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LEGAL INSIGHTS:
RESTRUCTURING & NCLT

RECENT IMPORTANT LEGAL DEVELOPMENT

1. **PENDENCY OF PROCEEDINGS BEFORE DRT UNDER RDDB ACT, SARFAESI ACT, NOT A BAR AGAINST INITIATION OF CIRP PROCEEDINGS.**

In the case titled as ***Mr. Amar Vora v. City Union Bank Ltd. & Anr.*** [Company Appeal (AT) (CH) (Ins) 130 / 2022], it was held by the Hon'ble National Company Law Appellate Tribunal, Chennai Bench as:

9. In view of the above provision of law the financial Creditor/ Operational Creditor/Corporate Persons can file an application under Section 7 ,9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws. In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.

2. **BANK'S INTERNAL CLASSIFICATION OF DEBT AS NPA, WON'T DETERMINE LIMITATION UNDER IBC.**

In the case titled as ***B. Prashanth Hegde v. State of India & Anr.*** [Civil Appeal No. 477 / 2022], it was held by the Hon'ble Supreme Court of India as:

50. In our view, how a bank classifies its debt for managing its balance sheet is not a factor determining the starting point of limitation more so, when the debt is restructured and is acknowledged in fresh working capital consortium agreements entered for availing credit facilities. What is relevant is that by virtue of execution of these working *capital consortium agreements the banks got a fresh lease of life for their dues and based on those agreements, new NPA date(s) became relevant as starting point for computing limitation.*

51. In Axis Bank Limited v. Naren Seth and another [2024 1 SCC 679], this Court held that a one-time settlement proposal of the debtor can constitute a valid acknowledgment.

3. RESIDENT WELFARE ASSOCIATION OR HOMEBUYERS' SOCIETY, CANNOT INTERVENE IN INSOLVENCY PETITION AGAINST BUILDER.

In the case titled as ***Elegna Cooperative Housing and Commercial Society Limited v. Edelweiss Asset Reconstruction Company Limited*** [Civil Appeal No. 10261 / 2025] and also in ***Takshashila Heights India Pvt. Ltd. v. Edelweiss Asset Reconstruction Company Limited & Anr.*** [Civil Appeal No. 10012 / 2025], it was held by the Hon'ble Supreme Court of India as:

13.17.In the present case, the appellant Society is neither a financial nor an operational creditor. It is a maintenance society not constituted for insolvency representation. No documentary proof of registration, collective authorisation, or general body resolution has been produced. Membership is automatic and mandatory, negating consensual representation. Reliance on compulsory membership to claim representational authority on behalf of allottees is nothing but a brutm fulmen. Notably, the intervention application was filed only at the appellate stage and not before the NCLT. The Society is not a party to the financial transaction forming the substratum of the Section 7 application. Hence, no statutory right of appeal inheres in the appellant.

13.22 […] A society or Resident Welfare Association, not being a creditor in its own right and not recognised as an authorised representative of allottees under the IBC, has no locus standi to intervene in proceedings arising out a Section 7 petition.

4. **INTEREST CANNOT BE CLAIMED SOLELY ON PARITY WITH OTHER CREDITORS WITHOUT CONTRACTUAL PROOF.**

In the case titled as ***Socrus Bio Sciences Ltd v. Hasti Mal Kacchara Resolution Professional Pushp Ratna Realty Pvt. Ltd.*** [IA 377 (MP) / 2025 in CP (IB) No. 26 (MP) / 2024, it was held by the Hon'ble NCLT, Indore as:

7. On analysis of the judgment of the Hon'ble Supreme Court in Swiss Ribbons Private Limited vs. Union of India and Ors. (2019 SCC Online SC 73), wherein held that financial creditors are clearly distinguishable from operational creditors, and there exists an intelligible differentia between the two categories. Such differentiation bears a direct nexus to the objectives sought to be achieved by the Insolvency and Bankruptcy Code, 2016.

8. The Applicants contention is therefore inapplicable, as the facts and circumstances of the present case do not warrant deviation. Moreover, there is no universal mandate under the doctrine of intelligible differentia requiring equal treatment of all unsecured financial creditors, as priority is determined by the security status and not by the principle of equitable parity.

