default' is defined in section 3(12) of the Code in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
24		The context of section 3(12) of the Code is actual non-payment by the CD when a 'debt' has become due and payable.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017 and other appeals]	SC	11.10.2018
25		An amount not released to FC due to misunderstanding between the consortium of banks, cannot be treated as 'default'.	R. Sridharan Vs. Assets Care & Reconstruction Enterprise Ltd. [CA (AT) (Ins.) No. 241 of 2018]	NCLAT	25.07.2018
	3(23)	Person			
26		A sole proprietary concern, not being a 'person' under section 3(23) of the Code and also when there is a pre-existing dispute, cannot file application under section 9.	R.G. Steels Vs. Berrys Auto Ancillaries (P) Ltd. [IB-722/ND/2019]	NCLT, New Delhi	23.09.2019
27		A 'trade union' is an entity established under a statute i.e. the Trade Unions Act, 1926 and is therefore, a 'person' under section 3(23) of the Code.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]	SC	30.04.2019
	3(30)	Secured Creditor			
28		The State Tax Officer does not come within the meaning of 'secured creditor' as defined under section 3(30) read with section 3(31) of the Code.	Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]	NCLAT	19.12.2019
	5(5A)	Corporate Guarantor			
29		If CIRP has been initiated against the CD, the insolvency and bankruptcy	State Bank of India Vs. D. S. Rajender Kumar [CA (AT) (Ins.)	NCLAT	18.04.2018

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		process against the personal guarantor can be filed under section 60(2) before the same NCLT and not before the DRT.	No. 87 to 91 of 2018]		
30		Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC <i>qua</i> corporate guarantor.	Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. & Ors. [Civil Appeal No. 1484 of 2019]	SC	11.02.2019
31		The principal debtor (CD) is discharged under the Code not on the instance of a creditor but due to operation of law, i.e., approval of resolution plan. Hence, the guarantor is not discharged of its liability merely because the creditor consented to a resolution plan of the principal debtor.	State Bank of India Vs. Sungrowth Shares & Stocks Ltd. [CP (IB) No. 796/KB/2018]	NCLT, Kolkata	04.09.2019
32		The corporate guarantees given by the CD can be invoked only in the event of a default on the part of the borrower.	Export Import Bank of India Vs. CHL Ltd. [CA (AT) (Ins.) 51 of 2018]	NCLAT	16.01.2019
33		It makes no difference as to whether the corporate person stood as guarantor to an individual or a corporate person, and as so long as the obligation in respect of a claim is due from a corporate person falling within the definition of 'financial debt', then it is obvious that the creditor can proceed under Section 7 of the Code against such corporate person.	The Karur Vysya Bank Ltd., Vs. Maharaja Theme Parks and Resorts Pvt. Ltd. [CP/1314/IB/2018]	NCLT, Chennai	08.04.2019
	5(6)	Dispute			
34		Any observations with regard to individual officer if made by a court of law or in any communication made by the operational creditor, the same cannot be treated to be an existence of dispute.	Yogendra Yasupal Vs. Jigsaw Solutions & Anr. [CA (AT) (Ins.) No. 222 of 2017]	NCLAT	16.10.2017
35		The test of existence of a dispute is: (a) whether the corporate debtor has	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil	SC	21.09.2017

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence (b) whether the defence is not spurious, mere bluster, plainly frivolous or vexatious (c) a dispute, if it truly exists in fact between the parties, which may or may not ultimately succeed.	Appeal No.9405 of 2017		
36		The dispute should not be a mere eyewash and attempt to derail the OC's entitlement to initiate the proceedings under sections 8 and 9 of the Code.	Simplex Infrastructures Ltd. Vs. Agrante Infra Ltd. [IB No. (IB)-167(ND)/2017]	NCLT, New Delhi	10.08.2017
37		A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) and an inter-se dispute between two groups of shareholders of the CD does not constitute a 'dispute' in reference to OCs. The 'dispute' under section 5(6) of the Code must be between the CD and the OCs.	Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd. & Anr. [CA (AT) (Ins.) No. 66 of 2017 and other appeals]	NCLAT	10.05.2018
	5(7)	Financial Creditor			
38		Mere invocation of pledge of shares will not result in automatic conversion of debt into equity and repayment of debt.	State Bank of India Vs. Meenakshi Energy Ltd. [CP(IB) 184/7/HDB/2019]	NCLT, Hyderabad	07.11.2019
39		The assignee of the debt is also entitled to file application and such assignee steps into the shoes of the FC.	Edelweiss Asset Reconstruction Company Limited Vs. Kalptaru Alloys Pvt. Ltd. [CP (IB) No. 84/7/NCLT/AHM/2017]	NCLT, Ahmedabad	05.09.2017
40		The grouping of FCs in accordance with the amount of security holding is not discriminatory.	Canara Bank Ltd. Vs. Deccan Chronicle Holdings Ltd. [IA 121 and 24/2019 in CP(IB)No. 41/7/HDB/2017]	NCLT, Hyderabad	09.05.2019
41		Essential criteria for being an FC: (i) A person to whom a financial debt is owed and includes a person whom	B.V.S. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd. [CA (AT) (Ins.) No. 38 of 2017]	NCLAT	22.12.2017

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		such debt has been legally assigned or transferred to (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5.			
42		The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The <i>Explanation</i> was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the <i>Explanation</i> is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]	SC	09.08.2019
43		On the basis of counter indemnity obligation, EXIM Bank comes within the definition of section 5(7) r/w section 5(8) of the Code.	Export Import Bank of India Vs. Resolution Professional JEKPL Pvt. Ltd. [CA (AT) (Ins.) No. 304 of 2017 and other appeals]	NCLAT	14.08.2018
44		Home buyers are brought within the purview of the financial creditors under the Code.	Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]	SC	09.08.2018
	5(8)	Financial Debt			
45		The Joint Development Agreement entered, is a contract of reciprocal rights and obligations, both parties are admittedly Joint Development Partners, who entered into a consortium of sorts for developing an Integrated Township and for any breach of terms of contract, Section 7 Application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.	Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins) No. 550 of 2020]	NCLAT	18.08.2020

