



IBC Pulse

Monthly Updates on Insolvency & Resolution



A. Assignee of debt cannot be barred from CoC due to Assignor's status as related party - NCLAT

In *Rare Asset Reconstruction Company Limited v. VR2 Land Development Private Limited & Ors.* (Company Appeal (AT) (Insolvency) Nos. 289-291 of 2024), the National Company Law Appellate Tribunal (NCLAT) was faced with the issue of whether a financial creditor, which is an assignee of debt and is not itself a related party, can be excluded from the Committee of Creditors solely because the original lender was allegedly a related party of the Corporate Debtor.

The NCLAT held that the disqualification under Section 21(2) of the IBC attaches to the person who is a related party and does not travel with the debt upon assignment. Relying on *Phoenix ARC Pvt. Ltd. v. Spade Financial Services Ltd.*, the Tribunal ruled that a bona fide third-party assignee, having no conflict of interest and no connection with the Corporate Debtor, cannot be excluded from the CoC unless the assignment is shown to be a sham or a device to circumvent the statutory bar. Accordingly, the NCLAT held that Rare ARC, not being a related party in praesenti, was entitled to participate in the CoC with proportionate voting rights.

B. Insolvency Proceedings Cannot Be Withdrawn Under Section 12A Once Liquidation Begins – NCLAT

In *Narayan Maheshwari v. Kavitha Surana* (Liquidator) and Anr., Company Appeal (AT)(CH)(Ins) No. 63, the NCLAT held that Section 12A of the Insolvency & Bankruptcy Code, 2016 which allows withdrawal of insolvency applications, cannot be applied at the liquidation stage once the corporate debtor has been ordered into liquidation.

The court explained that Section 12A was deliberately inserted into Chapter II of the Code to operate only during the CIRP stage and not after liquidation has commenced. Since the legislature chose not to insert a similar provision in Chapter III, the appellate tribunal concluded that withdrawal of the case after liquidation cannot be permitted, even if the parties enter into a settlement or one-time settlement and pay outstanding dues.

Forthcoming Events

- **Conference on IBC at Lucknow**
31st Jan'26
- **Residential Workshop on Corporate Governance at Goa**
11th - 13th Mar'26
- **National Summit & IBC Awards at Delhi**
Sep'26

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C. Approved Resolution Plan Cannot Be Reopened or Remanded by the CoC or Adjudicating Authority – NCLAT

The NCLAT in *Mehar Bhoomi Bhawan Pvt. Ltd. v. Shashi Bhusan Prasad (Company Appeal (AT) (Insolvency) No. 1876 of 2025)* was faced with the issue of whether, after a resolution plan has been approved by the Committee of Creditors and an application under Section 30(6) of the IBC has been filed, the Adjudicating Authority can remand the plan for reconsideration on grounds of alleged non-compliance, subsequent reconstitution of the CoC, or alleged ineligibility of the Successful Resolution Applicant.

The NCLAT held that once a resolution plan is approved by the CoC and placed before the Adjudicating Authority, it becomes binding inter se between the CoC and the Successful Resolution Applicant, and neither the CoC nor the Adjudicating Authority can permit withdrawal, reconsideration, or remand of the plan except within the limited scope of judicial review under Section 30(2) of the IBC. The Tribunal further held that subsequent reconstitution of the CoC does not invalidate decisions already taken, as expressly protected by Regulation 12(3) of the CIRP Regulations. It was also clarified that a resolution plan cannot be rejected merely because it provides nil payment to a category of creditor not covered under Section 30(2)(b), nor can it be reopened on the basis of changes in consortium arrangements, so long as the resolution applicant remains eligible under Section 29A and the obligations under the plan remain unchanged.

E. No Section 14 Protection for Development Rights Terminated prior to CIRP – Supreme Court

The Supreme Court held that contracts lawfully terminated prior to initiation of CIRP do not get revived by virtue of Section 14 of the IBC, and where the corporate debtor had neither possession nor any subsisting proprietary or contractual right on the insolvency commencement date, such agreements cannot be treated as “assets” or “property” protected by the moratorium. At best, the corporate debtor is left with a claim for damages, not a right capable of being preserved under insolvency law. Accordingly, the Court upheld the impugned Bombay High Court’s decision permitting statutory authorities to grant redevelopment approvals in favour of the newly appointed developer, and rejected the challenge based on moratorium and natural justice, holding that the writ proceedings were validly entertained and did not prejudice the insolvency process.

NCLT & IBC Committee Leadership

- Mr. GP Madaan, Chair
- Mr. Abhishek Anand, Co-Chair
- Ms. Ranjana Roy Gawai, Co-Chair
- Mr. Harish Taneja, Co-Chair
- Mr. Rachit Mittal, Co-Chair

D. Section 14 Moratorium does not preclude initiation of PIRP against Personal Guarantors - NCLAT

The NCLAT in *Neeta Saha v. Assets Care & Reconstruction Enterprise Ltd. (Company Appeal (AT) (Insolvency) No. 61 of 2025)*, was faced with the issue of whether the moratorium under Section 14 of the IBC during the CIRP of the corporate debtor bars a financial creditor from invoking personal guarantees and initiating proceedings under Section 95 of the IBC against personal guarantors.

The NCLAT held that the moratorium under Section 14 applies only to the corporate debtor and does not preclude invocation of personal guarantees or initiation of personal insolvency proceedings against guarantors. It further held that Section 10A does not bar proceedings under Section 95 against personal guarantors, relying on its earlier decision in *Amit Jain v. Siemens Financial Services Pvt. Ltd.* The Tribunal also clarified that at the stage of admission under Section 95, exact quantification of debt is not required, so long as a default above the statutory threshold is established, and issues relating to adjustment of recoveries or precise liability can be examined at the stage of consideration of the repayment plan.

The Supreme Court in *A A Estates Private Limited v. Kher Nagar Sukhsadan Co-operative Housing Society Ltd. (SLP (C) No. 10758 of 2025)*, was faced with the issue of whether development agreements that had been terminated prior to commencement of CIRP could be treated as “assets” of the corporate debtor protected by the moratorium under Section 14 of the IBC, and whether redevelopment could be restrained during CIRP on that basis.

In case of any query:

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