12. Having regard to the foregoing discussion, this Adjudicating Authority is of the considered view that the Applicants has failed to establish any contractual or documentary basis evidencing entitlement to interest at the rate of 18% or at any rate whatsoever. The principle of equity among creditors, though recognized in Swiss Ribbons Pvt. Ltd. v. Union of India (2019 SCC OnLine SC 73), does not override the statutory requirement of substantiating a financial claim with cogent evidence under Sections 5(8) and 18 of the IBC 2016 read with Regulations 13 and 14 of the IBBI (CIRP) Regulations, 2016.

5. **CONTRACTOR WHO STAYED SILENT DURING CIRP & LIQUIDATION, CANNOT RECLAIM AUCTIONED MACHINERY.**

In the case titled as ***Union of India v. Guruashish Construction Private Limited***. [IA 2259 of 2024 & IA 1041 of 2025] IN [CP (I&BP) (MB) 1061 / 2017], it was held by the Hon'ble NCLT, Mumbai - I as:

48. It is pertinent to note the decision in the case of Reliance Realty Ltd. v. Anup Kumar (Liquidator) and Anr. [2025 IB 877 (NCLAT], by the Hon'ble NCLAT, New Delhi, wherein the Hon'ble NCLAT after taking note of the fact that the assets have already been sold, possession memo prepared, sale certificate issued, and the distribution of proceeds by the Liquidator, held that the liquidation process should not be disrupted and derailed by the Applicant who for no cogent reason had never agitated the issue of ownership of assets lying in the lease premises. The Hon'ble NCLAT also observed that the provisions of IBC enjoin the Liquidator to sale the assets of the Corporate Debtor in a manner that would result in maximization in value, lead to quick recovery for the stakeholders and obviate scope for any necessary delay.

6. **NCLT CAN ORDER FORFEITURE OF ENTIRE DEPOSIT IF PURCHASER OF LIQUIDATION ASSETS DEFAULTS IN PAYMENT.**

In the case titled as ***M/s Shri Karshni Alloys Private Limited v. Ramakrishnan Sadasivan*** [Civil Appeal No. 3625 – 3628 of 2025]] [2025 LiveLaw (SC) 1195], it was held by the Hon'ble Supreme Court of India, as:

19. […] Even on merits, we find that the appellant had no justifiable claim to seek refund of the amounts paid by it, which stood forfeited in keeping with the order passed by the NCLT. This was not a case of a contract between the appellant and the liquidator/stakeholders, whereby the appellant could seek to fall back on Section 74 of the Indian Contract Act,1872. The sale in question was purely under the supervision of the Adjudicating Authority, i.e., the NCLT, and the forfeiture condition stipulated by the

NCLT while granting extension of time cannot be equated with a forfeiture clause in a contract. Having made an offer, coupled with a temporal commitment, which was duly accepted by the NCLT, vide its order dated 22.03.2022, the appellant went before the NCLT and sought extension of time. That extension was granted, saddled with the condition of forfeiture in the event of failure, and was duly accepted and acted upon by the appellant, as already noted supra. […]

7. BANKS CANNOT HOLD THE OTS EARNEST / ADVANCE MONEY, ONCE IT ACCEPTS RESOLUTION PLAN.

In the case titled as ***Bank of India v. Pranav Construction System Private Limited*** **[**IA 2747 of 2025] IN [CP (IB)/ 3923 (MB) 2019], it was held by the Hon'ble NCLT Mumbai, Bench - I, as:

18. It is well-settled that after approval, the Resolution Plan becomes final and binding on all stakeholders, including guarantors, banks, statutory authorities and Government bodies. The Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta,*** *[(2020) 8 SCC 531] held that Section 31 has held that an approved resolution plan has an "absolute binding effect", and no person can assert any residual or past financial claims once the plan is approved. Similarly,* ***in Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta****, [(2021) 7 SCC 209], it was reiterated that once the Resolution Plan is approved, all pre-CIRP rights stand overridden by the plan. Therefore, Bank of India cannot rely on pre-CIRP contractual terms of the OTS to withhold funds after issuance of a No-Dues Certificate under the approved plan.*

8. ONLY COC CAN APPOINT LIQUIDATOR, NCLT'S POWER LIMITED TO REPLACING THE RP.

In the case titled as ***Omkara Asset Construction Private Limited v. Amit Vijay Karia & Anr.*** [Company Appeal (AT) (Ins) No.914 of 2025], it was held by the Hon'ble NCLAT, Delhi, as:

11. […] Now, if the second part of Sec.34(1) and Sec.34(4)(c) is read carefully, it only has authorised the Adjudicating Authority to replace the resolution professional and not to appoint a liquidator. But, the authority to replace the resolution professional is left to the CoC under Sec.27 as per the procedure contemplated therein. Even in terms of Sec.27, the Adjudicating Authority appoints only that RP whom the CoC has chosen, subject only to the confirmation by the Board. Therefore, replacement of RP within the meaning of Sec.34(1) read with Sec.34(4)(c) can be done only as per the procedure contemplated in Sec.27. […]

9. APPEAL AGAINST FORMATION OF COC, NOT A GROUND TO OPPOSE APPOINTMENT OF A NEW RESOLUTION PROFESSIONAL.

In the case titled as ***Bikram Bhadur, Suspended Director of Beoworld Pvt. Ltd. v. Committee of Creditors of Beoworld Pvt. Ltd. & Ors.*** [Company Appeal (AT) (Ins) No. 1432 of 2025], it was held by the Hon'ble NCLAT, Delhi, as:

"5. Under Section 27, it is the CoC which is empowered to replace the Resolution Professional with requisite majority. The CoC which is existing as on date and functioning has passed the resolution for change of the RP which has been approved the impugned order. The mere fact tht appellant is aggrieved by the constitution of the CoC and made a challenge which is pending consideration in this Tribunal cannot be a ground to oppose the appointment of the RP who has the approval under Section 27."

10. SECTION 7 APPLICATION CAN'T BE REJECTED FOR CURABLE DEFECTS IN AFFIDAVIT.

In the case titled as ***Livein Aqua Solutions Private Limited versus HDFC Bank Limited*** [CIVIL APPEAL NO. 11766 OF 2025], it was held by the Hon'ble Supreme Court of India, as:

"17. […] Mere filing of a 'defective' affidavit in support of an application would, however, not render the very application non est and liable to be rejected on that ground as it is neither an incurable nor a fundamental defect.

18. As pointed out by this Court in ***Vidyawati Gupta and others vs. Bhakti Hari Nayak and Others*** *[(2006) 2 SCC 777], rules of procedure are made to further the cause of justice and not to prove a hindrance thereto. Again, in* ***Uday Shankar Triyar vs. Ram Kalewar Prasad Singh and Another*** *[(2006) 1 SCC 75], this Court pointed out that non-compliance with any procedural requirement relating to an application for relief should not entail automatic dismissal or rejection, unless the relevant statute or rule so mandates, and procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. It was further pointed out that procedure, a handmaiden to justice, should never be made a tool to deny justice or perpetuate injustice, by any oppressive or punitive use.*

19. […] However, the NCLAT ought to have asked the respondent-bank to cure the defective affidavit at least at that stage instead of ignoring the same and directing the NCLT to proceed to hear the company petition on merits and in accordance with law. To that extent, the NCLAT was in error.

11. LIABILITY OF PERSONAL GUARANTOR ARISES ONLY UPON DEMAND MADE IN ACCORDANCE WITH GUARANTEE DEED.

In the case titled as ***Canbank Factors Limited v. Sri D. Rama Linga Raju*** [CP (IB) No.44/95/HDB/2024.], it was held by the Hon'ble NCLT. Hyderabad – II, as:

"30. In the ***State Bank of India v. Mr. Deepak Kumar Singhania****, [Company Appeal (AT) (Insolvency) No. 191 of 2025], it was held that where the guarantee has not been invoked, the guarantor shall not be a Debtor and no default can be committed by the guarantor, unless the guarantee is invoked as per the terms of the Deed of Guarantee.*

Thus, the insolvency resolution process against a Guarantor, against whom the debt has not become due, is not understandable.

Para 20. […] "Guarantor with regard to whom guarantee has not been invoked, shall not be a Debtor and no default can be committed by Guarantor, unless guarantee is invoked as per the terms of Deed of Guarantee. Thus, the insolvency resolution process against a Guarantor, against whom debt has not become due, is not understandable."