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
46		Pledge of shares would not fall within the concept of guarantee and indemnity so as to bring it within the meaning of financial debt.	Vistara ITCL (India) Ltd. & Ors. Vs. Dinkar Venkatasubramanian & Ors. [CA (AT) (Ins) No. 703 of 2020]	NCLAT	24.08.2020
47		The payment received for shares, duly issued to a third party at the request of the payee as evident from official records would not be a debt.	Radha Exports (India) Pvt. Ltd. Vs. K.P. Jayaram & Anr. [Civil Appeal No. 7474 of 2019]	SC	28.08.2020
48		In order to satisfy the requirement of this provision, the financial transaction should be in the nature of debt and no equity has been implied by the opening words of section 5(8) of the Code.	Nikhil Mehta and Sons Vs. AMR Infrastructure Ltd. [CA (AT) (Ins.) No. 07 of 2017]	NCLAT	21.07.2017
49		A financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
50		A transaction will be considered as an operational debt if the payment is made to goods or services and if money is lent in contemplation of returns in the form of interest will be a financial debt.	DF Deutsche Forfait AG & Anr. Vs. Uttam Galva Steel Ltd. [C.P. No. 45/1 & P/NCLT/MAH/2017]	NCLT, Mumbai	10.04.2017
51		It is manifestly clear that money advanced by a Promoter, Director or a Shareholder of the CD as a stakeholder to improve financial health of the Company and boost its economic prospects, would have the commercial effect of borrowing on the part of CD notwithstanding the fact that no provision is made for interest thereon.	Shailesh Sangani Vs. Joel Cardoso & Anr. [CA (AT) (Ins.) No. 616 of 2018]	NCLAT	30.01.2019
52		In real estate projects, money is raised from the allottee, against consideration for the time value of money. Thus, allottees are to be regarded as FCs.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (C) No. 43 of 2019 with other appeals]	SC	09.08.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	5(13)	Insolvency Resolution Process Cost			
53		If any cost is incurred towards supply of essential services during the period of moratorium, it may be accounted towards the insolvency resolution process costs.	Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017]	NCLAT	08.02.2018
54		In case where a CoC has not been appointed as a result of non-initiation of the interim resolution process, it is clear that, whatever the AA fixes as expenses will be borne by the creditor who moved the application.	S3 Electricals and Electronics Pvt. Ltd. Vs. Brian Lau &Anr. [Civil Appeal No.103 of 2018]	SC	05.08.2019
	5(14)	Insolvency Resolution Process Period			
55		It is always open to the AA/Appellate Tribunal to exclude certain period for the purpose of counting the total period of 270 days. The grounds include the following: (i) If the CIRP is stayed by a court of law or the AA/Appellate Tribunal/Supreme Court (ii) If no RP is functioning for one or other reason during the CIRP (iii) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP (iv) On hearing a case, if order is reserved by the AA/Appellate Tribunal/Supreme Court and finally pass order enabling the RP to complete the CIRP (v) If the CIRP is set aside by the Appellate Tribunal or order of the Appellate Tribunal is reversed by the Supreme Court and CIRP is restored (vi) Any other circumstances which justifies exclusion of certain period.	Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018]	NCLAT	08.05.2018
	5(20)	Operational Creditor			
56		The OCs can be classified in three different classes for determining the manner in which the amount is to be	Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.)	NCLAT	04.07.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		distributed to them (as per section 5(21). However, they are to be given the same treatment, if similarly situated.	No. 242 of 2019 and Other appeals]		
57		Custom Duty as a statutory due is only operational in nature when it is paid to the relevant authority, and not when it is repaid to a party that has paid such statutory authority.	IRK Raju Vs. Immaneni Eswara Rao & Ors. [CA (AT) (Ins.) No. 1058 of 2019]	NCLAT	30.01.2020
58		It is clear that an OC who has assigned or legally transferred any operational debt to an FC, the assignee or transferee shall be considered as an OC to the extent of such assignment or legal transfer.	Cooperative Rabobank U.A. Singapore Branch Vs. Shailendra Ajmera [CA (AT) (Ins.) No. 261 of 2018]	NCLAT	29.04.2019
59		The workmen of a Company come within the meaning of an OC in terms of section 5(20) r/w section 5(21) of the Code.	Suresh Narayan Singh Vs. Tayo Rolls Ltd. [CA (AT) (Ins.) No. 112 of 2018]	NCLAT	26.09.2018
60		An OC means a person to whom an operational debt is owed, and an operational debt under section 5(21) means a claim in respect of provision of goods or services.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
61		A Trade Union or Association of workmen/employee does not come within the meaning of OC as no services is rendered by the Workmen's Association/Trade Union to the CD to claim any dues which can be termed to be debt as defined in sub-section (11) of section 3.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamlapat Jute Mills Co. Ltd. [CA (AT) (Ins.) No. 82 of 2017]	NCLAT	12.09.2017
	5 (21)	Operational Debt			
62		The advance amount paid for supply of sugar is not an operational debt.	Andal Bonumalla Vs. Tomato Trading LLP & Anr. [CA (AT) (Ins.) No. 752 of 2019]	NCLAT	20.08.2020
63		The dues towards the Government, be it tax on income or on sale of properties, would qualify as operational debt and must be dealt	Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA - 666/2019 in (IB)-250(ND)/2017]	NCLT, New Delhi	22.10.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		with accordingly.			
64		In case assets seized by the ED were purchased out of the proceeds of crime, the amount as may be generated out of the assets would come within the meaning of operational debt payable to the ED for which it may file claim in terms of the Code.	JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA (AT) (Ins.) No. 957 and other appeals]	NCLAT	25.10.2019
65		Lease of immovable property cannot be considered as supply of goods or rendering of any services. For a debt to be operational, claim must be regarding provision of goods, services, employment or the Government dues.	M. Ravindranath Reddy Vs. G. Kishan & Ors. [CA (AT) (Ins.) No. 331 of 2019]	NCLAT	17.01.2020
66		Claim arising out of lease of immovable property neither falls in the category of goods or services including employment nor is it a debt of repayment of dues arising under any law.	Sudhir Garg Vs. ASG Hospital Pvt. Ltd. [CP No. (IB)-12/9/JPR/2019]	NCLT, Jaipur	10.01.2020
67		Lease of immovable property cannot be considered as a supply of goods or rendering of any services and thus cannot fall within the definition of operational debt.	Parmod Yadav & Anr. Vs. Divine Infracon Pvt. Ltd. [IB - No. (IB) 229 (ND)/2017]	NCLT, New Delhi	28.09.2017
68		All statutory dues including Income Tax, Value Added Tax, etc., come within the meaning of operational debt.	Pr. Director General of Income Tax (Admn. & TPS) Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) 205 of 2017 & other appeals]	NCLAT	20.03.2019
69		Operational debt would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
70		The amount due from the buyer of the	Renish Petrochem FZE Vs. Ardor	NCLT,	31.07.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		goods, and which is due to the seller and is guaranteed by the guarantee agreement, is also an operational debt.	Global Pvt. Ltd. [C.P. (I.B) No. 33/9/NCLT/AHM/2017]	Ahmedabad	
71		Transaction of sale of share is an operational debt.	Samskar Financial Services Pvt. Ltd. Vs. Votary Trading Pvt. Ltd. [C.P. (IB) No. 735/KB/2019]	NCLT, Kolkata	21.08.2019
	7	Initiation of CIRP by FC			
72		The Joint Development Agreement entered into, is a contract of reciprocal rights and obligations, both parties are admittedly 'Joint Development Partners', who entered into a consortium of sorts for developing an integrated township and for any breach of terms of contract, section 7 application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.	Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. [CA (AT) (Ins.) No. 550 of 2020]	NCLAT	18.08.2020
73		An application under section 7 admitted by the AA being an independent proceeding has to be decided in terms of the provisions of the Code and the CIRP has to proceed unhindered and notwithstanding pendency of any other proceedings.	Action Barter Pvt. Ltd. Vs. SREI Equipment Finance Ltd. & Anr. [I.A. Nos. 811/2020, 917/2020, 962/2020 & 1587/2020 in CA (AT) (Ins.) No. 1434 of 2019]	NCLAT	21.09.2020
74		Decree holders under UP RERA seeking execution of decree/recovery of money due under the Recovery Certificate, cannot claim to be allottees of a real estate project and the application under section 7 is impermissible. Though decree holder is included in the definition of 'creditor', they do not fall within the definition of FC and hence cannot seek initiation of CIRP as FC.	Sushil Ansal Vs. Ashok Tripathi & Ors. [CA (AT) (Ins.) No. 452 of 2020]	NCLAT	14.08.2020
75		There being a continuous cause of action evident from the books of	Mack Soft Tech Pvt. Ltd. Vs. Quinn Logistics India Ltd. [CA (AT)	NCLAT	21.05.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		account of the CD wherein liability of loan payable to the FC is accepted, the application under section 7 cannot be held to be barred by limitation.	(Ins.) No. 143 of 2017 and other appeals]		
76		The CD is NBFC and being FSP, section 7 application could not be admitted against it.	Saumil A. Bhavnagri Vs. Nimit Builders & Anr. [CA (AT) (Ins.) No.710 of 2019]	NCLAT	21.11.2019
77		The AA exceeded its jurisdiction while directing that all FCs should submit information of default of CDs from the IU while filing applications under section 7. This is beyond section 424 of the Companies Act, 2013, and section 7(3)(a) of the Code r/w rule 4 of AA Rules and regulation 8 of CIRP Regulations.	Univalue Projects Pvt. Ltd. Vs. The Union of India & Ors. [W.P. No. 5595 (W) of 2020 With C.A.N. 3347 of 2020 and another appeal]	HC, Calcutta	18.08.2020
78		While admitting an application under section 7, the AA should be satisfied that the default has occurred, the application is complete and no disciplinary proceeding is pending against the proposed IRP.	Noor Alam & Ors. Vs. Prism Infracon Ltd. [CP(IB)No. 762/KB/2017]	NCLT, Kolkata	03.07.2018
79		The SC held that the RBI circular dated 12 th February, 2018, by which the RBI promulgated a revised framework for resolution of stressed assets is <i>ultra vires</i> of section 35AA of the Banking Regulation Act, 1949 and all actions taken under the said circular which has triggered the CIRP under section 7 will fall along with the circular.	Dharani Sugars and Chemicals Ltd. Vs. Union of India & Ors. [Transferred Case (Civil) No. 66 of 2018 in Transfer Petition (Civil) No. 1399 of 2018 and other appeals]	SC	02.04.2019
80		The order of admission by NCLT, which was set-aside by the NCLAT, was restored stating that FC being a foreign company need not observe the requirement of section 7(3)(a) for filing of statutory form and that the application can be filed by an advocate.	Sunrise 14 A/S Denmark Vs. Ravi Mahajan [Civil Appeal Nos. 21794-21795 of 2017]	SC	03.08.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
81		If the two CDs collaborate and form an independent corporate unit entity for developing the land and allotting the premises to its allottee, the application under section 7 will be maintainable against both of them jointly and not individually against one or other.	Mamatha Vs. AMB Infrabuild Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 155 of 2018]	NCLAT	30.11.2018
82		The time limit of 7 days for removal of defects in the application as provided in proviso to sub-section (5) of section 7, is directory and not mandatory in nature.	Surendra Trading Company Vs. Juggilal Kamapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals]	SC	19.09.2017
83		The 7 days for rectification of defects is to be counted not from the 'date of the order' passed by the AA but from the 'date of receipt' of such notice from the AA to rectify the defects in the application. Further, the holidays such as Saturdays, Sundays and other holidays of the AA are to be excluded.	Palogix Infrastructure Pvt. Ltd Vs. ICICI Bank Ltd. [CA (AT) (Ins.) No. 30 of 2017 and other appeals]	NCLAT	20.09.2017
84		The filing of an application may not result into mechanical admission of application. The AA in exercise of judicial discretion needs to deal with such application in accordance with law and based upon facts, evidence and circumstance placed before it. The AA is certainly required to extend hearing and reasonable opportunity to the company to explain as to why such an application should not be entertained.	Essar Steel India Ltd. Vs. Reserve Bank of India [Special Civil Application 12434 of 2017]	HC, Gujarat	17.07.2017
85		The scheme of section 7 stands in contrast with the scheme under section 8 where an OC is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
86		A perusal of Form – 1 prescribed under AA Rules would reveal that there is no requirement specified in any part of the proforma with regard to power of attorney. It does not however lead to the conclusion that there is no requirement of filing a power of attorney. But then it is a different matter and would not be hit by the defect in the proforma. It is not that every defect is hit by section 7(2) of the Code.	Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [C.P. No. IB-104(PB)/2017]	NCLT, New Delhi	03.07.2017
87		In the application filed for commencement of CIRP, the AA is not required to get into the merits of a foreign decree, because the AA under the Code does not have the powers of a Civil Court.	V. R. Hemantraj Vs. Stanbic Bank Ghana Ltd. & Anr. [Civil Appeal No. 9980 of 2018]	SC	12.10.2018
88		The AA being not a Court of law and as the AA does not decide a money claim or suit, it cannot exercise any of the power vested under sections 3 or 4 of the Usurious Loans Act, 1918.	Naveen Luthra Vs. Bell Finvest (India) Ltd. & Anr. [CA (AT) (Ins.) No. 336 of 2017 and other appeals]	NCLAT	29.11.2018
89		When the NCLT receives an application under section 7, it must afford a reasonable opportunity of hearing to the CD as section 424 of the Companies Act, 2013, mandates it to ascertain the existence of default as claimed by the FC in the application.	SreeMetaliks Ltd. & Anr. Vs. Union of India & Anr. [W.P. 7144 (W) of 2017]	HC, Calcutta	07.04.2017
90		Section 7 application filed under the Code is an independent proceeding and must run its entire course, which has nothing to do with the pendency of winding up proceedings before the HC.	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]	SC	22.01.2019
	8	Insolvency Resolution by OC			
91		The CD did not raise the dispute before the statutory notice and the dispute	Gaurang Nipinbhai Nagarsheth Vs. POSCO- India Pune	NCLAT	20.08.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		raised in reply to the application does not require any investigation. Such dispute is a patently feeble legal argument and is not supported by evidence.	Processing Center Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 214 of 2020]		
92		A dispute must truly exist in facts and should not be spurious, hypothetical and illusory.	Vishal Vijay Kalantri Vs. DBM Geotechnics & Constructions Pvt. Ltd. & Anr. [Civil Appeal No. 2730 of 2020]	SC	20.07.2020
93		The expression 'existence of a dispute, if any', infers that a dispute shall not only be limited to instances specified in the definition as provided under section 5(6) of the Code, as it has far arms, apart from pending Suit or Arbitration.	Kuntal Construction Pvt. Ltd. Vs. Bharat Hotels Ltd. [CA(AT)(Ins.) No. 542 of 2020]	NCLAT	04.09.2020
94		The moment there is pre-existence of a dispute, the OC gets out of the clutches of the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
95		The expression 'an operational creditor may on the occurrence of a default deliver a demand notice' under section 8 of the Code must be read as including an OCs authorised agent and lawyer, as has been fleshed out in Forms 3 and 5 appended to the AA Rules.	Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]	SC	15.12.2017
96		So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No.9405 of 2017]	SC	21.09.2017
97		A prior notice under section 8 of the Code is mandatory before initiation of interim resolution process, in the absence of which, the AA was right in rejecting the application.	Seema Gupta Vs. Supreme Infrastructure India Ltd. & Ors. [CA (AT) (Ins.) No. 53 of 2017]	NCLAT	25.05.2017
98		OCs cannot use the Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal Nos.21824 & 21825 of 2017]	SC	14.08.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
99		Pendency of the case under section 138/141 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, cannot be held to be a dispute pending before a court of law. Such pendency actually amounts to admission of debt and not an existence of dispute.	Sudhi Sachdev Vs. APPL Industries Ltd. [CA (AT) (Ins.) No. 623 of 2018]	NCLAT	13.11.2018
100		The legislative intent of issuance of demand notice under section 8(1) is not a mere formality but a mandatory provision.	Prajna Prakash Nayak Vs. ASAP Info Systems Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 196 of 2018]	NCLAT	11.07.2018
101		Due to the demand notice not being served by the OC, the NCLAT quashed all orders, interim arrangement, moratorium, appointment of IRP, as declared earlier by AA.	Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt. Ltd. [CA (AT) (Ins.) No. 31 of 2017]	NCLAT	03.05.2017
102		The CD can show and satisfy the AA that a default has not occurred in the sense that the debt, which may also include a disputed claim, is not due or payable in law or in fact.	Neha Himatsingka & Anr. Vs. Himatsingka Resorts Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 201 and another appeal]	NCLAT	30.11.2018
103		The OC had a relief open under the MSME Act and utilising the same does not mean that there is a pre-existing dispute. The context of the word 'dispute' in section 18 of the MSME Act takes colour from section 17 thereof and is different from the context of section 5(6) read with section 8 of the Code.	iValue Advisors Pvt. Ltd. Vs. Srinagar Banihal Expressway Ltd. [CA (AT) (Ins.) No. 1142 of 2019]	NCLAT	13.01.2020
104		Since arbitration proceedings u/s 37 of Arbitration and Conciliation Act, 1996, on the same subject matter was pending, the AA dismissed the application holding that the dispute has already been in pre-existence in between the petitioner and the CD even before section 8 notice was issued by the petitioner.	CG Power & Industrial Solutions Ltd. Vs ACC Ltd. [CP No. 1681/IB &C/2017]	NCLT, Mumbai	16.02.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	9	Application for initiation of CIRP by OC			
105		Except the CD, no other party has the right to intervene at the stage of admission of an application under section 7 or 9 of the Code.	Damont Developers Pvt. Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 436-437 of 2019]	NCLAT	24.04.2019
106		The AA is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of CIRP under sections 7 and 9 of the Code based on the application, if filed by an FC or OC or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of section 248 of the Companies Act, 2013.	Hemang Phopalia Vs. The Greater Bombay Co-operative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 765 of 2019]	NCLAT	05.09.2019
107		While admitting an application under section 9 of the Code, the AA directed the OC to pay an advance of Rs. 25,000/- to the IRP within two weeks from the date of receipt of the order, for the purpose of smooth conduct of the CIRP and that the IRP has to file a proof of receipt of such amount to the AA with the First Progress Report.	Shashikant Thakar Vs. Windsor Paper Pvt. Ltd. [CP(IB)No. 701/9/NCLT/AHM/2019]	NCLT, Ahmedabad	04.09.2020
108		Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. A cost of Rs. 5 lakh was imposed on the OC.	Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019]	NCLAT	18.11.2019
109		CIRP is not a 'suit', a 'litigation' or a 'money claim' for any litigation and no one is selling or buying the CD a 'resolution plan'. It is not an auction or a recovery or liquidation. It is a resolution process so that the CD does not default on dues.	Excel Metal Processors Ltd. Vs. Benteler Trading International GMBH and Anr. [CA (AT) (Ins.) No.782 of 2019]	NCLAT	21.08.2019
110		Once an application under sections 7 or 9 is filed, it is not necessary for the AA to await hearing of the parties for	NUI Pulp and Paper Industries Pvt. Ltd. Vs. Roxcel Trading GMBH [CA (AT) (Ins.) No. 664 of	NCLAT	17.07.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		passing order of moratorium under section 14 of the Code. To ensure that one or other party may not abuse the process or for meeting the ends of justice, it is always open to the AA to pass appropriate interim order.	2019]		
111		The applicability of Form 3 or Form 4 under of the AA Rules depends on whether invoices were generated during the course of transaction or not. Further, a copy of invoice is not mandatory if the demand notice is issued in Form 3 provided the documents to prove the existence of operational debt and the amount in default is attached with the application. Also, submission of a copy of the invoice along with the application in Form 5 is not a mandatory requirement, if demand notice is delivered in Form 3 and documents to prove the existence of operational debt and the amount in default is attached with the application.	Neeraj Jain Vs. Cloudwalker Streaming Technologies Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 1354 of 2019]	NCLAT	24.02.2020
112		Unless the decree of a foreign court and decretal amount is adjudicated upon by a Civil Court as a legally payable claim, the same would not constitute a debt in the hands of OC and unless the debt is crystallized and payable in law, the issue of default would not be attracted.	Peter Johnson John (Employee) Vs. KEC International Ltd. [CA (AT) (Ins.) No. 188 of 2019]	NCLAT	03.07.2019
113		A copy of the certificate required under section 9(3)(c) of the Code from the financial institution maintaining accounts of the OC confirming that there is no payment of an unpaid operational debt by the CD is certainly not a condition precedent to triggering	Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 and other appeals]	SC	15.12.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the insolvency process under the Code.			
114		The definition of the word 'dispute' is not exhaustive but is, in fact illustrative. In other words, a CD is not left with the only option of showing the existence of dispute by way of a pending suit, arbitration or to show the breach of representation or warranty. The CD would be well within its right to show that 'goods' and services were not supplied at all or the supply was far from satisfactory in case of demand raised by an OC. Hence, a CD would be well within its rights to reject the demand on any sustainable grounds. It would therefore, depend on the facts and circumstances of each case.	Annapurna Infrastructure Pvt. Ltd. & Ors Vs. Soril Infra Resources Ltd. [C.P. No. (IB)-22(PB)/2017]	NCLT, New Delhi	24.03.2017
115		In view of Rule 8 of AA Rules, it was open to the OC to withdraw the application under section 9 before its admission but once it was admitted, it cannot be withdrawn even by the OC, as other creditors are entitled to raise claim pursuant to public announcement under section 15 read with section 18 of the Code.	Mother Pride Dairy India Pvt. Ltd. Vs. Portrait Advertising & Marketing Pvt. Ltd. [CA (AT) (Ins.) No. 94 of 2017]	NCLAT	13.07.2017
116		The 'operational debt' under the Code is a claim in respect of provision of goods or services, including dues on account of employment or a debt in respect of repayment of dues arising under any law for the time being in force and payable to the Central/State Government/local authority. Hence, it is confined to four categories like goods, services, employment and the Government dues.	Vinod Awasthy Vs. AMR Infrastructures Ltd. [C.P No. (IB)-10 (PB)/2017]	NCLT, New Delhi	20.02.2017
117		Since the OC has not submitted the information as required for admission	Transparent Technologies Pvt. Ltd. Vs. Multi Trade [CA (AT)	NCLAT	25.10.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		of application under section 9 before the AA, and in the absence of non-supply of requisite information in terms of Rule 5 of the AA Rules, the application cannot be treated as an application under section 9 for initiation of CIRP against the CD.	(Ins.) No. 207 of 2017		
118		A dispute could be proved by showing that a suit has been filed or arbitration is pending.	One Coat Plaster Vs. Ambience Pvt. Ltd. [CA No. (I.B.) 07/PB/2017 and [CA (I.B.) No. 08/PB/2017]	NCLT, New Delhi	01.03.2017
119		The OC had no account in India and it was not possible to produce a certificate from any bank in India in terms of definition of 'financial institution' in section 3(14) of the Code. The AA observed that this interpretation will render the provisions of the Code otiose and the purpose and object of the legislation would be defeated.	Rio Glass Solar SA Vs. Shriram EPC Ltd. [CP/537/(IB)/CB/2017]	NCLT, Chennai	10.08.2017
120		Section 16G(1)(c) of the Tea Act, 1953, relates to winding up, while section 9 of the Code is for initiation of CIRP to ensure revival and continuation of the CD. Therefore, these provisions occupy different fields. Accordingly, no permission of the Central Government is required for initiation of CIRP of the CD in terms of section 16G (1) of the Tea Act, 1953.	A.J. Agrochem Vs. Duncans Industries Ltd. [CA (AT) (Ins.) No. 710 of 2018]	NCLAT	20.06.2019
121		As the amount is due from the partnership firm, application under section 9 is not maintainable against one of the members of the partnership firm.	Gammon India Ltd. Vs. Neelkanth Mansions & Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 698 of 2018]	NCLAT	19.12.2018
122		Bank was directed to issue certificate as required under section 9 of the Code and it was clarified that all citizens of the country are bound by	Magicrete Buildings Solutions Pvt. Ltd. Vs. Pratibha Industries Ltd. [T.C.P. No. 409/(MAH)/2017]	NCLT, Mumbai	31.07.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		the statute governing the people of this country, including the Bank.			
123		Since money was paid as advance for supply of goods but the goods were not supplied, the payment cannot be considered to be an 'operational debt' and hence, application under section 9 was not maintainable.	Roma Infrastructures India Pvt. Ltd. Vs. A.S. Iron & Steel (I) Pvt. Ltd. [CA (AT) (Ins.) No. 223 of 2019]	NCLAT	22.04.2019
	10	Initiation of CIRP by Corporate Applicant			
124		Since the applicant was not a director and was disqualified under section 164 of the Companies Act, 2013, he had no authority to file the application.	Neesa Infrastructure Ltd. Vs. State Bank of India & Ors. [C.P. (I.B.) 61/10/NCLT/AHM/2018]	NCLT, Ahmedabad	17.09.2020
125		The IRP moved the AA stating that the application filed by the CD under section 10 of the Code was based on fraud and non-disclosure of material particulars. While holding that the application had been actuated by fraudulent and malicious intent, the order of admission and initiation of CIRP was recalled. The corporate veil was also pierced to identify the persons behind fraudulent initiation of CIRP.	Alpfly Private Ltd. Vs. Ravi Kant Gupta & Ors. [CA No. 448-C/3-ND of 2019 in C.P. IB No. in 358/ND/2018]	NCLT, New Delhi	30.09.2019
126		Section 10 does not empower the AA to go beyond the records as prescribed under section 10 and the information as required to be submitted in Form 6 of the AA Rules, subject to ineligibility prescribed under section 11.	Unigreen Global Pvt. Ltd. Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017
127		The shareholder has a right to decide whether approving or disapproving the decision be proceeded with the CIRP under section 10 of the Code.	Export-Import Bank of India & Anr. Vs. Astonfield Solar (Gujarat) Pvt. Ltd. & Anr. [CA (AT) (Ins.) 754 of 2018]	NCLAT	04.12.2018
128		CIRP was ordered to speed up preferably within a period of 100 days as the Corporate Applicant had	Amit Spinning Industries Ltd. [IB-131 (PB)/2017]	NCLT, New Delhi	01.08.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		already availed the moratorium as provided under section 22(1) of the Sick Industrial Companies (Special Provisions) Act, 1985.			
	10A	Suspension of initiation of CIRP			
129		The <i>Explanation</i> given under section 10A reinforces the retrospectivity in the applicability of section 10A and because of the applicability of the newly inserted section, the primary application under section 9 cannot be proceeded with as the date of default was beyond the prescribed date under the section.	Siemens Gamesa Renewable Power Pvt. Ltd. Vs. Ramesh Kymal [IA/395/2020 in IBA/215/2020]	NCLT, Chennai	09.07.2020
	11	Persons not entitled to make application			
130		Since the HC already admitted the winding up proceedings and ordered for winding up of the CD, therefore the question of initiation of CIRP against same CD does not arise.	Innoventive Industries Ltd. Vs. Kumar Motors Pvt. Ltd. [CA (AT) (Ins.) No. 181 of 2017]	NCLAT	09.02.2018
131		Two parallel insolvency proceedings cannot run against a CD.	Jai Ambe Enterprise Vs. S.N. Plumbing Pvt. Ltd. [MA 78/2018 in CP 1268/I&BC/NCLT/MB/MAH/2017]	NCLT, Mumbai	06.02.2018
132		CD under liquidation is not entitled to make an application to initiate CIRP in terms of section 11(d).	Abhay N. Manudhane Vs. Gupta Coal India Pvt. Ltd. [CA (AT) (Ins.) No. 786 of 2019]	NCLAT	01.10.2019
133		Section 11 is of limited application and only bars a CD from initiating an application under section 10 of the Code in respect of whom a liquidation order has been made. From a reading of the section, it does not follow that until a liquidation order has been made against the CD, an insolvency application may be filed under section 7 or 9 of the Code.	Forech India Ltd. Vs. Edelweiss Assets Reconstruction Co. Ltd. [Civil Appeal No. 818 of 2018]	SC	22.01.2019
	12	Time-limit for completion of insolvency resolution process			
134		The matter was admitted on 16.08.2017 and on intimation, the RP	Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT)	NCLAT	16.05.2018

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		took charge on 14.09.2017. Accordingly, NCLAT directed AA to exclude the 30 days for the purpose of counting the period of CIRP.	(Ins.) No. 161 of 2018]		
135		The resolution plan, which had consumed the time available under section 12 of the Code, has failed owing to nonfulfillment of the commitment by Liberty House. However, the SC noted that the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (w.e.f. 16.08.2019) permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. Accordingly, it permitted the RP to invite fresh offers within a period of 21 days.	Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal]	SC	24.09.2019
136		The NCLAT was not inclined to set-aside the order for re-starting the CIRP, even if there was some infirmity in the impugned order during the resolution process as almost two years had elapsed since the time CIRP was initiated.	Sunil S. Kakkad Vs. Parag Sheth & Anr. [CA (AT) (Ins.) Nos. 1260-1261 of 2019 and another appeal]	NCLAT	19.11.2019
137		Time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
138		The statutory scheme laying down time limits sends a clear message that time is the essence of the Code.	Surendra Trading Company Vs. Juggilal Kamalapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals]	SC	19.09.2017
139		Circumstances must exist for grant of extension of time under section 12(1).	Sky Blue Papers Pvt. Ltd., In re. [CP No. IB No. 09/Chd/CHD/2017]	NCLT, Chandigarh	03.10.2017
140		It was AA's duty to extend the period to find out whether a suitable resolution plan is to be approved	Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins.) No. 35 of 2018]	NCLAT	20.02.2018

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		instead of going for liquidation, which is the last recourse on failure of resolution process.			
141		The AA can extend the time limit provided under section 12 of the Code if it is satisfied that grave injustice would be caused in case the prayer of extension is made for no fault of the applicant.	RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [CA (IB) Nos. 270/KB/2017, 238/KB/2018, 288/KB/2018 in CP (IB) No. 170/KB/2017]	NCLT, Kolkata	18.04.2018
142		It is always open to the AA/Appellate Tribunal to exclude certain period for the purpose of counting the total period of 270 days, if the facts and circumstances justify exclusion, in unforeseen circumstances.	Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018]	NCLAT	08.05.2018
143		Section 12, construed in the light of the object sought to be achieved by the Code, and in the light of the consequence provided by section 33, makes it clear that the periods mentioned are mandatory and cannot be extended. Regulation 40A of the CIRP Regulations presents a model timeline of the CIRP, and it is of utmost importance for all authorities concerned to follow this model timeline as closely as possible.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]	SC	04.10.2018
144		The SC took <i>suo motu</i> cognizance of the situation arising out of COVID-19 and resultant difficulties that may be faced by litigants as to period of limitation prescribed under general law of limitation or under Special Laws (both Central and/or State). In exercise of its powers under Articles 141 and 142 of the Constitution, it ordered extension of period of limitation for all proceedings, from 15.03.2020, until further orders, and also declared that the order is binding	In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020]	SC	06.05.2020

