
IBC & Debt Recovery Case Laws Digest: 09th September, 2024 to 15th September, 2024

Supreme Court

1. Clause 12 of Part-1 of Schedule-I of IBBI (Liquidation Process) Regulations, 2016 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator

Case Name: V.S. Palanivel Vs. P. Sriram, CS, Liquidator, etc.

Case Citation: [\(2024\) ibclaw.in 223 SC](#)

Hon'ble Supreme Court held that:

- (i) The Auction Purchaser would be entitled to the benefit of the order dated 23rd March, 2020 read with Regulation 47A of the IBBI Regulations, 2016.
- (ii) In view of the analysis undertaken above, Rule 12 would have to be treated as mandatory in character for the reason that it contemplates a consequence in the event of non-payment of the balance sale consideration by the highest bidder within the stipulated timeline of 90 days, which is cancellation of the sale by the Liquidator.
- (iii) The Rule 11 of the NCLT Rules is not to be read in isolation but in conjunction with Section 35 of the IBC.
- (iv) Clause 12 of the Schedule-I of the Liquidation Process Regulations is not interlinked with Clause 13. Both the Rules cover different situations.
- (v) Clause 12 to be mandatory in character because non-payment within the timeline has consequences attached to it. However, in contrast thereto, there are no adverse consequences spelt out in Clause 13 for it to be treated as mandatory.

National Company Law Appellate Tribunal

1. Whether transactions between the Family Companies were out to help each other is a Financial Debt under Insolvency Code?

Case Name: Sushil Kumar Bajaj Vs. Mandyati Dealcomm Pvt. Ltd. and Anr.

Case Citation: [\(2024\) ibclaw.in 559 NCLAT](#)

Hon'ble NCLAT observed that transaction between the two Companies were out to help each other, which were the family Companies and amounts were given as help to one Family Company by other Family Companies which amount was repaid from time to time. The transaction was never a Financial Debt nor any loan transaction.

2. Whether disbursement of property (instead of disbursement of money) is covered by Financial Debt | Whether Section 7 application can be filed on default in balance payment of sale consideration | Whether conversion of sale consideration into loan can be treated as Financial Debt under Section 5(8) of IBC

Case Name: Sandeep Mittal Vs. ASREC (India) Ltd. and Ors.

Case Citation: [\(2024\) ibclaw.in 573 NCLAT](#)

In this important judgment, Hon'ble NCLAT held that:

- (i) The guarantee by the Corporate Debtor for payment of purchase price, cannot in any manner be read as any financial debt owned by the Corporate Debtor.
- (ii) The letter, Agreement and Guarantee Deed documents clearly indicate and prove that transaction was sale and purchase transaction and in no manner can be said to be a financial transaction under which financial debt was undertaken to be paid by the Corporate Debtor to the Financial Creditor.
- (iii) Disbursal of property cannot be accepted to be covered by definition of 'financial debt' under Section 5(8) of IBC.
- (iv) Nature of transaction is to be determined from the documents reflecting the transaction and any subsequent letter or subsequent pleadings of the parties cannot be considered in the facts of the present case.

3. Section 33 of the Madhya Pradesh Value Added Tax Act, 2002 (MPVAT Act) is not pari materia with Section 48 of Gujarat Value Added Tax Act, 2003

(GVAT Act) and Commercial Tax Dept. cannot be treated as secured creditors on the basis of the decision in Rainbow Papers

Case Name: Commercial Tax Department Vs. Mrs. Teena Saraswat Pandey and Anr.

Case Citation: [\(2024\) ibclaw.in 574 NCLAT](#)

In this judgment, Hon'ble NCLAT referring judgment in State Tax Officer (1) Vs. Rainbow Papers Ltd., (2022) ibclaw.in 107 SC and Department of State Tax Vs. Zicom Saas Pvt. Ltd. & Anr. (2023) ibclaw.in 109 NCLAT held that although it has also been held by the Hon'ble Supreme Court in the case of Paschimanchal Vidyut Vitran Nigam Ltd. Vs. Raman Ispat Pvt. Ltd. & Ors. (2023) ibclaw.in 81 SC that the decision in the case of Rainbow Papers (Supra) is a decision of the Court in the facts of the said case but without going into this aspect of the matter, argument of the Appellant would not cut any ice that Section 48 of the GVAT Act and Section 33 of the MPVAT Act are pari materia, therefore, the ratio laid down by the in Rainbow Papers (Supra) has to be applied rather the provisions of Section 37 of the MVAT Act and Section 33 of the MPVAT Act appears to be pari materia about which a decision has been taken by this court in the case of Zicom Saas (Supra) that both the provisions are not pari materia with Section 48 of the GVAT Act, therefore, no benefit can be given to the Appellant on the basis of the decision of the Rainbow Papers (Supra).