12. BANKS CANNOT RETAIN ONE COMPANY'S FIXED DEPOSITS FOR GROUP COMPANY'S LOAN.

In the case titled as ***Industrial and Commercial Bank of China Limited v. Anish Niranjan Nanavaty & Ors.*** [Company Appeal (AT) Insolvency No. 69 / 2024], it was held by the Hon'ble NCLAT, Principal Bench, New Delhi, as:

30. In view of our foregoing discussions and conclusions, we are of the view that action of the Bank in not releasing the FD opened by the CD on 27.03.2017 on the pretext that there are dues on Appellant of another Group Company of the CD, i.e. RITL, is unjustified. The letter of lien dated 27.03.2017 as noticed above, authorised the Bank to retain securities for any amount due on the CD, either singly or jointly with another or others. Unless the CD was not part of any facility against which any amount is due, the Bank had no jurisdiction to retain the security. […]

13. COMMITTEE OF CREDITORS CONTINUE TO EXIST TILL RESOLUTION PLAN IS IMPLEMENTED OR LIQUIDATION ORDER IS PASSED.

In the case titled as ***Kalyani Transco v. M/S Bhushan Power And Steel Limited And Others*** [Civil Appeal No. 1808 Of 2020], it was held by the Hon'ble Supreme Court of India, as:

82. We are of the view that the Explanation to clause 2 of Regulation 18 of the IBBI (CIRP) Regulations clarifies the position. It empowers the CoC to hold meetings till either the Resolution Plan is approved under Section 31(1) of the IBC or an order for liquidation is passed under Section 33 of the IBC. It is empowered to decide all the matters except the matters which do not affect the Resolution Plan submitted before the Adjudicating Authority.

83. It may not be out of place to mention that the CoC has a vital interest in the Resolution Plan and that such an interest would continue till the Resolution Plan is actually implemented. It is only after the implementation of the Resolution Plan that payment can be made to the creditors, of their dues, in accordance with the Resolution Plan, which has been approved by the Adjudicating Authority.

14. RESOLUTION PLAN CAN'T BE APPROVED BY NCLT, IF LEASEHOLD RIGHTS OVER PRIMARY ASSETS ARE NOT PROVED.

In the case titled as ***CoC of Jupitar Spun Pipes & Casting Pvt. Ltd.*** *through its leading* ***Financial Creditor State Bank of India v. Bihar State Industrial Development Corporation And Others*** [Comp. App. (AT) Ins. No. 950 – 954 of 2024], it was held by the Hon'ble NCLAT, Principal Bench, New Delhi, as:

34. […] The above discussion indicate that the alleged Lease dated 24.09.2007 becomes unenforceable and void on both the counts, i.e. having not been executed by authorised person as per the Lease Deed itself by the BSIDC and no proof of huge consideration of Rs.16 crores upfront payment and Rs.10 lakhs advanced lease rent has been brought on record and in the absence of such proof, it cannot be held to transfer any leasehold rights in the assets to the CD and Adjudicating Authority has rightly after considering all facts and circumstances has taken the view that land admeasuring 344.915 acres at Hirodih, District Kodarma, Jharkhand with plant, building and machinery cannot be treated to be the assets of the CD.

15. APPLICATION U/S OF IBC CANNOT BE REJECTED OVER ISSUANCE OF DEMAND NOTICE IN WRONG FROM, WHEN INVOICES ATTACHED THEREIN ARE NOT CHALLENGED.

In the case titled as ***KNK Ship Management v. Thrani Industries Limited*** [Comp. App. (AT) Ins. No. 950 – 954 of 2024], it was held by the Hon'ble NCLAT, Principal Bench, New Delhi, as:

26. The very fact that the notice contained the invoices and that the invoices have not been challenged by the Respondent on the ground that the same are fake and fabricated, it would be totally hyper technical plea to reject the application of the Appellant on the ground that the notice issued under Section 8 in form 3 with invoices was a defective notice.