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		on all courts/tribunals and authorities.			
	12A	Withdrawal of application admitted under section 7, 9 or 10			
145		Section 12A, of the Code enacted with effect from 06.06.2018 will not come into the picture since the admission of the petition was on 01.06.2018.	Shipra Hotels Ltd. Vs. Value Lines Interiors Pvt. Ltd. [Civil Appeal No. 7405 of 2018]	SC	03.08.2018
146		At any stage where the CoC is not yet constituted, a party can approach the NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of the NCLT Rules, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the concerned parties and considering all relevant factors on the facts of each case.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
147		Regulation 30A of the CIRP Regulations must be read along with section 12A of the Code. Accordingly, the stipulation in regulation 30A can only be construed as directory depending on the facts of each case.	Brilliant Alloys Pvt. Ltd. Vs. S. Rajagopal & Ors. [Petition(s) for Special Leave to Appeal (C) No(s). 31557/2018]	SC	14.12.2018
148		It is the promoter who can settle the matter with creditors and submit such proposal to RP and that he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A.	Sukhbeer Singh Vs. Dinesh Chandra Agarwal & Ors. [CA (AT) (Ins.) No. 259 of 2019]	NCLAT	07.08.2019
149		The exit route prescribed in section 12A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking sections 7, 9 and 10 of the Code.	Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and other appeals]	SC	22.01.2020
150		The application under section 12A having been approved by the CoC with more than 90% of the voting share, it was not open to the AA to reject the same and that too on a ground of	Shweta Vishwanath Shirke & Ors. Vs. The Committee of Creditors & Anr. [CA (AT) (Ins.) No. 601 of 2019 and other appeals]	NCLAT	28.08.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		ineligibility under section 29A, which is not applicable.			
151		Regulation 30A of the CIRP Regulations cannot override the substantive provisions of section 12A of the Code, according to which the applicant can only move application for withdrawal before the AA and not by the RP.	Francis John Kattukaran Vs. The Federal Bank Ltd. & Anr. [CA (AT) (Ins.) No. 242 of 2018]	NCLAT	13.11.2018
152		As CoC has already been constituted, the application for withdrawal can only be filed to the RP and not directly in the court under section 60(5) of the Code read with Rule 11 of NCLT Rules.	A. K. Corporation Vs. Anupam Extraction Ltd. [MA 2746/2019 in CP (IB) 2781/(MB)/2018]	NCLT, Mumbai	14.08.2019
	14	Moratorium			
153		A conjoint reading of section 14(1)(a) and section 238 of the Code clearly shows that the Code overrides section 44 of the Gujarat Value Added Tax Act, 2003, as the same is inconsistent with the provisions of the Code and thus the action of the Assistant Commissioner of State Tax directing a payment out of the account of the CD is clearly barred by the provisions of section 14(1)(a).	Sundaresh Bhat Vs. Assistant Commissioner of State Tax and Anr. [IA No. 1043 of 2020 in CP(IB)No. 490/MB/2018]	NCLT, Mumbai	22.09.2020
154		The sale of goods by custom department through e-auction notice was violative of section 14 of the Code.	Ramsarup Industries Ltd. Vs. ICICI Bank Ltd. [CA (IB) No. 116/KB/2018 in CP(IB) No. 349/KB/2017]	NCLT, Kolkata	03.07.2018
155		'Security Interest' does not include 'Performance Bank Guarantee' and it is not covered by section 14 of the Code.	Indian Overseas Bank Vs. Arvind Kumar [CA (AT) (Ins.) No. 558 of 2020]	NCLAT	28.09.2020
156		Section 14(1)(d) of the Code prohibits recovery of any property by an owner or lessor in possession of the CD. This prohibition is also applicable to Department of Telecom (DoT). Use of licence / spectrum is akin to	Vijaykumar V. Iyer Vs. Union of India [MA-337/2018 in C.P. (IB)-298/(MB)/2018 and MA-336/2018 in C.P. (IB)-302/(MB)/2018]	NCLT, Mumbai	27.11.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		<i>"essential goods or services"</i> without which the CD cannot run its telecom business. The AA instructed the DoT not to make any attempt to cancel the CD's licence.			
157		The asset in question being owned by a third party but in possession of the RP, that too due to a contractual arrangement, must not be retained but to be returned.	Weather Makers Pvt. Ltd. Vs. Parabolic Drugs Ltd. [CA 206/2019 in CP(IB)-102/CHD/2018]	NCLT, Chandigarh	26.04.2019
158		Once the counterclaims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, section 14 could be triggered.	SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC(COMM) 73/2017]	HC, New Delhi	18.07.2019
159		Any amount deposited by any person in the account of CD cannot be appropriated by bank towards its own dues, during the period of moratorium.	State Bank of India Vs. Debashish Nanda [CA (AT) (Ins.) No. 49 of 2018]	NCLAT	27.04.2018
160		Once moratorium is over, no further embargo remains for continuing to hear suits and other proceedings to which the CD is a party.	Sirpur Paper Mills Ltd. Vs. I.K. Merchants Pvt. Ltd. [A.P. No. 550 of 2008]	HC, Calcutta	10.01.2020
161		The appropriation of Fixed Deposit Receipts (FDRs) was barred by section 14 as it was initiated after the initiation of CIRP. Any withdrawal from the account/FDR by the bank will be regarded as violation of Regulation 19 of the CIRP Regulations and in the absence of such a bar, it will not be possible for RP to verify the claims and the object of moratorium will be defeated.	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)/2017]	NCLT, New Delhi	25.04.2018
162		Once the proceedings under the Code had commenced and an order declaring moratorium has been passed by the AA, then if the assets	Anand Rao Korada Vs. Varsha Fabrics (P) Ltd. & Ors. [Civil Appeal Nos. 8800-8801 of 2019]	SC	18.11.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of the CD are alienated during the pendency of the proceedings under the Code, it will seriously jeopardise the interest of all the stakeholders.			
163		Since the moratorium has expired, the appellant may pursue the suit pending before the subordinate court in the light of section 60(6) of the Code.	ICICI Bank Ltd. Vs. Gopalsamy Ganesh Babu [CA (AT) (Ins.) No. 655 of 2019]	NCLAT	05.07.2019
164		Section 14 has created a piquant situation i.e., that the CD undergoing insolvency proceedings can continue to pursue its claims, but the counterclaim would be barred under section 14(1)(a). When such situations arise, the court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed, and the court cannot blindly stay the counterclaim and refer the defendant to the NCLT/RP for filing its claims.	SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd. [CS (COMM) 470/2016 & CC (COMM) 73/2017]	HC, New Delhi	18.07.2019
165		The mandate of the Code is that the moment an insolvency application is admitted, the moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against CD.	Alchemist Asset Reconstruction Company Ltd. Vs. Hotel Gaudavan Pvt. Ltd. & Ors. [Civil Appeal No. 16929 of 2017]	SC	23.10.2017
166		Moratorium will also not affect the power of the HC under Article 226 of the Constitution. However, so far as suit, if filed before any HC under original jurisdiction which is a money suit or suit for recovery, against the CD, such suit cannot proceed after declaration of moratorium under section 14 of the Code.	Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]	NCLAT	14.09.2017
167		The Debts Recovery Appellate	Amira Pure Foods Pvt. Ltd. Vs.	HC, New Delhi	20.05.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Tribunal should have recalled its order so that the IRP/RP could take over the assets of the CD in exercise of its mandate under the Code, during the period of moratorium.	Canara Bank & Ors. [W.P.(C) No. 5467/2019]		
168		The word 'its' used in section 14(1)(c) was interpreted to denote the property owned by the CD, thus the property not owned by CD would not fall within the ambit of moratorium.	Schweitzer Systemtek India Pvt. Ltd. Vs. Phoenix ARC Pvt. Ltd. [T.C.P. No. 1059/I&BP/NCLT/MB/MAH/2017]	NCLT, Mumbai	03.07.2017
169		On determination, even if it is found that the CD is liable to pay certain amount, still no recovery can be made during the period of moratorium.	Jharkhand Bijli Vitran Nigam Ltd. Vs. IVRCL Ltd. & Anr. [CA (AT) (Ins.) No. 285 of 2018]	NCLAT	03.08.2018
170		Moratorium imposed by section 14 is in the interest of the CD itself, thereby preserving its assets during the CIRP.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
171		The RP has the right to take control and custody of any asset, though the customs authority is in possession of the same during the period of moratorium.	Commissioner of Customs, (Preventive) West Bengal Vs. Ram Swarup Industries Ltd. & Ors. [CA (AT) (Ins.) No. 563 of 2018]	NCLAT	20.06.2019
172		The termination of the mining lease with the CD during the moratorium has taken away the interest created in favour of the CD in relation to the mining operations and the CD cannot carry on mining business as a going concern, which frustrates the object of CIRP.	Vasudevan Vs. State of Karnataka & Ors. [MA/632/2018 in CP/39/2018]	NCLT, Chennai	03.05.2019
173		Freezing of the bank accounts in the name of CD is a proceeding of quasi-judicial nature and being so, such a proceeding is a proceeding before any other authority as contemplated in the provision of law, and as such, continuation of the same during the	Kitply Industries Ltd. Vs. Assistant Commissioner of Income Tax (TDS) & Anr. [I.A. No. 54/2018 in C.P. (IB)/02/GB/2018]	NCLT, Guwahati	15.11.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		period when the moratorium is in operation is illegal in view of the prohibitions, rendered in section 14(1)(a) of the Code.			
174		Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.	Tayal Cotton Pvt. Ltd. Vs. State of Maharashtra & Ors. [Criminal Writ Petition No. 1437of 2017]	HC, Bombay	06.08.2018
175		Moratorium will not affect any suit or case pending before the SC under Article 32 of the Constitution or where an order is passed under Article 136 of the Constitution.	Canara Bank Vs. Deccan Chronicle Holdings Ltd. [CA (AT) (Ins.) No. 147 of 2017]	NCLAT	14.09.2017
176		'Essential service' is for survival of humankind, but not for making business and earn profits without making payment to the services used. When company is using it for making profit, then the company must make payment to the services/goods utilised in manufacturing purpose.	ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 157 in CP 01/I&BP/2016]	NCLT, Mumbai	23.08.2017
177		Essential goods or services, including electricity, water, telecommunication services and information technology services, if they are not direct input to the output produced or supplied by the CD, cannot be terminated, or suspended or interrupted during moratorium period.	Dakshin Gujarat VIJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. [CA (AT) (Ins.) No. 334 of 2017]	NCLAT	03.02.2018
178		'Profit Petroleum' is not out of the ambit of section 14 of the Code and moratorium is applicable.	Videocon Industries Ltd. Vs. State Bank of India & Ors. [MA 1300/2018 in C.P. (IB)-02/(MB)/2018]	NCLT, Mumbai	13.03.2019
179		Section 14 of the Code is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceedings under the Prevention of Money-Laundering Act, 2002.	Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement [CA (AT) (Ins.) No. 493 of 2018]	NCLAT	02.05.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
180		Imposition of fine cannot held to be a money claim or recovery against the CD nor order of imprisonment, if passed by the court of competent jurisdiction and cannot come within the purview of section 14. Further, no criminal proceeding is covered under section 14 of the Code.	Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors. [CA (AT) (Ins.) No. 306 of 2018]	NCLAT	31.07.2018
181		Sections 96 and 101, when contrasted with section 14, would show that section 14 cannot possibly apply to a personal guarantor.	State Bank of India Vs. V. Ramakrishnan & Anr. [Civil Appeal No. 3595, 4533 of 2018]	SC	14.08.2018
182		'Moratorium' shall be declared for prohibiting any action to recover or enforce any security interest created by the CD in respect of 'its' property.	Alpha and Omega Diagnostics (India) Ltd. Vs. Asset Reconstruction Company of India Ltd. & Ors. [CA (AT) (Ins.) No. 116 of 2017]	NCLAT	31.07.2017
183		In terms of section 14 of the Code, all the proceedings pending before any court against the CD automatically comes to halt and cannot be decided.	Haravtar Singh Arora Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 567 of 2018]	NCLAT	20.09.2018
184		Section 14 of the Code will prevail over section 28A of the Securities and Exchange Board of India Act, 1992, and SEBI cannot recover any amount including any penalty from the CD.	Anju Agarwal Vs. Bombay Stock Exchange & Ors. [CA (AT) (Ins.) No. 734 of 2018]	NCLAT	23.04.2019
185		The Government of India issued show cause notice to the CD before issuance of the termination letter much prior to initiation of the CIRP. The CD having failed to act in terms of the said show cause notice and the order of cancellation passed by the Government being before declaration of moratorium, it cannot be held to be in violation of section 14(1)(d) of the Code.	Monnet Ispat & Energy Ltd. Vs. Government of India, Ministry of Coal [CA (AT) (Ins.) No. 26 of 2018]	NCLAT	30.11.2018
186		It is always fit to appoint local professional, instead of airlifting a person from Delhi, which will be	Sojitz India Pvt. Ltd. Vs. Oren Hydrocarbons Pvt. Ltd. [CP/1182/IB/2018]	NCLT, Chennai	12.02.2019