4. Can NCLT reject an application filed under Section 9 of IBC on the grounds that no proper explanation given on the date of invoice, default and limitation period to ascertain the due date, without providing opportunity to rectify the defects as per proviso to Section 9(5)(ii) of IBC

Case Name: Shiv Glitz Hotels and Resorts LLP Vs. Oravel Stays Ltd.

Case Citation: [\(2024\) ibclaw.in 575 NCLAT](#)

Hon'ble NCLAT held that:

(i) When the Adjudicating Authority has proceeded to dismiss the Application as defective, it was obligatory as per Proviso to Section 9(5)(ii) to give a notice to the Applicant to rectify the defect in the Application within seven days from the date of receipt of such notice. The Adjudicating Authority having not issued a notice under Proviso, the order impugned is unsustainable on this ground alone.

(ii) Adjudicating Authority having not adverted on the issue of pre-existing dispute, it is appropriate that said issue be gone into and considered by the Adjudicating Authority in accordance with law.

5. Any clause in Resolution Plan which requires Creditors to take a hair-cut

cannot be construed as being violative of Section 30(2) of the IBC | When Resolution Plan has been approved by CoC, irrespective of whether a single-member CoC or multi-member CoC, the decision becomes a collective business decision

Case Name: Yogesh Kelkar and Ors. Vs. RP of Anudan Properties Pvt. Ltd.

Case Citation: [\(2024\) ibclaw.in 560 NCLAT](#)

Hon'ble NCLAT held that:

(i) When the resolution plan has been approved by the CoC with requisite majority and after holding due deliberations, the decision becomes a collective business decision.

(ii) A matter relating to approval of resolution plan which is indubitably distinct and unrelated to a scheme of compromise or arrangement contemplated under the Companies Act.

(iii) As regards approval of resolution plan is concerned, the IBC provides for 66% vote share and once this threshold is met, the decision of the CoC, irrespective of whether it is a single-member or multi-member, the decision of the CoC becomes sacrosanct and binding on all stakeholders.

(iv) The Adjudicating Authority cannot substitute its views with the commercial wisdom of the CoC in rejecting the resolution plan simply because the Appellants are aggrieved by the amounts proposed to be paid to them under the resolution.

(v) Merely because there is a reduction in the claim of any creditor does not make the resolution plan fall foul of law. Any clause in the resolution plan which requires creditors to take a hair-cut cannot be construed as being violative of Section 30(2) of the IBC.

(vi) Once the CoC has approved the resolution plan by requisite majority and the same is in consonance with applicable provisions of law and nothing has come to light to show that any material irregularities have been committed in the conduct of the CIRP proceedings, the same cannot be a subject matter of judicial review and modification.

6. Mere fact that some challenge in Civil Court is pending with regard to assignment of debt cannot be a ground to postpone the consideration of an application filed under Section 7 of IBC

Case Name: Terry E D'souza Vs. Omkara Asset Reconstruction Pvt. Ltd. and Ors.

Case Citation: [\(2024\) ibclaw.in 561 NCLAT](#)

Hon'ble NCLAT held that:

(i) The Section 7 Application was filed by the Financial Creditor on the default committed by the Corporate Debtor and the mere fact that some challenge in the Civil Court is pending with regard to Assignment cannot be a ground to postpone the consideration of Section 7 Application.

(ii) The objects of Section 7 Application are entirely different from any litigation and disputes between the Parties which are awaiting adjudication by a Civil Court.

(iii) When the Adjudicating Authority found debt and default by the Corporate Debtor, Adjudicating Authority did not commit any error in admitting Section 7 Application.

7. Money given to Corporate Debtor for the purpose of clearing their title over the land in question which was to be shared by both of them in a ratio cannot be treated as Financial Debt under Section 5(8) of the IBC, 2016

Case Name: Meehika Buildcon LLP Vs. City Star Infrastructure Ltd.