16. CORPORATE DEBTOR'S ABILITY TO PAY DEBT NOT TO BE CONSIDERED BEFORE ADMITTING INSOLVENCY PETITION.

In the case titled as ***Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan*** [Civil Appeal No. 2211 of 2024], it was held by the Hon'ble Supreme Court of India, as:

34. In a similar vein, the Adjudicating Authority is not required to go into the inability of a corporate debtor to pay its debt. This is a clear departure from the scheme of winding up envisaged under Section 433(e) of the erstwhile Companies Act, 1956 which required the Adjudicating Authority to come to a finding with regard to the inability of the company to pay the debt and thereby arrive at a requisite satisfaction whether it is just and equitable to wind up the company. The Code restricts the scope of enquiry for admission of an insolvency process by a financial creditor merely to the existence of default of a debt due and payable and nothing more. The legislative intent behind such prompt and summary intervention is "to ensure revival and continuation of the corporate *debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation.*

17. AVOIDANCE PROVISIONS UNDER IBC *(SUCH AS PUFE TRANSACTIONS)* ARE RESTORATIVE IN NATURE AND ARE NOT PUNITIVE.

In the case titled as ***Asten Properties and Developers Private Limited*** [IA(IBC)/239/KOB/2025] IN [CP(IBC)/12/KOB/2024], it was held by the Hon'ble NCLT, Kochi, as:

*23. It is submitted that the Applicant has not undertaken the necessary steps as required under Section 43 of the Code for the determination of preferential transactions, as has been emphasized by the Hon'ble Supreme Court in **Anuj Jain vs. Axis Bank Limited and Ors.** [MANU/SC/0228/2020; dated 26.02.2020].*

*37. The Hon'ble Supreme Court in **Anuj Jain, IRP of Jaypee Infratech Ltd. v. Axis Bank Ltd. & Ors.** has authoritatively held that, for the determination of a preferential transaction under Section 43 of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority is required to examine: (i) the existence of an antecedent financial or operational debt; (ii) the timing of the transfer in relation to the insolvency commencement date; (iii) the effect of such transfer on the priority of distribution under Section 53 of the Code; and (iv) whether the transaction falls within any of the statutory exclusions provided under Section 43(3) of the Code.*

45. The avoidance provisions are intended to neutralise the preferential effect of a transaction and restore the Corporate Debtor's estate to the position it would have occupied but for such preference, and not to impose a punitive liability on the beneficiary.

18. FRAUD HAS NO 'LOOK BACK PERIOD', DIRECTORS CANNOT USE LAPSE OF TIME AS SHIELD.

In the case titled as ***Asten Properties and Developers Private Limited*** [IA(IBC)/239/KOB/2025] IN [CP(IBC)/12/KOB/2024], it was held by the Hon'ble NCLT, Kochi, as:

26. It is also significant to note that the Hon'ble National Company Law Appellate Tribunal, in ***Mr. Thomas George v. K. Easwara Pillai and Others*** *(2021 SCC OnLine NCLAT 4636), has categorically held that there is no prescribed look-back period for fraudulent transactions under Section 66 of the Code, and that the general limitation period of three years under the Limitation Act, 1963, does not apply to such proceedings. The Hon'ble NCLAT further observed that, in cases of fraudulent trading, the Resolution Professional is entitled to scrutinise and examine transactions undertaken at any point of time before the insolvency commencement date, to ascertain whether such transactions were carried out with the intent to defraud credirs. […]*

19. OPPRESSION MUST BE CONTINUOUS; EX-SHAREHOLDERS CANNOT FILE THE OPPRESSION PLEA.

In the case titled as ***Stalin Nova Gnanaraj v. Shalom Garments Pvt. Ltd. & Ors.*** [CP(CA)/54(CHE)2023], it was held by the Hon'ble NCLT, II, Chennai, as:

7.29. Before parting, this Tribunal deems it necessary to refer to the settled legal position, in Cyrus Investments Private Limited & Another v. Tata Sons Ltd. & Ors. (Company Appeal (AT) No. 254 of 2017), the NCLAT held that a person whose name is not found in the Register of Members cannot maintain a petition under Sections 241–242. And in Shailaja Krishna v. Satori Global Ltd. (2025 SC), the Supreme Court reaffirmed that Section 241 relief requires continuous oppression and cannot be invoked for old grievances or intra-family disputes. These principles directly apply to the present case and fortify the conclusion that the Petitioner's claims are not maintainable.

KEY CONTRIBUTORS

Deepak Panwar
Managing Partner
Infolex Consultants
M.: 8890238352
E.: deepak@infolexconsultants.com
W.: www.infolexconsultants.com