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		taxing the stressed CD and there is every chance of delay in proceeding.			
187		After admission of application under section 7 of the Code, once moratorium is declared, it is neither open to any person including FCs and the appellant bank to recover any amount from the account of the CD, nor it can appropriate any amount towards its own dues.	Indian Overseas Bank Vs. Dinkar T. Venkatsubramaniam [CA (AT) (Ins.) No. 267 of 2017]	NCLAT	15.11.2017
188		It is true that guarantor's liability is co-extensive with that of principal borrower. But it does not mean that the insolvency application can be filed against the principal borrower and the corporate guarantor simultaneously. Another insolvency proceeding against the CD is barred on account of moratorium order passed under section 14(1)(a) of Code against the principal borrower.	ICICI Bank Ltd. Vs. Vista Steel Pvt. Ltd. [CP (IB) No. 552/KB/2017]	NCLT, Kolkata	15.12.2017
189		During the moratorium period, a guarantee cannot be invoked.	RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [C.A. (I.B.) No.543/2017 arising out of C.P(IB)/170/KB/2017]	NCLT, Kolkata	18.12.2017
	16	Appointment and tenure of IRP			
190		An ex-employee of the FC cannot be appointed as an IRP.	State Bank of India Vs. Metenere Ltd. [CA (AT) (Ins.) No. 76 of 2020]	NCLAT	22.05.2020
191		Section 16 of the Code visualises appointment of an IRP to manage the affairs of the CD. Such appointment is to be made by the AA.	Bank of New York Mellon Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017]	SC	21.02.2017
192		The appointment and tenure of IRP is prescribed under section 16 of the Code.	Dharmendra Kumar Vs. IBBI & Ors. [CA (AT) (Ins.) No. 313 of 2018]	NCLAT	24.08.2018
193		An IP must refrain from accepting too many assignments if he is unlikely to be able to devote adequate time to each of his assignment.	IDBI Bank Ltd. Vs. Lanco Infratech Ltd. [C.P. (IB) No. 111/7/HDB/2017]	NCLT, Hyderabad	07.08.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
194		Once an IP is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the CD.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017]	SC	31.08.2017
195		IBBI <i>vide</i> its letter dated 01.01.2018, has recommended a panel of IPs for appointment as IRPs in compliance with section 16(3)(a) of the Code to cut delay. The list of recommended IP provides instant solution to the AA to pick up the name and make appointment. It helps in meeting the timeline given in the Code and helps unnecessary time wasted, first by asking the IBBI to recommend the name and then appointing such IRP by AA.	Innovsource Pvt. Ltd. Vs Getit Grocery Pvt. Ltd. [IB-295(PB)/2017]	NCLT, New Delhi	08.01.2018
196		It was clarified that IRP is acting as a court officer and any hindrance in the work of CIRP will amount to contempt of court.	Asset Reconstruction Company (India) Pvt. Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [C.P. No. (IB) 1882 (MB)/2018]	NCLT, Mumbai	02.01.2019
	17	Management of affairs of CD by IRP			
197		To ensure that the CD remains a going concern, all the directors/employees are required to function and assist the RP who manages the affairs of the CD during moratorium. If an officer or employee had the power to sign a cheque on behalf of the CD prior to the order of moratorium, such power does not stand suspended on the suspension of the Board of Directors nor can be taken away by the RP.	Subasri Realty Pvt. Ltd. Vs. N. Subramanian & Anr. [CA (AT) (Ins.) No. 290 of 2017]	NCLAT	22.02.2018
198		Once CIRP has commenced with the appointment of IRP, no doubt the Board of Directors would be suspended. That does not mean the entire machinery of the CD is suspended. Even after appointment of	State Bank of India Vs. Essar Steel India Ltd. [C.P. (I.B) No. 40/7/NCLT/AHM/2017]	NCLT, Ahmedabad	02.08.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		IRP, all the employees of the CD, top to bottom, would continue to function under the control of IRP instead of the Board of Directors.			
199		IRP has not vested with any specific power to sue any person on behalf of the CD. However, in case of such difficulty, it is always open to IRP to bring to the notice of the AA for appropriate order.	Steel Konnect (India) Pvt. Ltd. Vs. Hero Fincorp Ltd. [CA (AT) (Ins.) No. 51 of 2017]	NCLAT	29.08.2017
200		RP is required to act in terms of section 17(2)(e) of the Code for complying with the requirements under SEBI and the Regulations framed thereunder as well as the guidelines.	Bohar Singh Dhillon Vs. Rohit Sehgal (IRP) & Ors. [CA (AT) (Ins.) No. 665 of 2018]	NCLAT	09.05.2019
	18	Duties of IRP			
201		It is the duty of the IRP to take control and custody of any asset over which the CD has ownership rights as recorded in the balance sheet of the CD.	Encore Asset Reconstruction Company Pvt. Ltd. Vs. Charu Sandeep Desai & Ors. [CA (AT) (Ins.) No. 719 of 2018]	NCLAT	14.05.2019
202		The RP will come into picture after IRP having exercised his duties under section 18, so that IRP will hand over the custody of the assets as well as other records that have already been taken into custody, to the RP.	Rajendra K. Bhutia Vs. Maharashtra Housing and Area Development Authority [MA 96/2018 in C.P. No. 1061/I&BC/2017]	NCLT, Mumbai	02.04.2018
	19	Personnel to extend co-operation to IRP			
203		Section 19 of the Code latently and patently imposes an obligation on the personnel and promoters of the CD to extend all assistance and cooperation which the IRP will require in running / managing the affairs of the CD.	Shailesh Chawla & Anr. Vs. Vinod Kumar Mahajan, RP & Ors. [CA (AT) (Ins.) No. 571 of 2020 and another appeal]	NCLAT	23.09.2020
204		All the personnel connected with the CD, its promoters or any other person associated with the management of the CD are under legal obligation under section 19 of the Code to extend every	Bank of India Vs. Tirupati Infraprojects Pvt. Ltd. [CP No. IB-104(PB)/2017]	NCLT, New Delhi	03.07.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		assistance and cooperation and in case there is any violation, the IRP would be at liberty to make appropriate application to the AA with a prayer for passing an appropriate order.			
205		Any interference in RP's discharge of duty/work, action shall be initiated against the CD and it will be presumed that the CD is not obeying the order of the Court. It is expected that CD should fully cooperate with the RP.	Punjab National Bank Vs. Divyajyoti Sponge Iron Pvt. Ltd. [C.P. (IB) No.363/KB/17]	NCLT, Kolkata	22.12.2017
	21	Committee of Creditors			
206		It is the settled law of the land that CoC enjoys primacy in the matter of approval or rejection of resolution plan/settlement proposal and the AA as well as the appellate tribunal would be exceeding its jurisdiction in approving or rejecting such plan/proposal which is essentially based on the commercial wisdom of the CoC.	M.P. Agarwal Vs. Shri Lakshmi Cotsyn Ltd. & Anr. [CA (AT) (Ins.) No. 620 of 2020]	NCLAT	27.07.2020
207		The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties are not supposed to decide the manner of distribution. The <i>inter se</i> distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC.	Standard Chartered Bank Vs. Satish Kumar Gupta & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]	NCLAT	04.07.2019
208		CoC is the fit person to take its own business decision and no reason has been found to disturb or sit on the decision of the CoC taken on by majority vote share.	State Bank of India Vs. Orissa Manganese & Minerals Ltd. [CA (IB) Nos. 402 and others in CP (IB) No. 371/KB/2017]	NCLT, Kolkata	22.06.2018
209		The CoC is required to evaluate the resolution plan on the basis of	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP	SC	25.01.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		feasibility and viability.	(Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]		
210		The CoC has no absolute power to change the IRP/RP at their whims and fancies without any valid or tenable reasons. The change of RP must be rational/tenable/reasonable and not at the whims and fancies of the CoC.	Rama Subramaniam Vs. Sixth Dimension Projects Solutions Ltd. [M.A. No. 1626/2018 in C.P. No. 587/I&BP/2018]	NCLT, Mumbai	13.03.2019
211		All members of the CoC are bound by the resolution approved by it with requisite majority.	Sai Regency Power Corporation Pvt. Ltd. Vs. CoC of Sai Regency Power Corporation Pvt. Ltd. [MA/872/2019 in IBA/92/2019]	NCLT, Chennai	21.08.2019
212		The decision of CoC taken by requisite majority cannot be questioned by non-applicant respondent and no one is permitted to strangulate the CIRP by refusing to contribute their share of expense.	IFCI Ltd. Vs. Era Housing & Developers (India) Ltd. [(IB)-489(PB)/2017]	NCLT, New Delhi	26.04.2019
213		All decisions of COC shall be taken by a vote of not less than 51% of voting share of FCs. It is just like a general provision that all matters other than those referred to in section 28 of the Code require to be approved by a voting of not less than 51% of voting share of FCs.	Asset Reconstruction Company (India) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola and Anr. [IA No.344 of 2018 in CP (IB) No.219/7/HDB/2018]	NCLT, Hyderabad	26.02.2019
214		In a number of cases, it has now been seen that members of the CoC are nominated by FCs like Banks without conferring upon them the authority to take decision on the spot which acts as a block in the time bound process contemplated by the Code. Such like speed brakers and roadblocks obviously cause obstacles to achieve the targets of speedy disposal of the CIRP.	SBJ Exports & Mfg. Pvt. Ltd. Vs BCC Fuba India Ltd. [CP-659/2016]	NCLT, New Delhi	07.06.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
215		The FCs/Banks must send only those representatives who are competent to take decisions on the spot. The wastage of time causes delay and allows depletion of value which is sought to be contained.	Jindal Saxena Financial Services Pvt. Ltd. Vs. Mayfair Capital Pvt. Ltd. [C.A. No. 523(PB)/2018 in C.P. No. (IB)-84(PB)/2017]	NCLT, New Delhi	04.07.2018
216		It is time to recognise the OC's voice in the CoC for payment of minimum amount payable to them as required under the Code.	Bank of Baroda and Binani Cements Limited & Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]	NCLT, Kolkata	04.05.2018
217		In case of deadlock in voting share in the appointment of RP under section 22 of the Code, preference can be given to the decision taken by highest percentage of the votes in the COC.	Nikhil Mehta & Sons (HUF) & Ors. Vs. AMR Infrastructure Ltd. [CA No. 811(PB)/2018 in (IB)-02(PB)/2017]	NCLT, New Delhi	29.09.2018
218		The CoC is also a creature of statute, and, can be termed as the instrumentality of the State, hence, they are under statutory obligation to follow the basic principles of administrative law. The instrumentality of the State has to act in transparent and fair manner and not to take arbitrary decision or to adopt discriminatory practice.	Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]	NCLT, Ahmedabad	19.04.2018
219		Only the members of the CoC who attend the meeting directly or through video conferencing, can exercise its voting powers after considering the other requirements as may be specified by the IBBI. Those members of the CoC who are absent, their voting shares cannot be counted.	Tata Steel Limited Vs. Liberty House Group Pte. Ltd. & Ors. [CA (AT) (Ins.) No. 198 of 2018]	NCLAT	04.02.2019
220		The CoC cannot take an adverse decision as against the prospective bidding plan submitted more so by a leading company who is capable of effectively taking over the CD without giving a reasonable opportunity of	Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Vijaykumar V. Iyer [CA (IB) No. 201/KB/18 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]	NCLT, Kolkata	04.05.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		being heard and the same amounts to being unjust and arbitrary.			
	22	Appointment of RP			
221		When there is a conflict and no consensus is reached in the CoC where FCs comprising of financial institutions and non-financial institutions by the majority of voting shares to appoint the IRP/RP, proposed by the applicant under section 9 of the Code, it is expedient to appoint an independent IRP/RP to break stalemate between the FCs.	Allahabad Bank Vs. Anil Kumar [IA No. 691 of 2019 and other IAs in C.P. (IB) 397 of 2018]	NCLT, Ahmedabad	28.07.2020
	24	Meeting of committee of creditors			
222		A combined reading of the Code as well as the Regulations leads to the conclusion that members of the erstwhile Board of Directors of the CD being vitally interested in resolution plans that may be discussed at meetings of the CoC, must be given a copy of such plans as part of documents that have to be furnished along with the notice of such meetings.	Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018]	SC	31.01.2019
223		If the claim of OCs, on verification is found to be less than 10%, the OCs have no right to claim representation in the meeting of the CoC.	Consolidated Engineering Company & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Ins.) No. 501 of 2018]	NCLAT	12.12.2018
	25	Duties of RP			
224		The goods lying in the form of raw material in the custody of CD for processing is under the contract of bailment preventing the RP from withholding the same. The RP was directed to handover the goods of the applicant with the liberty to proceed against the applicant under section 25(2) to recover any sum, if due.	KEC International Ltd. Vs. Mr. Bhuvan Madan & Anr. [IA No.139 of 2019 in CP (IB) No. 137/7/NCLT/AHM/2018]	NCLT, Ahmedabad	04.09.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
225		The act of RP to accept the resolution plan after opening of other bid cannot be justified by any means and is a blatant misuse of the authority invested in the RP to conduct CIRP. It was further observed that the material irregularity in exercise of powers by the RP, even with the approval of the CoC in the conduct of CIRP, cannot be treated as an exercise of commercial wisdom.	Kotak Investment Advisors Ltd. Vs. Krishna Chamadia & Ors. [CA (AT) (Ins.) No. 344-345 of 2020]	NCLAT	05.08.2020
226		While making physical verification of debtors appearing in the records of the CD, the RP found that some of them are not even aware of the CD. The AA suggested the RP to initiate all steps available under the Code to proceed against the promoters/directors of the CD.	Union Bank of India Vs. Paramshakti Steel Ltd. [MA No. 243/2018 in C.P. No. (IB) 727 (MB)/2017]	NCLT, Mumbai	12.04.2018
227		It is pertinent to mention that RP is duty bound to maintain CD as going concern.	State Bank of India Vs. Jet Airways (India) Ltd. [MA 2955/2019 in C.P.(IB)-2205/(MB)/2019]	NCLT, Mumbai	25.09.2019
228		1. The RP has administrative powers as opposed to quasi-judicial powers. 2. The RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. Under the CIRP Regulations, the RP has to vet and verify claims made, and ultimately, determine the amount of each claim.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
229		The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy.	BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP(IB) 4301/ 2018]	NCLT, Mumbai	16.10.2019
230		The RP cannot go into investigations and enquiries whether or not a CD is	Amit Gupta Vs. Yogesh Gupta [CA (AT) (Ins) No. 903 of 2019]	NCLAT	20.12.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		an MSME, and the AA is also not expected to make such investigations, enquiries on such evidence or give findings on such issues.			
231		Whether a person is a secured or unsecured creditor is a question of fact normally determined by the RP or the CoC.	Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. [CA (AT) (Ins.) No. 354 of 2019 and other appeals]	NCLAT	19.12.2019
232		RP has no jurisdiction to determine a claim. He can only collate it, based on evidence and the record of the CD, or as filed by the FC.	S. Rajendran Vs. Jonathan Muralidarane [CA (AT) (Ins.) No. 1018 of 2019]	NCLAT	01.10.2019
233		After the constitution of the CoC, without its permission, the RP was not competent to entertain more applications after three months to include one or other person as FC.	Asset Reconstruction Company (I) Ltd. (ARCIL) Vs. Koteswara Rao Karuchola & Ors. [CA (AT) (Ins.) No. 633 of 2018]	NCLAT	18.11.2019
234		The very object of the Code is to revive a company under CIRP and not to liquidate it. In the instant case, it is clear that the RP has omitted to perform his statutory duties. It is amply clear that the RP has not invited prospective resolution applicants as per section 25 of the Code. Therefore, the RP was directed to act as per section 25 of the Code.	Sunrise Polyfilms Pvt. Ltd. Vs. Punjab National Bank [Inv P.5 of 2018 in IA 27 of 2018 in C.P. (I.B) No. 89/7/NCLT/AHM/2017]	NCLT, Ahmedabad	04.05.2018
235		The nature of duties as assigned to the RP is/are similar to public servant because he is appointee of the Court.	Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]	NCLT, Ahmedabad	19.04.2018
	27	Replacement of RP by CoC			
236		CoC is not required to record any reason or ground for replacing of the RP, which may otherwise call for proceedings against such RP. The CoC having decided to remove the RP with 88% voting share, it was not open to the AA to interfere with such decision, till it is shown that the decision of the	Punjab National Bank Vs. Kiran Shah [CA (AT) (Ins.) No. 749 of 2019]	NCLAT	06.08.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		CoC is perverse or without jurisdiction.			
237		The proposed RP cannot be regarded as independent umpire to conduct CIRP as required by well settled practice.	Mussadi Lal Kishan Lal Vs. Ram Dev Int. Ltd. [(IB)-178 (PB)/2017]	NCLT, New Delhi	15.05.2018
238		The AA is also empowered to remove the RP, apart from the CoC, but it should be for the reasons and in the manner as provided under the relevant provisions.	Devendra Padamchand Jain Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 177 of 2017]	NCLAT	31.01.2018
	29A	Persons not eligible to be resolution applicant			
239		Section 29A or section 31 would not provide a shield against the operation of section 14(3)(b) of the Code and that CD/Promoter would not come under the immunity blanket of section 14 as the same is contrary to the law governing CIRP and RBI guidelines.	Sandip Kumar Bajaj & Anr. Vs. State Bank of India & Anr. [I.A. No. GA 1 of 2020 with (Old G.A. 1062 of 2020) with W.P.O 236 of 2020]	HC, Calcutta	15.09.2020
240		Since the application was admitted prior to the promulgation of Ordinance bringing section 29A into force, the resolution plan would be eligible for due adjudication.	Wig Associates Pvt. Ltd. [M.A. No. 435 of 2018 in C.P. No. 1214/I&BC/NCLT/MB/MAH/2017]	NCLT, Mumbai	04.06.2018
241		The NCLAT held that if it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a person who is ineligible in terms of section 29A, it is always open to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.	State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]	NCLAT	18.11.2019
242		The certificate issued by the Ministry of MSME raises no objection to the fact that the CD is an MSME. Hence, clauses (c) and (h) of section 29A are not applicable to the CD.	K. Periyasamy & 1 another Vs. J. Manivannan [MA/347/2019 in CP/422/IB/2018]	NCLT, Chennai	01.05.2019
243		Promoter, if ineligible under section 29A, cannot make an application for compromise and arrangement for	Jindal Steel and Power Ltd. Vs. Arun Kumar Jagatramka & Anr. [CA (AT) No. 221 of 2018]	NCLAT	24.10.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		taking back the immovable and movable properties or actionable claims of the CD.			
244		The intention of the Legislature shows that the promoters of MSME should be encouraged to pay back the amount with the satisfaction of the CoC to regain control of the CD and entrepreneurship by filing resolution plan, which is viable, feasible and fulfils other criteria as laid down by the IBBI.	Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors. [CA (AT) (Ins.) No. 203 of 2019]	NCLAT	04.07.2019
245		The promoters/employees of the CD without the knowledge of RP had secured the registration certificate under the MSME Act to overcome the bar under section 29A of the Code and submitted their resolution plan. The same was not approved by the CoC although no other resolution plan was submitted and that the AA's order of liquidation of the CD does not have any legal flaw.	T. Johnson Vs. St. John Freight Systems Ltd. & Anr. [CA (AT) (Ins.) No. 1402 of 2019]	NCLAT	04.03.2020
246		Section 29A is a <i>de facto</i> as opposed to a <i>de jure</i> position of persons mentioned therein. This is a typical see through provision so that one can see persons who are actually in control, whether jointly or in concert. A purposeful and contextual interpretation of section 29A is imperative to pierce the corporate veil to find out as to who are the real individuals or entities who are acting jointly or in concert for submission of a resolution plan.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals]	SC	04.10.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
247		The defaulters disqualified under Section 29A should not get any benefit under the Code. This is a clear message conveyed through section 29A. A defaulter must not be benefitted by entering into those very assets through side doors, otherwise not permitted to enter from the front doors, for e.g. by submission of a resolution plan.	SBI Global Factors Ltd. Vs. Sanaa Syntex Pvt. Ltd. [MA 1123/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017]	NCLT, Mumbai	08.04.2019
248		Constitutional validity of section 29A was upheld.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
	30	Submission of Resolution Plan			
249		The AA, in law cannot enter into the arena of majority decision of the CoC other than the grounds mentioned in section 32(a) to (e) of the Code. After due deliberations, when the RP had accepted the conditions of the resolution plan, especially keeping in mind the ingredients of section 25(2)(h) of the Code to the effect that no change or supplementary information to the resolution plan shall be accepted after the submission date of plan, then it is not open to the resolution applicant to take a topsy turvy stance and is not to be allowed to withdraw the approved resolution plan.	CoC of Educomp Solutions Ltd. Vs. Ebix Singapore Pte. Ltd. & Anr. [CA (AT) (Ins.) No. 203 of 2020]	NCLAT	29.07.2020
250		The successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted and that all claims must be submitted to and decided by the RP,	Shree Sidhivinayak Cotspin Pvt. Ltd. & Anr. Vs. RP of Marurti Cotex Ltd. & Anr. [CA (AT) (Ins.) No. 694 of 2020]	NCLAT	20.08.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		so that a prospective resolution applicant knows exactly, what has to be paid, in order that it may then take over and run the business of the CD.			
251		The restructuring plan projected as a resolution plan approved by the CoC could not be termed as a resolution plan within the ambit of section 30 of the Code.	Bank of Baroda Vs. Sisir Kumar Appikatla Resolution & Ors. [CA (AT) (Ins.) No. 579 of 2020]	NCLAT	20.07.2020
252		The RP, CoC and successful resolution applicant already took note of the facts and yet took a conscious decision to go ahead with the resolution plan, as such it cannot be stated that the question of viability and feasibility was not examined in the proper perspective.	The Karad Urban Cooperative Bank Ltd. Vs. Swwapnil Bhingardevay & Ors. [Civil Appeal Nos. 2955 of 2020 and 2902 of 2020]	SC	04.09.2020
253		No FC, including a secured creditor, can dissent on the ground that if it dissents against the resolution plan, in spite of plan being feasible and viable and in accordance with section 30(2), just to get more amount than the other secured creditor, can take advantage of the amended section 30(2)(b)(ii).	DBS Bank Ltd., Singapore Vs. Shailendra Ajmera & Anr. [CA (AT) (Ins.) No. 788 of 2019]	NCLAT	18.11.2019
254		The NCLAT concurred with the observation of the AA that resolution plan should be planned for insolvency resolution of the CD as a going concern and not for addition of value with intent to sell the CD. The purpose to take up the company with the intent to sell the CD is against the basic object of the Code.	Superna Dhawan & Anr. Vs. Bharti Defence and Infrastructure Ltd. & Ors. [CA (AT) (Ins.) No. 195 of 2019]	NCLAT	14.05.2019
255		In case where all creditors have been satisfied and there is no default with any other creditor, the formality of submission of resolution plan under section 30 or its approval under section 31 is required to be expedited	Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd. [CA (AT) (Ins.) No. 89 of 2017]	NCLAT	18.08.2017