Case Citation: [\(2024\) ibclaw.in 570 NCLAT](#)

Hon'ble NCLAT observed that the Appellant has not advanced the money as loan rather the money has been given to the Respondent for the purpose of clearing their title over the land in question which was to be shared by both of them in the ratio of 30% / 70%. The Appellant has not filed any financial statement on record in order to show that the money which has been given as per term sheet has been shown as a loan advanced to the Respondent.

8. NCLAT has no jurisdiction to condone the delay beyond 45 days in filing of appeal under Section 61 of IBC

Case Name: Brijesh Haridas Nagar Co-op. Hsg Soc. Ltd. Vs. VAS Infrastructure Ltd. and Anr.

Case Citation: [\(2024\) ibclaw.in 568 NCLAT](#)

Hon'ble NCLAT held that:

(i) There are four parts of the Section 61 of IBC, namely, firstly, an appeal can be filed by a person who is aggrieved by the order of the Tribunal, secondly, the appeal has to be filed within a period of 30 days, thirdly, in case the appeal is not filed within a period of 30 days then it can still be filed within a further period of 15 days by assigning sufficient cause for not filing the appeal within 30 days and lastly, the period of 15 days cannot be extended at any cost.

(ii) As regards the case of the Appellant that it had no knowledge of the order having been passed, the appellant itself was an intervenor in that case pending before the Tribunal, therefore, the Appellant had knowledge of the matter which was pending and cannot be

allowed to show ignorance.

9. Invoices which are found as bogus by Income Tax Department in assessment orders cannot be relied for initiating insolvency proceeding against Corporate Debtor

Case Name: N.V. Aluminium Cast Pvt. Ltd. Vs. APL Metals Ltd.

Case Citation: [\(2024\) ibclaw.in 564 NCLAT](#)

Hon'ble NCLAT observes that the Adjudicating Authority has returned categorical finding that the Income Tax Department has found the invoices bogus, hence, the application was rejected, under Section 9. The said order was passed after hearing the Promoters of the Corporate Debtor as submitted by Learned Counsel for the Respondent. Hence, the findings are now re-affirmed that invoices which are bogus could not be relied for initiating any insolvency proceeding against the Corporate Debtor.

10. Operational Creditors are denied any payment when the amount payable to them in the event of Liquidation is NIL, but till the Legislature comes to the aid of the claim of Operational Creditor by amending the Legislative Scheme hands of the Courts are tied to take any other view in the matter

Case Name: Rajat Metaal Polychem Pvt. Ltd. Vs. Mr. Neeraj Bhatia RP Vinayak Rathi Steels Rolling Mills Pvt. Ltd. and Anr.

Case Citation: [\(2024\) ibclaw.in 558 NCLAT](#)

Hon'ble NCLAT already in Damodar Valley Corporation Vs. Dimension Steel and Alloys Pvt. Ltd. & Ors. (2022) ibclaw.in 387 NCLAT has observed that time has come when it should be examined by the Government to find out as to whether there are any grounds for considering change in the Legislative Scheme towards the payment to the Operational Creditor which also consists of the Government dues. In this judgment, it is again held that it is true that Operational Creditors as the law stands now are denied any payment when the amount payable to them in the event of Liquidation is NIL, but till the Legislature comes to the aid of the claim of Operational Creditor by amending the Legislative Scheme hands of the Courts are tied to take any other view in the matter.

11. Whether Prospective Resolution Applicant is an Aggrieved Party to file appeal under Section 61 of IBC to challenge an order of NCLT allowing Erstwhile Promoter/ Director of the Corporate Debtor to submit Resolution Plan in CIRP

Case Name: Meir Commodities India Pvt. Ltd. Prospective Resolution Applicant of NCS Sugars Ltd.
Vs. Mr. Narayanam Nageswara Rao and Ors.

Case Citation: [\(2024\) ibclaw.in 554 NCLAT](#)

Hon'ble NCLAT observes that there is no material right which is prejudiced by passing of the Impugned Order by the Adjudicating Authority, which could give him a cause to challenge the same by invoking Section 61 of the I & B Code, 2016, and that too, in the status of being a Prospective Resolution Applicant, where he has only expressed his interest to submit the Resolution Proposal and has not even reached the stage of submitting Resolution Proposal. The Appellant does not have any cause of action, as such, as against the Impugned Order, in the status of his being a Prospective Resolution Applicant.

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