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Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		on the basis of plan if prepared. In such case, the AA, without waiting for 180 days of resolution process, may approve resolution plan under section 31, after recording its satisfaction that all creditors have been paid/ satisfied and any other creditor do not claim any amount.			
256		Section 30(2)(e) does not empower the RP to decide whether the resolution plan does or does not contravene the provisions of law. It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of section 30.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 -9405 of 2018 and other appeals]	SC	04.10.2018
257		Resolution plan which relates to the closure of the CD/corporate applicant being against the scope and the intent of the Code is in violation of section 30(2)(e) of the Code.	Industrial Services Vs. Burn Standard Company Ltd. & Anr. [CA (AT) (Ins.) No. 141 of 2018 and other appeals]	NCLAT	13.05.2019
258		If goods have been supplied during the CIRP period to keep the CD as going concern, it is the duty of the RP to include the costs on such goods in the CIRP cost. If it is not included, the resolution plan in question can be held to be in violation of section 30(2)(a) of the Code.	Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]	NCLAT	24.04.2019
259		While scrutinising the resolution plan under section 30(2), the RP cannot hold or decide as to who is ineligible under section 29A. Neither section 30(2) nor any other provision in the Code confers such power on the RP to scrutinise the eligibility of resolution applicants.	Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. [I.A. No. 594 of 2018 in CA (AT) (Ins.) No. 188 of 2018]	NCLAT	15.05.2018
260		Section 30(2) nowhere provides that each FC must get proportionately equivalent share with other FCs. The only condition for approving the	Rave Scans Pvt. Ltd. [(IB)-01(PB)-2017]	NCLT, New Delhi	17.10.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		resolution plan by the CoC is by voting share of 75% as per the requirements of section 30(4) (which has now been reduced to 66% w.e.f. 06.06.2018).			
261		The RP ought to follow provision of section 29A (c) read with section 30 (4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible.	Numetal Ltd. Vs. Satish Kumar Gupta & Anr. [I.A. Nos. 98 & other IAs in CP (IB) No. 40 of 2017]	NCLT, Ahmedabad	19.04.2018
262		Primacy is given in the process to commercial decisions. The success of the process is contingent upon the competence of the IRP and the CoC.	Chitra Sharma and Ors. Vs. Union of India and Ors. [WP (Civil) 744 of 2017 and other appeals]	SC	09.08.2018
263		Even though amended sub section (4) of section 30 came into force from 06.06.2018, it is applicable to all resolution plans which were not approved by the CoC or by the AA.	SICOM Ltd. Vs. Alok Employees Benefit and Welfare Trust & Ors. [CA (AT) (Ins.) No. 344 of 2018]	NCLAT	29.11.2018
264		The CoC is empowered under section 30(4) of the Code to independently consider the question of eligibility of all applicants under section 29A.	State Bank of India Vs. Electrosteel Steels Ltd. [CA (IB) No. 202-203/KB/2018 in CP (IB) No. 361/KB/2017]	NCLT, Kolkata	20.03.2018
265		The CoC has the primary responsibility of financial restructuring. They are required to assess the viability of a CD by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The CoC is required to evaluate the resolution plan on the basis of feasibility and viability.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
266		The word 'may' in section 30(4) is ascribable to the discretion of the CoC to approve the resolution plan or not to approve the same.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]	SC	05.02.2019
267		All OCs are ranked equal. Therefore, resolution plan should not create classes of OCs and treat them differently.	J.R. Agro Industries P Ltd. Vs. Swadisht Oils P Ltd. [CA No. 59 of 2018 in CP No. (IB) 13/ALD/2017]	NCLT, Allahabad	24.07.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
268		Whenever, a resolution applicant's plan is under consideration of CoC and that plan is not at all placed before the AA for approval, and if another resolution applicant comes forward making an offer before the CIRP duration expires, and that it satisfies all the stakeholders of the CD, then there is nothing in the Code or Regulations to prevent the CoC from considering a revised offer of the other applicant.	Bank of Baroda and Binani Cements Ltd. & Ors. Vs. Mr. Vijay Kumar V. Iyer, [CA (IB) NO.201/KB/2018 and other CAs/IAs in C.P.(IB) No. 359/KB/2017]	NCLT, Kolkata	04.05.2018
269		Once the resolution plan has been approved by the CoC, the AA ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan itself.	Maharashtra Seamless Ltd. Vs. Padmanabhan Venkatesh & Ors. [Civil Appeal No. 4242 of 2019 and another appeal]	SC	22.01.2020
	31	Approval of Resolution Plan			
270		Once the resolution plan is approved under section 31 of the Code, all the assets and benefits of the contracts of the CD stands unconditionally transferred and assigned and vested in the successful resolution applicant free from all encumbrances. All persons including Central and State Governments as well as the Local Authorities are bound by the said Order.	Shri Dutt India Pvt. Ltd Vs. Office of the Sugar Commissioner [I.A. No. 1055 of 2020 in C.P. (IB) No. 2956 of 2018]	NCLT, Mumbai	21.09.2020
271		A resolution applicant whose resolution plan stands approved by CoC, cannot be permitted to alter his position to the detriment of various stake holders after pushing out all potential rivals during the bidding process, and the same fraught with disastrous consequences for the CD which may be pushed into liquidation, as the CIRP period may by then be over thereby setting at naught all	Kundan Care Products Ltd. Vs. Amit Gupta and Ors. [CA (AT) (Ins.) No. 653 of 2020]	NCLAT	30.09.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		possibilities of insolvency resolution and protection of a CD, more so, when it is a going concern.			
272		Where the AA has approved a resolution plan that provides for taking over the shares of the promoters, it is not required to comply with the provisions of sections 56 and 57 of the Companies Act, 2013. The same can be completed at the stage of implementation of the resolution plan.	Sunil Jain Vs. Punjab National Bank & Ors. [CA (AT) (Ins.) No. 156 of 2018 and other appeals]	NCLAT	24.04.2019
273		The proviso to sub-section 31(4) of Code which relates to obtaining the approval from the CCI under the Competition Act, 2002, prior to the approval of such resolution plan by the CoC, is directory and not mandatory.	Arcelormittal India Pvt. Ltd. Vs. Abhijit Guhathakurta & Ors. [CA (AT) (Ins.) No. 524 of 2019]	NCLAT	16.12.2019
274		The FCs and OCs whose claims have been decided by the AA or the NCLAT, such decision being final is binding on all such FCs and OCs in terms of section 31 of the Code. Their total claims stand satisfied and, therefore, they cannot avail any remedy under section 60(6) of the Code.	Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. [CA (AT) (Ins.) No. 242 of 2019 and other appeals]	NCLAT	04.07.2019
275		The legislature has not endowed the AA with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting FCs. The discretion of the AA is circumscribed by section 31 to scrutiny of resolution plan 'as approved' by the requisite percent of voting share of FCs.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 and other appeals]	SC	05.02.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
276		The resolution applicant is bound by the mandate under section 30(2)(f) and shall ensure that the resolution plan shall not be against any of the provisions of the existing law.	MSTC Ltd. Vs. Adhunik Metalliks Ltd. & Ors. [CA (AT) (Ins.) No. 519 of 2018 and another appeal]	NCLAT	15.03.2019
277		Even though the CoC may approve a resolution plan with not less than 75% of the voting share, a discretion is given to the AA to approve the resolution plan.	K. Sashidhar Vs. Kamineni Steel & Power India Pvt. Ltd. & Ors. [CP (IB) No. 11/10/HDB/2017]	NCLT, Hyderabad	27.11.2017
278		A resolution by CoC with less than 75% voting share in CoC is <i>non est</i> in law.	ICICI Bank Ltd. Vs. Innoventive Industries Ltd. [MA 557/2017 & other MAs in IA 72/2017 in C.P 01/I&BP/2016]	NCLT, Mumbai	08.12.2017
279		The AA is not expected to substitute its view with commercial wisdom of the RP and COC nor should it deal with technical complexity and merits of resolution plan unless it is found contrary to express provision of law and goes against the public interest. This observation finds support from the UNCITRAL Legislative Guide, which recommends for similar approach to be taken by a court.	JEKPL Pvt. Ltd. [CA No. 223/2017 in CP No. 24/ALD/2017]	NCLT, Allahabad	15.12.2017
280		Either by principle or by jurisdictional aspect, the AA cannot say that 180/270 days' period as procedural, therefore, it has no jurisdiction to trespass into the domain set out for the CoC except to the extent mentioned in section 31 of the Code.	Gupta Energy Pvt. Ltd. [MA 24, 80 & 110/2018 in C.P. No. 43/I&BP/2017]	NCLT, Mumbai	20.02.2018
	32A	Liability for prior offences, etc.			
281		Considering the object behind the introduction of section 32A, the section is also applicable to the CD undergoing liquidation as well, and the liquidator can file an application under the same.	SBER Bank Vs. Varsana Ispat Ltd. [C.P. (IB) No. 543/KB/2017]	NCLT, Kolkata	22.07.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
282		CD would not be liable for any offence committed prior to commencement of the CIRP.	Tata Steel BSL Ltd. & Anr. Vs. Union of India & Anr. [W.P. (CRL) 3037/2019 & CRL.M.A. 39126/2019]	HC, New Delhi	16.03.2020
283		Section 32A(2) of the Code will not apply to the provisional attachment order under the PMLA.	Raj Kumar Ralhan Vs. Deputy Director, ED and Ors. [IA No. 54 of 2020 in CP (IB) No. 43/07/HDB/2018]	NCLT, Hyderabad	06.05.2020
284		The ED/other investigating agencies do not have the powers to attach assets of a CD, once a resolution plan stands approved and the criminal investigations against the CD stands abated.	JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA (AT) (Ins.) No. 957 of 2019 and other appeals]	NCLAT	17.02.2020
	33	Initiation of Liquidation			
285		The CoC unanimously decided to send the CD into liquidation for want of resolution plans. Once the application under section 33 was moved it was left with no option but to order liquidation.	Edelweiss Asset Reconstruction Co. Ltd. Vs. Shri Shyam Sundar Rathi & Anr. [CA (AT) (Ins.) No. 683 of 2020]	NCLAT	14.08.2020
286		Liquidation was ordered by the AA as a last option since there was no response from any viable prospective resolution applicant, despite an extension of time period.	Siva Rama Krishna Prasad Vs. S Rajendran & Ors. [CA (AT) (Ins.) No. 751 of 2020 and another appeal]	NCLAT	04.09.2020
287		The decision of CoC to liquidate the CD without taking any steps for resolution of the CD is covered under the <i>Explanation</i> to sub-clause (2) of section 33 of the Code which is based on the commercial wisdom and is non-justiciable given the law laid by the SC in case of <i>K. Sashidhar vs. Indian Overseas Bank</i> .	Sunil S. Kakkad Vs. Atrium Infocom Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 194 of 2020]	NCLAT	10.08.2020
288		In the event of liquidation, the amount to be paid to the Central Government or the State Government against the operational debt should not be less	RMS Employees Welfare Trust Vs. Anil Goel [CA (AT) (Ins.) No. 699 of 2018]	NCLAT	30.05.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		than an amount to be paid to the OC.			
289		After completion of CIRP period, ordering liquidation, will not have any bearing on PMLA proceedings.	Nathella Sampath Jewelry Pvt. Ltd. [MA/1147/2019 & MA/547/2018 in CP/129/IB/CB/2018]	NCLT, Chennai	03.01.2020
290		The AA directed liquidation of the CD without admission and appointment of IRP.	GNB Technologies (India) Pvt. Ltd. [C.P. (IB) No. 167/BB/2019]	NCLT, Bengaluru	08.11.2019
291		The CoC has no role to play after the order of liquidation. They are mere claimants, whose matters are to be determined by the liquidator. They cannot move an application for removal of the liquidator.	Punjab National Bank Vs. Mr. Kiran Shah [CA (AT) (Ins.) No. 102 of 2020]	NCLAT	21.01.2020
292		During the liquidation process, it is necessary to take steps for revival and continuance of the CD by protecting it from its management and from a death by liquidation.	Y. Shivram Prasad Vs. S. Dhanapal & Ors. [CA (AT) (Ins.) No. 224 of 2018 and another appeal]	NCLAT	27.02.2019
	34	Appointment of Liquidator and fee to be paid			
293		AA was well within its jurisdiction to engage another person as RP or Liquidator as the performance of the previous RP was unsatisfactory.	Sandeep Kumar Gupta Vs. Stewarts & Lloyds of India Ltd. & Anr. [CA (AT) (Ins.) No. 263 of 2017 and another appeal]	NCLAT	28.02.2018
	35	Powers and Duties of Liquidator			
294		The liquidator is duty bound to exercise his powers under the Code and does not require the prior permission of AA for every action to be performed under the Code.	Nicco Corporation Ltd. in Liquidation [C.A. (IB) No. 487/KB/2017 connected to C.P. No. 03/2017]	NCLT, Kolkata	24.11.2017
295		Liquidator has a duty under section 35(1)(k) of the Code but the FC has no right to force the liquidator to take part in the arbitration proceedings. The duty of the liquidator would include a conscious decision not to take part in the proceedings.	Reliance India Power Fund Vs. Raj Kumar Ralhan [CA (AT) (Ins.) No. 318 of 2020]	NCLAT	24.02.2020
296		Liquidator is only an additional person and not exclusive person who can move an application under section	Rasiklal S. Mardia Vs. Amar Dye Chem Ltd. & Ors. [CA (AT) No. 337 of 2018]	NCLAT	08.04.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		391 of the Companies Act, 1956, when the company is in liquidation.			
297		The liquidator is duty bound to make every endeavour to protect and preserve the value of the property of the CD and manage the operations as a going concern.	B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 and other appeals]	NCLAT	13.11.2019
	36	Liquidation estate			
298		Provident fund dues, pension funds dues and gratuity fund dues are not treated as a part of the liquidation estate.	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [(IB)-378(PB)-2017]	NCLT, New Delhi	19.03.2019
299		All sums due to any workman or employees from the provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.	Savan Godiwala Vs. Apalla Siva Kumar [CA (AT) (Ins.) No. 1229 of 2019]	NCLAT	11.02.2020
300		Due to the workmen or employees viz., provident fund, pension fund and the gratuity fund, do not form part of the liquidation estate/liquidation assets of the CD.	State Bank of India Vs. Moser Baer Karamchari Union and Anr. [CA (AT) (Ins.) No. 396 of 2019]	NCLAT	19.08.2019
301		The order of attachment by the tax authorities constituting an encumbrance on the property, does not have the effect of taking it out of the purview of section 36(3)(b) of the Code.	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) IT Dept. Hyderabad [Writ Petition No. 8560 of 2018]	HC, Hyderabad	26.07.2018
	37	Powers of Liquidator to access information			
302		The liquidator has to perform his duties as the officer of the court and he should never be afraid of false complaints.	Hema Manoj Shah Vs. Gaurav Dave & Ors. [IA 2511/2019, MA 2400/2019, MA 876/2019, in MA 1082/2019, MA 2314/2019 CP (IB)-1882 (MB)/2018]	NCLT, Mumbai	17.07.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	42	Appeal against the decision of Liquidator			
303		It is almost impracticable for the liquidator to follow the principles of natural justice before admitting or rejecting a claim because he cannot be selective in his approach and if the same is applied universally, it will make the timeline under the Code haywire and defeat the provisions of Code.	Bank of India Vs. V. Mahesh & Anr. [IA/497/2020 in MA/289/2018 in TCP/10/IB/2017 and IA/115/2020 in MA/289/2018 in TCP/10/IB/2017]	NCLT, Chennai	03.09.2020
304		The AA allowed a creditor to file claim before the conclusion of liquidation but after the due date of submission of claims and condoned the delay on the ground that if the claim is admitted, no prejudice would be caused.	Asmi Enterprises Vs. Yog Industries Ltd. [MA1098/2018 in CP No.82/IBC/NCLT/MB/MAH/2017]	NCLT, Mumbai	10.04.2019
	43, 44	Preferential transactions and relevant time, Order in case of preferential transactions			
305		The mortgage of land of the CD in favour of a creditor amounts to transfer of interest in the property of the CD for the benefit of the creditor, and putting it in a beneficial position <i>vis-à-vis</i> other creditors, is a preferential transaction.	Anuj Jain Vs. Manoj Gaur & Ors. [CA No. 26/2018 in CP No. (IB)77/ALD/2017]	NCLT, Allahabad	16.05.2018
306		Section 43 of the Code is applicable during the pendency of resolution process or liquidation proceedings, if there are genuine, reasonable grievances relating to preferential transactions at a relevant time. A liquidator by filing an application can seek one or other order from the AA as per section 44 of the Code.	K.L. Jute Products Pvt. Ltd. Vs. Tirupti Jute Industries Ltd. & Ors. [CA (AT) (Ins.) No. 277 of 2019]	NCLAT	20.02.2020
307		To invoke section 43 of the Code, there shall be two elements in the given facts, (1) there shall be transfer of property or interest from CD to a creditor, (2) and it must be for the benefit of such creditors in preference to the other creditors of the CD in the	S. V. Ramkumar Vs. Orchid Health Care Pvt. Ltd.& Ors. [MA/86/2018 in CP/540/IB/CB/2017]	NCLT, Chennai	04.07.2019

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		event of a distribution of assets being made in accordance with section 53 of the Code.			
308		<p>(a) Preferential Transactions: A CD shall be deemed to have given a preference at a relevant time if: (i) there is a transfer of property or the interest thereof of the CD for the benefit of a creditor or surety or guarantor for or on account of an antecedent financial debt or operational debt or other liability; (ii) such transfer has the effect of putting such creditor or surety or guarantor in a beneficial position than it would have been in the event of distribution of assets in accordance with section 53 of the Code; and (iii) preference is given, either during the period of two years/one year preceding the ICD when the beneficiary is a related/unrelated party. However, such deemed preference may not be an offending preference, if it falls into any or both exclusions provided by section 43(3).</p> <p>Section 43(3)(a) exempts transfers made in ordinary course of business of the CD or the transferee. This calls for purposive interpretation. The expression 'or', appearing as disjunctive between the expressions 'corporate debtor' and 'transferee', ought to be read as 'and'. Therefore, a preference shall not include the transfer made in the ordinary course of the business of the CD and the transferee.</p> <p>(b) Duties and responsibilities of RP: The RP shall –</p> <p>(i) sift through all transactions relating</p>	Anuj Jain Vs. Axis Bank Ltd.& Ors. [Civil Appeal Nos. 8512-8527 of 2019 with other appeals]	SC	26.02.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		<p>to the property/interest of the CD backwards from the ICD and up to the preceding two years;</p> <p>(ii) identify persons involved in the transactions and put them in two categories: (1) related party under section 5(24) and (2) remaining persons;</p> <p>(iii) identify which of the said transactions of preceding two years, the beneficiary is a related party of the CD and in which the beneficiary is not a related party. The sub-set relating to unrelated parties shall be trimmed to include only the transactions preceding one year from the ICD;</p> <p>(iv) examine every transaction in each of these sub-sets to find out whether (1) the transaction is of transfer of property of the CD or its interest in it; and (2) beneficiary involved in the transaction stands in the capacity of creditor/surety/guarantor;</p> <p>(v) scrutinise the shortlisted transactions to find, if the transfer is for or on account of antecedent financial debt/operational debt/other liability of the CD;</p> <p>(vi) examine the scanned and scrutinised transactions to find, if the transfer has the effect of putting such creditor/surety/guarantor in beneficial position, then it would have been in the event of distribution of assets under section 53. If answer is in the affirmative, the transaction shall be deemed to be of preferential, provided it does not fall within the exclusion under section 43(3); and then</p> <p>(vii) apply to the AA for</p>			

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		<p>necessary orders, after carrying out the aforesaid volumetric and gravimetric analysis of the transactions.</p> <p>(c) Undervalued and fraudulent transactions: As the transactions are held as preferential, it is not necessary to examine whether these are undervalued and/or fraudulent. In preferential transaction, the question of intent is not involved and by virtue of legal fiction, upon existence of the given ingredients, a transaction is deemed to be of giving preference at a relevant time, while undervalued transaction requires different enquiry under sections 45 and 46 where the AA is required to examine the intent, if such transactions were to defraud the creditors. The AA needs to examine the aspect of preferential, undervalued and fraudulent separately and distinctively.</p>			
	45, 46	Avoidance of undervalued transactions, Relevant period for avoidable transactions			
309		<p>The transactions as has been made i.e. mortgage(s) in favour of the appellants as and when made against the amount payable by Jaiprakash Associates Limited, the amount is not payable by the CD. Therefore, clause (a) of sub-section (2) of section 45 is not attracted. For the same reason, clause (b) of sub-section (2) of section 43 or section 45 cannot be made applicable with regard to transaction in question which are not related to any payment due from the CD.</p>	Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 with other CAs]	NCLAT	01.08.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	52	Secured creditor in liquidation proceedings			
310		If one or more secured creditors have not relinquished the security interest and have opted to realise their security interest against the same asset in terms of section 52(1)(b) read with section 52(2) and (3), the liquidator will act in terms of section 52(3) and find out as to who has the first charge (security interest). If any dispute is pending as to the question of who has the first charge, the liquidator may inform the same to parties and proceed as per section 52(3).	JM Financial Asset Reconstruction Company Ltd. Vs. Finquest Financial Solutions Pvt. Ltd. and Ors. [CA (AT) (Ins.) No. 593 of 2019]	NCLAT	11.12.2019
311		If it comes to the notice of the liquidator that a secured creditor intends to sell the assets to a 'person' who is ineligible in terms of section 29A, it is always open to him to reject the application under section 52(1)(b) read with section 52(2) and (3) of the Code.	State Bank of India Vs. Anuj Bajpai [CA (AT) (Ins.) No. 509 of 2019]	NCLAT	18.11.2019
312		Even during liquidation process, the liquidator is to ensure that CD remains a going concern. If no arrangement or scheme framed under sections 230 to 232 of the Companies Act, 2013 becomes possible or the CD is not sold in its totality along with the employees and there is no option but to sell the assets of the CD and to distribute the same amongst the creditors in terms of section 53 read with section 52 of the Code, the liquidator may be asked to return the third party assets.	B.R. Traders Vs. Venkataramanarao Nagarajan & Ors. [CA (AT) (Ins.) No. 189 of 2019 with other CAs]	NCLAT	13.11.2019
313		If the liquidator concludes that the claimants have security interest over the assets of the CD, he shall permit the creditors to utilise their rights	Clutch Auto Ltd. [CA-1432(PB)/2019 & CA-1433(PB)/2019 in (IB)-15(PB)/2017]	NCLT, New Delhi	06.01.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
		under section 52 of the Code. Application seeking directions from AA against such creditors to compel them to relinquish security interest, is not supported by the Code.			
314		Section 52(4) of the Code releases the secured creditor from the clutches of the Code and gives liberty to recover its security interest as per any other law which may be applicable. Once the secured creditor is out of liquidation under section 52(1)(b) of the Code, it is relieved from all the clutches of the Code or the liquidation process. To move under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 or any other Act, to sell the assets to any party, is all the prerogative of the secured creditor because his rights are given a specific protection under the Code. However, it has to be kept in mind that the intent of the Code cannot be hampered by allowing the promoters/directors a backdoor entry in the liquidation process.	Anuj Bajpai Vs. State Bank of India [MA 1123/2018 in CP No. 172/IBC/NCLT/MB/MAH/2017]	NCLT, Mumbai	08.04.2019
315		Only the first charge holder/secured creditor with the first <i>pari-passu</i> charge can stay outside the liquidation process and realise his security interest in the manner provided under section 52(1)(b).	Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018]	NCLT, Mumbai	10.05.2019
316		Income-tax Department does not enjoy the status of a secured creditor, on par with a secured creditor covered by a mortgage or other security interest, who can avail the provisions of section 52 of the Code. At best, it can only claim a charge under the attachment order, in	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central) & Ors. [Writ Petition No. 8560 of 2018]	HC, Hyderabad	26.07.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		terms of section 281 of the Income-tax Act, 1961.			
	53	Distribution of assets			
317		Upon realisation of the liquidation estate of the CD, it has to be distributed in accordance with the waterfall mechanism under section 53 of the Code. The dues towards the Government, be it tax on income or sale of properties, would qualify as 'operational debt' and has to be dealt with accordingly. Further, the applicability of section 178 or 194IA of the Income-tax Act, 1961 will not have an overriding effect over section 53 of the Code, and the capital gains shall not be taken into consideration as the liquidation cost.	Shree Ram Lime Products Pvt. Ltd. Vs. Gee Ispat Pvt. Ltd. [CA-666/2019 in (IB)-250(ND)/2017]	NCLT, New Delhi	22.10.2019
318		Section 45 and 46 of the Income-tax Act, 1961 will not have an overriding effect on the waterfall mechanism provided under section 53 of the Code, which is a complete Code in itself and thus capital gains shall not be taken into consideration as the liquidation cost.	LML Ltd. Vs. Office of Commissioner of Income Tax, Mumbai [CA No. 389 of 2019 in CP(IB) No. 55/ALD/2017]	NCLT, Allahabad	31.08.2020
319		Section 53 of the Code will not be followed for distribution in the case as it would cause injustice to shareholders who have invested public money in Infrastructure Leasing & Financial Services Ltd. and its group companies and therefore the <i>pro-rata</i> distribution as proposed by the Central Government was accepted.	Union of India Vs. Infrastructure Leasing & Financial Services Ltd. & Ors. [CA (AT) No. 346 of 2018 with I.A. Nos. 3616, 3851, 3860, 3962, 4103, 4249 of 2019, 182, 185 of 2020 with other appeals]	NCLAT	12.03.2020
320		There is an intelligible differentia between the financial debts and operational debts, which are unsecured, which has direct relation to the object sought to be achieved	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP	SC	25.01.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		by the Code. It can be seen that unsecured debts are of various kinds and as long as there is some legitimate interests sought to be protected, having relation to the object sought to be achieved by the statute in question, Article 14 of the Constitution does not get infringed. Accordingly, validity of section 53 was upheld.	(Civil) 37 of 2019]		
321		Section 53, including <i>Explanation</i> given therein cannot be relied upon while approving the resolution plan. However, that does not mean that a discriminatory plan can be placed and can get through on one or other ground, which is against the basic object of maximization of the assets of the CD on one hand and for balancing the stakeholders on the other.	Binani Industries Ltd. Vs. Bank of Baroda & Anr. [CA (AT) (Ins.) No. 82,123, 188,216 & 234 of 2018]	NCLAT	14.11.2018
	55	Fast track corporate insolvency resolution process			
322		The CD does not come within the category of CD in terms of clauses (a) or (b) or (c) of sub-section (2) of section 55 as its assets and income being not below a level, notified by the Central Government nor having class of creditors or amount of debt as notified by the Central Government. Therefore, section 55 cannot be invoked against the CD.	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr. [CA (AT) (Ins.) No. 560 of 2018]	NCLAT	03.01.2019
	59	Voluntary liquidation of corporate persons			
323		Voluntary liquidation can only be done, as required under regulation 38 of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, if the debt of the CD has been discharged to the satisfaction of the creditors and	Central Inland Water Transport Corporation Ltd. [C.A. (IB) No. 791/KB/2018]	NCLT, Kolkata	28.09.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		no litigation is pending against CD. Since the CD did not satisfy the twin requirements in the matter, the voluntary liquidation of the CD was suspended.			
	60	Adjudicating Authority for corporate persons			
324		With regard to the issue as to whether AA has jurisdiction to determine the issue of disputed question of fact as to who holds the first charge, it was held that it is the exclusive prerogative of AA which is exclusively vested with the power to adjudicate the matters relating to and connected with insolvency and bankruptcy law particularly the process of liquidation and the related measures to be adopted in the said process of liquidation. It was observed that it is not just a substantive law but also a procedural law and therefore, the AA can decide on the issues of disputed question of fact when the documents unequivocally prove the point that is sought to be decided.	Finquest Financial Solutions Pvt. Ltd. Vs. Ravi Shankar Devarakonda [M.A 1392/2019 in CP No. 382/IB/MB/MAH/2018]	NCLT, Mumbai	10.05.2019
325		A plain reading of section 60(2) with sections 95 and 97(3) of the Code indicates that, even while an application for CIRP or liquidation is pending against CD, an application against the personal guarantor can be allowed to be filed. The law does not envisage that the insolvency resolution of the personal guarantor should follow only when the process of CIRP of the CD has come to an end.	State Bank of India Vs. Anil Dhirajlal Ambani [IA No. 1009 of 2020 in CP (IB) 916 (MB) of 2020 and Anr.]	NCLT, Mumbai	20.08.2020
326		Clause (c) sub-section (5) of section 60 of the Code vests the jurisdiction in AA to entertain and dispose of any question of priorities or any question of law or fact, arising out of or in	GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]	HC, New Delhi	26.06.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		relation to the insolvency resolution for liquidation proceedings. Therefore, the jurisdiction vested in AA while dealing with a resolution plan is of wide ambit and any question of law or fact in relation to the insolvency resolution has to be determined by the AA.			
327		The AA has no jurisdiction to enforce a foreign decree, however, there is no bar in taking cognizance of a foreign decree.	Stanbic Bank Ghana Ltd. Vs. Rajkumar Impex Pvt. Ltd. [CP/670/IB/2017]	NCLT, Chennai	27.04.2018
328		Though the AA and the NCLAT have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to adjudicate upon disputes such as those arising under the Mines & Minerals (Development and Regulation) Act, 1957, and the rules thereunder, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action.	Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors. [Civil Appeal No. 9170, 9172 of 2019]	SC	03.12.2019
329		If the AA is satisfied that there are circumstances suggesting that the business of a CD is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, and that the affairs of the CD ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, it may refer the matter to the Central Government for investigation into the affairs of the CD.	M. Srinivas Vs. Ramanathan Bhuvaneshwari & Ors. [CA (AT) (Ins.) No. 498 of 2019]	NCLAT	24.07.2019
330		Once a disciplinary proceeding is initiated by IBBI on the basis of	IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]	NCLAT	11.07.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		evidence on record, it is for the disciplinary authority i.e. IBBI to close the proceedings or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of such power being vested with AA, the AA cannot quash the disciplinary proceedings initiated by IBBI.			
331		The AA is not supposed to pass any adverse observations, even <i>prima facie</i> , against the RP, without giving an opportunity to him as to why in view of certain act, the matter be not referred to the IBBI.	Ilam Chand Kamboj Vs. ANG Industries Ltd. [CA (AT) (Ins.) No. 253 of 2019 and I.A. No. 995 of 2019]	NCLAT	02.08.2019
332		Section 212 of the Companies Act, 2013 does not empower the NCLT or AA to refer the matter to the Central Government for investigation by Serious Fraud Investigation Office (SFIO) even if it notices the company defrauding creditors and others. However, in terms of section 213(b) of the said Act, it can direct the Central Government to investigate through inspectors and after investigation and if case is made out, it may decide the matter to be investigated by SFIO. It was held that the AA is not competent to straight away direct any investigation to be conducted by the SFIO.	Union of India Vs. Maharashtra Tourism Development Corporation & Anr. [CA (AT) (Ins.) No. 964 and 965 of 2019]	NCLAT	02.12.2019
333		The Code does not confer any power and jurisdiction on the AA to compel specific performance of a resolution plan by an unwilling resolution applicant.	Committee of Creditors of Metalyst Forging Ltd. Vs. Deccan Value Investors LP & Ors. [CA (AT) (Ins.) No. 1276 and 1281 of 2019]	NCLAT	07.02.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
334		Section 60 of the Code in sub-section (1) thereof, refers to insolvency resolution and liquidation for both CDs and personal guarantors, the AA for which shall be the NCLT having territorial jurisdiction over the place where the registered office of the corporate person is located. The scheme of section 60(2) and (3) is clear that the moment there is a proceeding against the CD pending under the Code, any bankruptcy proceeding against the individual personal guarantor will, if already initiated before the proceeding against the CD, be transferred to the NCLT or, if initiated after such proceedings had been commenced against the CD, be filed only in the NCLT.	State Bank of India Vs. V. Ramakrishnan & Anr. [CA No. 3595 of 2018]	SC	14.08.2018
335		An order of moratorium will be applicable only to the proceedings against the CD and the personal guarantor, if pending before any court of law/tribunal or authority. However, this order of moratorium will not be applicable on filing of applications for triggering CIRP under sections 7 or 9 or 10 of the Code against the guarantor or the personal guarantor under section 60(2).	State Bank of India Vs. D. S. Rajendra Kumar [CA (AT) (Ins.) Nos. 87 to 91 of 2018]	NCLAT	18.04.2018
336		The limited judicial review available to AA can in no circumstance trespass upon a business decision of the majority of the CoC. The residual jurisdiction of the AA under section 60(5)(c) cannot, in any manner, whittle down section 31(1) of the Code, by the investment of some discretionary or equity jurisdiction in the AA outside section 30(2) of the	Committee of Creditors of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s]	SC	15.11.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Code, while adjudicating a resolution plan.			
337		Without initiating any CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC <i>qua</i> corporate guarantor.	Ferro Alloys Corporation Ltd. Vs. Rural Electrification Corporation Ltd. [CA (AT) (Ins.) No. 92, 93 & 148 of 2017]	NCLAT	08.01.2019
338		It was noted that the AA under the Code exercises only a summary jurisdiction and cannot be made to conduct the proceedings by way of a detailed trial to ascertain the amount of debt claimed is as claimed or not, as is done by a Civil Court taking a detailed examination of documents supported by oral examination of witnesses when the plaintiff approaches it by way of a suit.	UT Worldwide (India) Pvt Ltd. Vs. Integrated Caps Pvt. Ltd. [IB-298/ND/2017]	NCLT, New Delhi	17.10.2017
339		The <i>non-obstante</i> clause in section 60(5) is designed for a different purpose i.e. to ensure that the NCLT alone has jurisdiction when it comes to applications and proceedings by or against a CD covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]	SC	04.10.2018
340		Section 60(5) of the Code does not provide for review jurisdiction to the NCLT.	P. Purushothaman Vs. Union Bank of India & Anr. [MA/496/2019 in CP/280/IB/2018]	NCLT, Chennai	04.06.2019
341		The prayer to recall and cancel NCLTs own order of admission of CIRP would not come within the purview of section 60 of the Code. Moreover, the order of admission of CIRP is an appealable order under section 32 of the Code.	Vistar Financiers Pvt. Ltd. Vs. Datre Corporation Ltd. [CA No. 209 of 2018 in CP (IB) No. 441/KB/2017]	NCLT, Kolkata	22.06.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
342		The AA is empowered to direct the ex-directors not to leave the country without its prior permission.	Amandeep Singh Bhatia & Ors. Vs. Vitol S.A. & Anr. [CA (AT) (Ins.) No. 502 of 2018]	NCLAT	30.08.2018
343		There is no bar in the Code against filing of two applications under section 7 simultaneously, against the principal borrower as well as the corporate guarantor or against both the guarantors. However, once for same set of claim, application under section 7 filed by the FC is admitted against one of the CDs (i.e. principal borrower or corporate guarantor), second application by the same FC for same set of claim and default cannot be admitted against the other CD (i.e. corporate guarantor or the principal borrower).	Vishnu Kumar Agarwal Vs. Piramal Enterprises Ltd. [CA (AT) (Ins.) 346 & 347 of 2018]	NCLAT	08.01.2019
344		The AA has no jurisdiction to pass any order with regard to any matter pending before the court of criminal jurisdiction.	Prasad Gempex Vs. Star Agro Marine Exports Pvt. Ltd. & Anr. [CA (AT) (Ins.) 469 of 2019]	NCLAT	02.05.2019
345		NCLT is not a court subordinate to the HC and hence as prohibited by the provisions of section 41(b) of the Specific Relief Act, 1963, no injunction can be granted by the HC against a CD from institution of proceedings in NCLT.	Jotun India Pvt. Ltd. Vs. PSL Ltd. [CP Nos. 434, 1048, 878 of 2015 & 256 and 392 of 2016]	HC, Bombay	05.01.2018
	61	Appeals and Appellate Authority			
346		There is a sea of difference between 'erroneous exercise of jurisdiction' or 'lack of jurisdiction' by a tribunal. The erroneous or failure to exercise jurisdiction by a tribunal is a ground which can be effectively be taken before the Appellate Authority.	SEL Manufacturing Company Ltd. & Anr. Vs. Union of India & Ors. [CWP No. 9131 of 2018]	HC, Punjab and Haryana	01.05.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
347		As per sub-section (3) of section 61 of the Code, an appeal is required to be filed within 30 days and the NCLAT has been empowered to condone delay not exceeding 15 days, if satisfied on the ground mentioned in the petition for condonation of delay. It was held that NCLAT has no jurisdiction to condone the delay beyond 45 days.	Custodial Services (India) Pvt. Ltd. Vs. Metafilms (India) Ltd. [CA (AT) (Ins.) No. 183 of 2017]	NCLAT	16.11.2017
	63	Civil Court not to have jurisdiction			
348		Sections 63 and 231 of the Code create a bar on the jurisdiction of the Civil Court in respect of any matter in which the AA and NCLAT has jurisdiction under the Code and the AA under the Code is competent to pass any order.	GE Power India Ltd. Vs. NHPC Ltd. [CS (COMM) 140/2020 & I.A. 4016/2020]	HC, New Delhi	26.06.2020
349		If the questions raised in the suits arise out of or in relation to insolvency resolution, the NCLT will have jurisdiction to entertain the same. The jurisdiction of the HC will also be barred by section 231 of the Code.	Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No.16061/2018 and 16065/2018]	HC, New Delhi	22.02.2019
	64	Expeditious disposal of applications			
350		Section 64 makes it clear that the timelines are to be adhered to by the NCLT and NCLAT as they are of great importance, and reasons must be recorded by either the NCLT or NCLAT, if the matter is not disposed of within the time limit specified.	Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta and Ors. [Civil Appeal Nos. 9402 to 9405 of 2018]	SC	04.10.2018
351		The strict adherence of the timelines is of essence to both the triggering process and the insolvency resolution process.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. [Civil Appeal No. 9405 of 2017]	SC	21.09.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	65	Fraudulent or malicious initiation of proceedings			
352		Though section 65 provides for penal action against initiating CIRP with a fraudulent or malicious intent, the same cannot be construed to mean that if an application is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution.	Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd. [CA (AT) (Ins.) No. 99 of 2020]	NCLAT	16.07.2020
353		<p>There is nothing on record to suggest that the corporate applicant has suppressed any fact or has not come with the clean hands. The AA has also not held that the application has been filed by the corporate applicant 'fraudulently' or 'with malicious intent' for any purpose other than for the resolution process or liquidation or that the voluntary liquidation proceedings have been initiated with the intent to defraud any person. In absence of any such reasons recorded by the AA, the impugned order of AA was not be upheld.</p> <p>Further, as the AA before imposing penalty under section 65 has not given nor served any notice to the corporate applicant recording its <i>prima facie</i> view and intent to punish the corporate applicant, therefore, the impugned order of AA cannot be upheld as being passed in violation of rules of natural justice.</p>	Unigreen Global Pvt. Ltd. Vs Punjab National Bank and Ors. [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	66	Fraudulent trading or wrongful trading			
354		The AA had allowed the application under sections 66, 43 and 45 of the Code and ordered that the mortgaged properties be vested with the CD. On appeal, the NCLAT noted that the mortgages were made in favour of the banks and financial institutions by the CD in the ordinary course of business. Further, in absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA.	Axis Bank Ltd. Vs. Anuj Jain [CA (AT) (Ins.) No. 243 of 2018 and Ors.]	NCLAT	01.08.2019
	70	Punishment for misconduct in course of CIRP			
355		Despite directions of handing over the CD to the RP, the business head and statutory auditor did not extend any co-operation for handing over possession of the CD to the RP. Hence, a penalty of Rs. 10 lakh each was imposed under section 70 of the Code.	Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018]	NCLT, Mumbai	28.03.2019
	196	Powers and functions of Board			
356		IBBI can monitor the performance of the IPs and in appropriate cases, may pass any direction as may be required for compliance of the provisions of the Code.	IBBI Vs. Wig Associates Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 415 of 2018]	NCLAT	01.08.2018
357		IBBI cannot under section 196, directly or indirectly regulate the manner of exercise of commercial wisdom by FCs during the voting on resolution plan.	K. Sashidhar Vs. Indian Overseas Bank & Ors. [Civil Appeal No. 10673 of 2018 with other CAs]	SC	05.02.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	220	Appointment of disciplinary committee			
358		If there is any complaint against the IP, then IBBI is competent to constitute a disciplinary committee and have the same investigated from an investigating authority as per the provision of section 220 of the Code. If, after investigation IBBI finds that a criminal case has been made out against the IP, then IBBI has to file a complaint in respect of the offences committed by him.	Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/2017]	NCLT, New Delhi	22.09.2017
359		An appeal can only be entertained against an order passed by the AA. However, no appeal is maintainable against the order passed by the IBBI including its disciplinary committee.	Bhavna Sanjay Ruia Vs. IBBI [CA (AT) (Ins.) No. 341 of 2019]	NCLAT	08.04.2019
360		Once a disciplinary proceeding is initiated by IBBI on the basis of evidence on record, IBBI has to close the proceeding or pass appropriate orders in accordance with law. The AA cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the AA.	IBBI Vs. Rishi Prakash Vats & Ors. [CA (AT) (Ins.) No. 324 of 2019]	NCLAT	11.07.2019
361		Since the remuneration quoted by the IRP being quite exorbitant, the matter was referred to IBBI for taking appropriate action/remedial measure against the proposed IRP, including disciplinary action, if any, as deemed fit.	Shrikrishna Rail Engineers Pvt. Ltd. Vs. Madhucon Projects Ltd. [CP(IB) SR No. 4322/9/HDB/2017]	NCLT, Hyderabad	22.11.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	227	Power of Central Government to notify financial sector providers, etc.			
362		<p>The RBI filed an application under section 227 and 239 of the Code read with rule 5 and 6 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 for insolvency resolution of Dewan Housing Finance Corporation Ltd. (DHFL), which was admitted by NCLT, Administrator was appointed and moratorium imposed. The HC restrained DHFL from making any further payments to any unsecured creditors and secured creditors except in cases where payments are to be made on a <i>pro-rata</i> basis to all secured creditors out of its current and future receivables.</p> <p>The fixed deposit holders aggrieved by the orders of the HC restraining from making any payments towards their fixed deposits, challenged the order of the HC before SC. The SC held that since the depositors are being represented by the authorised representative before the CoC, they are free to raise all points and contentions before the CoC, the Administrator, and if necessary, before the AA.</p>	Vinay Kumar Mittal & Ors. Vs. Dewan Housing Finance Corporation Ltd. & Ors. [Civil Appeal No. 654 to 660 of 2020]	SC	31.01.2020
	231	Bar of jurisdiction			
363		The jurisdiction of the HC will also be barred by section 231 of the Code which provides that no Civil Court shall have jurisdiction in respect of any matter in which the AA is empowered, by or under, the Code to pass any order.	Liberty House Group PTE Ltd. Vs. State Bank of India & Ors. [CS (COMM) 1246 /2018 and IAs No. 16056/2018 and 16060/2018 and CS (COMM) 1247/2018 and IAs No.16061/2018 and 16065/2018]	HC, New Delhi	22.02.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
	236	Trial of offences by Special Court			
364		Before referring any matter to IBBI or the Central Government, the AA is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and, if satisfied, may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under section 236 of the Code for alleged offence under section 74(3) or any other provision under Chapter VII of Part II of the Code and for punishment under section 447 of the Companies Act, 2013.	Committee of Creditors of Amtek Auto Ltd. through Corporation Bank Vs. Dinkar T. Venkatasubramanian & Ors. [CA (AT) (Ins.) No. 219, 442 & 443 of 2019]	NCLAT	16.08.2019
365		There is complete bar of trial of offences in the absence of filing of a complaint by IBBI as is evident from a perusal of sub-sections (1) and (2) of section 236 the Code. Therefore, a complaint by a former director with the police would not be maintainable and competent as the complaint is not lodged by IBBI.	Alchemist Asset Reconstruction Co. Ltd. Vs. Hotel Gaudavan Pvt. Ltd. [CP/CA. No. (IB)23(PB)/2017]	NCLT, New Delhi	22.09.2017
	238	Provisions of this Code to override other laws			
366		An acknowledgement of debt interrupts the running of prescription and that it does not create a new right but only extends the period of limitation.	Yogeshkumar Jashwantlal Thakkar Vs. Indian Overseas Bank and Anr. [CA (AT) (Ins.) No. 236 of 2020]	NCLAT	14.09.2020
367		The accounting conventions cannot supersede any express provisions laid down in the specific law on the subject.	Vijay Kumar V Iyer Vs. Bharti Airtel Ltd. and Ors. [CA (AT) (Ins.) No. 530 & 700 of 2019]	NCLAT	13.07.2020
368		When it comes to any clash between the Maharashtra Housing and Area	Rajendra K. Bhutta Vs. Maharashtra Housing and Area	SC	19.02.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		Development Act, 1976 and the Code, on the plain terms of section 238, the Code must prevail.	Development Authority and Anr. [Civil Appeal No. 12248 of 2018]		
369		Section 238 of the Code prevails over section 421 of the Code of Criminal Procedure, 1973.	Ajay Kumar Bishnoi Vs. Tap Engineering [Crl OP(MD) No. 34996 and Ors. of 2019]	HC, Madras	09.01.2020
370		The Code will override the provisions of Maharashtra State Electricity Regulatory Commission Transmission Open Access Regulations, 2005 in terms of section 238 of the Code.	Maharashtra State Electricity Transmission Co. Ltd. Vs. Sri City Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 1401 of 2019]	NCLAT	03.02.2020
371		Section 61(2) of the Code will prevail over section 5 of the Limitation Act, 1963 by virtue of section 238 of the Code.	Radhika Mehra Vs. Vaayu Infrastructure LLP & Ors. [CA (AT) (Ins.) No. 121 of 2020]	NCLAT	30.01.2020
372		Proceedings under Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 will not extend the period of limitation since those proceedings are independent and as per section 238, the Code will have overriding effect on other laws.	Bimalkumar Manubhai Savalia Vs. Bank of India and Anr. [CA (AT) (Ins.) No. 1166 of 2019]	NCLAT	05.03.2020
373		The objective of PMLA, being distinct from the purposes of the Recovery of Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and the Code, the latter three legislations do not prevail over the former. They must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other.	The Deputy Director, Enforcement Directorate Vs. Axis Bank & Ors. [CRL.A.143/2018 & Crl.M.A. 2262/2018]	HC, New Delhi	02.04.2019
374		CIRP cannot be equated with winding up proceedings and hence no prior consent of the Central Government under the Tea Act, 1953 would be required for initiation of the	Duncans Industries Ltd. Vs. A. J. Agrochem [Civil Appeal No. 5120 of 2019]	SC	04.10.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		proceedings under section 7 or 9 of the Code as it overrides the said statute.			
375		Even by a process of harmonious construction, Real Estate (Regulation and Development) Act, 2016 and the Code must be held to co-exist, and, in the event of a conflict, the Code shall prevail.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) No.43 of 2019 and other petitions]	SC	09.08.2019
376		The Maharashtra Relief Undertakings (Special Provisions Act), 1958 cannot stand in the way of the CIRP under the Code.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [CA No. 8337-8338 of 2017]	SC	31.08.2017
377		Given section 238 of the Code, it is obvious that the Code will override anything inconsistent contained in any other enactment, including the Income-tax Act, 1961.	Pr. Commissioner of Income Tax Vs. Monnet Ispat and Energy Ltd. [SLP No. 6483/2018]	SC	10.08.2018
378		Section 238 provides overriding effect of Code over the provisions of the other Acts, if any of the provisions of an Act is in conflict with the provisions of the Code.	Edelweiss Asset Reconstruction Company Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Ins.) 169 to 173 of 2017]	NCLAT	14.12.2018
379		The <i>non-obstante</i> clause contained in section 238 of the Code will not override the Advocates Act, 1961 as there is no inconsistency between section 9 read with the AA Rules and Forms, and the Advocates Act, 1961.	Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd. [Civil Appeal No. 15135 of 2017 with other appeals]	SC	15.12.2017
380		Inter-se agreement between the FCs cannot override the express provisions of the Code nor can take away the right of any creditor to file application under section 7 of the Code.	Indian Overseas Bank Vs. Pearl Vision Pvt. Ltd. [CP No (IB)-419(PB)/ 2018]	NCLT, New Delhi	12.10.2018
381		The overriding effect of section 238 of the Code will not have any bearing over the asset of the workmen lying in the possession of the CD because that asset will not be considered as part of the liquidation estate, moreover, to	Precision Fasteners Ltd. Vs. Employees Provident Fund Organization [MA 576 and 752/2018 in C.P.(IB) 1339(MB)/2017]	NCLT, Mumbai	12.09.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		apply section 238 over any other law for the time being in force, the other law must be inconsistent with the provisions of the Code.			
382		Section 238 of the Code will apply in case there is an inconsistency between the Code and the Arbitration and Conciliation Act, 1996.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. [Civil Appeal No. 21824 & 21825 of 2017]	SC	14.08.2018
383		The company petition pending before the HC cannot be proceeded with further, in view of section 238 of the Code. The writ petitions that are pending before the HC have also to be disposed of in light of the fact that proceedings under the Code must run their entire course.	Jaipur Metals & Electricals Employees Organisation Vs. Jaipur Metals & Electricals Ltd. & Ors. [Civil Appeal No. 12023 of 2018 arising out of SLP (Civil) No. 18598 of 2018]	SC	12.12.2018
384		The statutory right of an FC satisfying the requirements of section 7 of the Code to trigger CIRP cannot be made subservient to adjudication of an application under sections 241 and 242 of the Companies Act, 2013. The Code is supreme so far as triggering of CIRP and same cannot be eclipsed by taking resort to remedies available under ordinary law of the land.	Jagmohan Bajaj Vs. Shivam Fragrances Pvt. Ltd. & Anr. [CA (AT) (Ins.) No. 428 of 2018]	NCLAT	14.08.2018
385		FC can proceed simultaneously under the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 as well as under the Code but section 238 of the Code will prevail over any other law for the time being in force.	Punjab National Bank Vs. Vindhya Cereals Pvt. Ltd. [CA (AT) (Ins.) No. 854 of 2019]	NCLAT	26.02.2020
	238A	Limitation			
386		Upon perusal of the documents on record it was observed that there was acknowledgement of debt in the balance sheet of the CD and that it was well-settled through various judgments of the SC that an	Syndicate Bank Vs. Bothra Metals and Alloys Ltd. [CP (IB) No. 2579/MB.IV/ 2019]	NCLT, Mumbai	06.07.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		acknowledgement in the balance sheet of the company satisfies the requirements of section 18 of the Limitation Act, 1963, leading to a fresh period of limitation commencing from each such acknowledgement.			
387		The provisions of the Limitation Act, 1963 <i>vide</i> section 238A of the Code will be applicable to all non-performing asset cases provided they meet the criteria of Article 137 of the Schedule to the Limitation Act, 1963 and that the extension of the period of limitation can only be done by way of application of section 5 of the Limitation Act, 1963, if any case for condonation of delay is made out.	Jagdish Prasad Sarada Vs. Allahabad Bank [CA (AT) (Ins.) No. 183 of 2020]	NCLAT	28.08.2020
388		The application under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963 and any application filed by the FC for initiation of the CIRP beyond three years from the date of the CDs account being classified as non-performing asset, would be barred by limitation.	Invent Assets Securitization and Reconstruction Pvt. Ltd. Vs. Xylon Electrotech Pvt. Ltd. [CA (AT) (Ins.) No. 677 of 2020]	NCLAT	11.08.2020
389		As acknowledgement of liability was made after a lapse of about five years, a fresh period of limitation will not accrue since the period of limitation was three years. Since the acknowledgement was made much later than the prescribed period of limitation, the petitioner cannot claim the benefit of section 18 of the Limitation Act, 1963, which provides a fresh period of limitation from the time when the acknowledgement was so made.	Jayprakash Vyas Vs. Prabhat Steel Traders Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 1238 of 2019]	NCLAT	24.07.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
390		<p>Any application filed beyond 3 years from the date of default is barred by limitation. CIRP of the CD was set aside on the ground that the application filed under section 7 of the Code is barred by limitation, with the following observations:</p> <p>(a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation;</p> <p>(b) CIRP is not intended to be adversarial to the CD but is aimed at protecting the interests of the CD;</p> <p>(c) intention of the Code is not to give a new lease of life to debts which are time-barred;</p> <p>(d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act, 1963, and is, therefore, 3 years from the date when right to apply accrues;</p> <p>(e) trigger for initiation of CIRP by a FC is default on the part of the CD, that is to say, the right to apply under the Code accrues on the date when default occurs;</p> <p>(f) default referred to in the Code is that of actual non-payment by the CD when a debt has become due and payable;</p> <p>(g) if default had occurred over 3 years</p>	<p>Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. [Civil Appeal No. 6347 of 2019]</p>	<p align="center">SC</p>	<p align="center">14.08.2020</p>

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		<p>prior to the date of filing of the application, the application would be time-barred save and except in those cases where, on facts, the delay in filing may be condoned; and</p> <p>(h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act, 1963 does not apply to the application under consideration.</p>			
391		Since the CD had acknowledged the debt in 2015 in a letter sent to the OC, the application is well within the limitation period of 3 years.	Bango Industries Vs. U T Ltd. [CP (IB) No. 08/KB/2018]	NCLT, Kolkata	19.04.2018
392		The SC has taken <i>suo motu</i> cognizance of the situation arising out of COVID-19 and resultant difficulties that may be faced by litigants regarding the period of limitation prescribed under general law of limitation or under Special Laws (both Central and/or State). The SC, exercising its power under Article 142 read with Article 141 of the Constitution, has ordered period of limitation in all such proceedings, irrespective of the prescribed period under general law or special laws shall stand extended w.e.f. 15/03/2020 till further orders to be passed by the SC and also declared that the order will be binding on all courts/tribunals and authorities.	In Re: Cognizance for Extension of Limitation [Suo Moto Writ (Civil) No. 3 of 2020]	SC	06.05.2020
393		For the purposes of computing the period of limitation of an application under section 7 of the Code, the date of default is the date on which the accounts of CD were declared non-performing asset (NPA).	V. Padmakumar Vs. Stressed Assets Stabilisation Fund (SASF) & Anr. [CA (AT) (Ins.) No. 57 of 2020]	NCLAT	12.03.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
394		An application which is filed under section 7 of the Code will fall within Article 137 instead of Article 62 of the Limitation Act, 1963.	Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952 of 2019]	SC	18.09.2019
395		The period of lockdown ordered by the Central/State Governments including the period as may be extended either in whole or part of the country, where the registered office of the CD may be located, shall be excluded for the purpose of counting of the period for CIRP under section 12 of the Code in all cases where CIRP is pending before any AA or in appeal before NCLAT.	Suo Moto [CA (AT) (Ins.) No. 01 of 2020]	NCLAT	30.03.2020
396		From the minutes of meeting of the Board of Directors, it can be clearly stated that there was an acknowledgement of debt by the CD as on the relevant date and the application for initiating CIRP was not time barred.	Rupesh Kumar Gupta Vs. Punjab National Bank & Anr. [CA (AT) (Ins.) No. 1119 of 2019]	NCLAT	28.02.2020
397		A judgement or a decree for recovery of money by the Civil Court/Debt Recovery Tribunal cannot shift forward the date of default for the purposes of limitation. It was also held that action taken by the FC under section 13(2) or (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 is not a civil proceeding or appeal or revision, and thus the period cannot be excluded for counting the limitation period.	Ishrat Ali Vs. Cosmos Cooperative Bank Ltd. & Anr. [CA (AT) (Ins.) No. 1121 of 2019]	NCLAT	12.03.2020
398		The relevant date is the date of default and article 137 of the Limitation Act, 1963 is applicable, for application under section 7 or 9 of the Code. It was also clarified that though a 'decree-holder' is covered in the definition of 'creditor' under section	Digamber Bhondwe Vs. JM Financial Asset Reconstruction Company Ltd. [CA (AT) (Ins.) No. 1379 of 2019]	NCLAT	05.03.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		3(10) of the Code, he cannot initiate CIRP under section 7 and 9 as FC and OC do not include a 'decree-holder'.			
399		The application was filed after 3 years of the cut-off period of default and there was nothing on record to suggest that there was acknowledgement of the debt within 3 years in terms of section 18 of the Limitation Act, 1963. Thus, the application was barred by limitation.	Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 177 of 2019 & I.A. Nos. 3392 & 3542 of 2019]	NCLAT	07.02.2020
400		A decree passed by the DRT or any suit, cannot shift the date of default. The decree passed by the DRT only suggests that debt has become due and payable.	G Eswara Rao Vs. Stressed Assets Stabilisation Fund & Anr. [CA (AT) (Ins.) No. 1097 of 2019]	NCLAT	07.02.2020
401		The date of coming into force of the Code does not and cannot form a trigger point of limitation for applications filed under the Code.	Sagar Sharma & Anr. Vs. Phoenix ARC Pvt. Ltd. & Anr. [Civil Appeal No. 7673 of 2019]	SC	30.09.2019
402		If there is a delay of more than 3 years from the date of cause of action and no laches on the part of applicant, the applicant can explain the delay. When there is a continuing cause of action, the question of rejecting any application on the ground of delay, does not arise.	Speculum Plast Pvt. Ltd. Vs. PTC Techno Pvt. Ltd. [CA (AT) (Ins.) No. 47 of 2017 and other appeals]	NCLAT	07.11.2017
403		There is nothing on the record that Limitation Act, 1963 is applicable to the Code. The Code is not an Act for recovery of money claim rather it relates to initiation of CIRP.	Neelkanth Township & Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd. [CA (AT) (Ins.) No. 44 of 2017]	NCLAT	11.08.2017
404		The right to apply under the Code accrues only on the date the Code came into effect, that is, on or after 1 st December, 2016 and before this date.	Black Pearls Hotels Pvt. Ltd. Vs. Planet M Retail Ltd. [CA (AT) (Ins.) No. 91 of 2017]	NCLAT	17.10.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
405		If the default has occurred over 3 years prior to the date of filing of the application, it would be barred under Article 137 of the Limitation Act, 1963, save and except in those cases where, in the facts of the case, section 5 of the said Limitation Act, 1963 may be applied to condone the delay in filing such application. Section 238A of the Code, being clarificatory of the law and being procedural in nature is retrospective in effect.	B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017]	SC	11.10.2018
	240	Power to make regulations			
406		IBBI may make regulations, but it should be consistent with the Code and rules made thereunder, to carry out the provisions of the Code. The provisions made by IBBI cannot override the provisions of the Code, nor can it be inconsistent with the Code.	Central Bank of India Vs. RP of the Sirpur Paper Mills Ltd. & Ors. [CA (AT) (Ins.) No. 526 of 2018]	NCLAT	12.09.2018
407		Section 240 is the general regulation making power of the IBBI and section 240(1) does not impose any restraints on the powers of the IBBI, except that regulations should be consistent with the Code and the rules thereunder and should be for the purposes of carrying out the provisions of the Code.	CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]	HC, Madras	28.07.2020
	252	Amendments of Act 1 of 2004 (The Sick Industrial Companies (Special Provisions) Repeal Act, 2003)			
408		It was held that the power to reject the reference, on the ground that the company is not an industrial unit, does not lie with the Registrar or the Secretary of the Board for Industrial and Financial Reconstruction. Therefore, the reference was deemed to be pending before BIFR on 01.11.2016 (date of commencement of the Code) and the company can	Bank of New York Mellon London Branch Vs. Zenith Infotech Ltd. [Civil Appeal No. 3055 of 2017]	SC	21.02.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		seek its remedies under the provisions of section 252 of the Code.			
	255	Amendments of Act 18 of 2013 (The Companies Act, 2013)			
409		In a case where a winding up proceeding has been initiated against a CD by the High Court or Tribunal or liquidation order has been passed in respect of the CD, no application under section 10 can be filed by the corporate applicant in view of the ineligibility under section 11(d) of the Code.	Unigreen Global Pvt. Ltd. Vs. Punjab National Bank [CA (AT) (Ins.) No. 81 of 2017]	NCLAT	01.12.2017
		Rules / Regulations under the Code			
410	Rule 6 of AA Rules	The trade union collectively represents its members who are workers, to whom dues may be owed by the employer, which are debts owed for services rendered by each individual workman. If each workman files a separate cause of action, the fact that a joint petition could be filed under rule 6 of AA Rules would be ignored.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamapat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 20978 of 2017]	SC	30.04.2019
411	Rule 8 of AA Rules	In the appeal before SC, a question as to whether, in view of rule 8 of the AA Rules, the NCLAT could utilise the inherent power under rule 11 of the National Company Law Appellate Tribunal Rules, 2016, to allow compromise before it by the parties after admission of the matter. The SC upheld the views of NCLAT that after admission, inherent power could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms.	Lokhandwala Kataria Construction Pvt. Ltd. Vs. Nisus Finance and Investment Managers LLP [Civil Appeal no. 9279 of 2017]	SC	24.07.2017

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
412	Regulation 33 of Liquidation Process Regulations	The proper interpretation on clauses (a) and(b) of the regulation 33 of Liquidation Process Regulations would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately. Otherwise, the purpose of Regulation would be defeated if time is required to be spent in filing an application and taking permission, because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value, if not sold immediately.	Alchemist Asset Reconstruction Co. Ltd. Vs. Moser Baer India Ltd. [CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017]	NCLT, New Delhi	16.07.2019
413	Regulation 30A(1) of CIRP Regulations	Regulation 30A(1) of the CIRP Regulations is not mandatory but directory for the simple reason that on the facts of a given case, an application for withdrawal may be allowed in exceptional cases even after issue of invitation for expression of interest under regulation 36A of the said Regulations.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. [WP (Civil) Nos. 99, 100, 115, 459, 598, 775, 822, 849, and 1221 of 2018, SLP (Civil) No. 28623 of 2018 and WP (Civil) 37 of 2019]	SC	25.01.2019
414	Regulation 7(2)(ca) of IP Regulations	The Code contains adequate safeguards to ensure that the Parliament effectively supervises all rules and regulations with the power to modify or even annul the same and that regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of <i>quid pro quo</i> .	CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]	HC, Madras	28.07.2020
415	Regulation 36A of CIRP Regulations	Section 25(2)(h) inserted on 23.11.2017 by way of amendment does not contemplate floating of any Expression of Interest. IBBI taking upon itself the task of	State Bank of India Vs. Su Kam Power Systems Ltd. [(IB)-540(PB)/2017]	NCLT, New Delhi	05.09.2018

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		<p>framing regulation 36A of CIRP Regulations, using the expression 'invitation of expression of interest' along with Form 'G' amounts to assumption of power and beyond the competence of IBBI. The source of power to frame regulations under the Code is drawn from section 240 of the Code.</p> <p>[Note: This order has since been stayed by the Delhi High Court vide order dated 05.10.2018 in the matter of IBBI Vs. State Bank of India & Ors. (LPA 566/2018)]</p>			
MISCELLANEOUS					
Fee of IRP/IPE					
416		For performance of duty of 27 days as IRP, a fee of Rs. 5 lakh is excessive. An IPE is not eligible or entitled to receive any fees or any cut or commission from the fees of the IRP.	Bhasin Infotech and Infrastructure Pvt. Ltd. Vs. Gurpreet Singh [CA (AT) (Ins.) No. 491 of 2018]	NCLAT	13.12.2018
Suspended management's locus standi					
417		The suspended management has no <i>locus standi</i> to move an application to start business operations, when the CD is under the control of the liquidator. There is no statutory provision which allows the CD to run the company till it is sold as a going concern.	Himanshu Pratulchandra Varia Vs. Sunil Kumar Agarwal & Ors. [IA 347 of 2020 in IA 362 of 2019 in CP(IB)No. 149/NCLT/AHM/ 2017]	NCLT, Ahmedabad	22.07.2020
Exemption of lockdown period					
418		The period of CIRP during promulgation of lockdown will be exempted pursuant to the notification of the Central Government read with new amendment which took place in the CIRP Regulations of the IBBI.	Finquest Financial Solutions Pvt. Ltd. Vs. Ballarpur Industries Ltd. [IA No. 1175 of 2020 in CP(IB) No. 2915/2019]	NCLT, Mumbai	15.09.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
Right of defaulted promoters of MSMEs					
419		Since CD is an MSME, even if the promoters/directors have been declared as wilful defaulters, they can apply under the provisions of section 230 of the Companies Act, 2013 as they are exempted from section 29A of the Code.	Marutham Steel Rolling Mills Pvt. Ltd. [MA/1219/2019 in IBA/264/2019]	NCLT, Chennai	03.07.2020
Bar of filing suits inapplicable under Code					
420		The bar in filing of suit in terms of section 69(2) of the Indian Partnership Act, 1932 will not apply on applications filed under the Code as they are not 'suits' but are only 'proceedings'.	Shree Dev Chemicals Corporation Vs. Gammon India Ltd. [CP(IB)No 3637/MB.IV/2018]	NCLT, Mumbai	16.07.2020
Fairness of RP					
421		The RP may not be currently in employment of the FC or drawing salary under it but the fact remains that on account of services rendered in past, an element of loyalty is there which cannot be ignored. Accordingly, there is a possibility that the RP would not be fair in his working.	Kanakabha Ray Vs. Narayan Chandra Saha & Ors. [CA (AT) (Ins.) No. 687 of 2020]	NCLAT	18.08.2020
Power of AA to review					
422		The power to review is not an inherent power under rule 11 of the NCLT Rules, 2016, and hence, a review jurisdiction cannot be pressed into service as an appellate jurisdiction.	Deepakk Kumar Vs. Phoenix ARC Pvt. Ltd. and Anr. [CA (AT) (Ins.) No. 848 of 2019]	NCLAT	17.09.2020
Fixation of fee of RP					
423		Fixation of fee of the RP is not a business decision depending upon the commercial wisdom of the CoC.	Devarajan Raman Vs. Bank of India Ltd. [CA (AT) (Ins.) No. 646 of 2020]	NCLAT	30.07.2020
Power of HC in writ jurisdiction					
424		There is no absolute bar on the HC to entertain an application under Article 227 of the Constitution, when a challenge is made to an order, which is otherwise amenable to be challenged	Atin Arora Vs. Oriental Bank of Commerce [C.O. No. 3894 of 2019 with CAN 12340 of 2019]	HC, Calcutta	13.08.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		by way of an appeal before the appellate forum if there is a patent error or miscarriage of justice apparent from the record.			
Notes on Clauses and construction of provisions					
425		There is no doubt whatsoever that Notes on Clauses are an important aid to the construction of sections of the Code as they show what the drafting committee had in mind when such provisions were drafted.	Vijay Kumar Jain Vs. Standard Chartered Bank & Ors. [Civil Appeal No. 8430 of 2018 with WP (C) No.1266 of 2018]	SC	31.01.2019
FC's obligation to meet cost of processes					
426		For effective continuation of CIRP, the FC constituting the CoC has to contribute to the expenses, fee and other cost of the process, otherwise the whole process would come to a halt and cause unnecessary delay.	Reliance Commercial Finance Ltd. Vs. Noble Resourcing Business and Solution Pvt. Ltd. [(IB)-494(PB)/2017]	NCLT, New Delhi	12.04.2019
Power of IBBI					
427		The powers of IBBI to frame regulations with regard to the fee payable by IPs and IPEs cannot be questioned if the power is used for carrying out the purposes of the Code.	CA. Venkata Siva Kumar Vs. IBBI & Ors. [W.P. No. 9132 of 2020 and W.M.P. No. 11134 of 2020]	HC, Madras	28.07.2020
Ex-employee of FC becoming IRP					
428		Substitution of RP on the apprehension of bias was challenged before the SC on the premise that the proposed IRP was an <i>ex-employee</i> of the FC in service for over 39 years and was drawing pension from the FC. It was observed that the approach adopted by the NCLAT was incorrect that merely an RP who was in the service of the FC and was getting pension, was disentitled to be the IRP. However, while directing the AA to appoint a new RP, it further observed that the change of the RP shall not reflect adversely upon the integrity of the	State Bank of India Vs. Metenere Ltd. [Civil Appeal No. 2570 of 2020]	SC	19.08.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		concerned RP who was replaced. It was also clarified that as the impugned order does not reflect a correct approach, the same shall not be treated as a precedent.			
Dispensation of justice by NCLAT					
429		The NCLAT closed its functioning as one of its employees was suffering from Covid-19. On appeal, the SC observed that the doors of justice cannot be closed and that NCLAT should find out a way for online hearing in such a situation. While dismissing the appeal, it requested the NCLAT to start hearing the matter on interim stay, immediately on reopening.	Marathe Hospitality Vs. Mahesh Surekha & Ors. [SLP (C) No(s). 8139 of 2020]	SC	10.07.2020
Common RP					
430		The AA will admit applications under section 7 filed against five CDs and appoint a common RP and the project will be completed in one go by initiating a consolidated resolution plan for total development.	Edelweiss Asset Reconstruction Company Ltd. Vs. Sachet Infrastructure Pvt. Ltd. [CA (AT) (Ins.) No. 377-385 of 2019]	NCLAT	20.09.2019
Consolidation of assets and liabilities					
431		The AA ordered that the assets and liabilities of the Videocon group companies should be substantively consolidated due to common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined accounts, interloping of debts, singleness of economics of units, common FCs and common group of CDs.	State Bank of India & Anr. Vs. Videocon Industries Ltd. & Ors. [MA 1306/2018 in CP Nos. 02-2018 and other applications]	NCLT, Mumbai	08.08.2019

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/Judgement
Penalty for failure to provide information of assets					
432		The AA imposed cost of Rs. 10 lakh on the appellants because they failed to provide any information pertaining to assets, finance and operations of the CD and did not extend their cooperation to RP for taking control and custody despite directions under section 19.	Asset Reconstruction Company (India) Ltd. Vs. Shivam Water Treaters Pvt. Ltd. [CP(IB) 1882(MB)/2018]	NCLT, Mumbai	28.03.2019
Penalty for initiating CIRP of functional company					
433		Starting of CIRP against a functional company is a serious matter and parties cannot be allowed to play hide and seek. It imposed a cost of Rs. 5 lakh on the OC and Rs. 2.5 lakh on the son of the director of the OC.	Vinod Mittal Vs. Rays Power Experts & Anr. [CA (AT) (Ins.) No. 851 of 2019]	NCLAT	18.11.2019
Penalty for abuse of power by RP					
434		The action or rather inaction by the RP in not taking a decision on the claim is his abuse of the power under the Code, and contrary to justice and public policy. The RP was directed to pay the amount claimed by him along with a cost of one lakh rupees to the applicant.	BMW India Financial Services Pvt. Ltd. Vs. SK Wheels Pvt. Ltd. [MA No. 2319/2019 in CP (IB) 4301/ 2018]	NCLT, Mumbai	16.10.2019
Penalty for non-implementation pf approved plan					
435		AA imposed a cost of Rs. 10 lakh because the appellant did not implement the resolution plan which was approved by the CoC and the AA.	Ingen Capital Group LLC Vs. Ramkumar S.V. Anr. [CA (AT) (Ins.) No. 795 of 2018]	NCLAT	30.04.2019
Penalty for non-cooperation with RP					
436		The AA slapped a cost of Rs. 5 lakh on the delinquent officer of the Directorate of Economic Offences, for not cooperating with RP as directed by the HC. The NCLAT noted that though the conduct of officer for not extending cooperation may be violative of the directions of the HC, however, the same cannot be linked with the order	Directorate of Economic Offences Vs. Binay Kumar Singhania and Ors. [CA (AT) (Ins.) No.1361-1362 of 2019]	NCLAT	05.02.2020

Section-wise Jurisprudence on IBC upto 30.09.2020

Sl. No.	Section	Dictum	Citation	Forum	Date of Order/ Judgement
		of liquidation. Therefore, the NCLAT observed that while passing order of liquidation, the AA exceeded its jurisdiction in slapping the appellant with liability of costs.			

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