



IBC Pulse

Monthly Updates on Insolvency & Resolution

A. WHILE APPROVING A RESOLUTION PLAN, THE NCLT CANNOT, UNDER SECTION 60(5)(C) OF THE IBC, DECLARE TRADEMARK OWNERSHIP IN FAVOUR OF THE SRA OR INVALIDATE A TRADEMARK ASSIGNMENT UNDER SECTIONS 43 AND 45 WITHOUT PROPER PLEADINGS AND A DULY FILED APPLICATION – SUPREME COURT

The Supreme Court in **Gloster Ltd. v. Gloster Cables Ltd. Civil Appeal No. 2996 of 2024** held that the NCLT, while exercising jurisdiction under Section 60(5)(c) of the Insolvency and Bankruptcy Code, 2016 and in the course of approving a resolution plan, cannot declare title to a trademark in favour of the Successful Resolution Applicant (SRA) or invalidate a trademark assignment by invoking Sections 43 and 45 of the Code in the absence of proper pleadings and a duly filed avoidance application.

The Court observed that the resolution plan itself acknowledged the existence of rival claims over the trademark and did not confer ownership upon the SRA. In such circumstances, the Adjudicating Authority could not, under the guise of deciding an application under Section 60(5), grant substantive proprietary rights or render findings on title. Doing so would amount to an impermissible modification or enlargement of the approved resolution plan, contrary to the settled principles governing the finality and sanctity of resolution plans under the IBC.

The Supreme Court further held that findings under Sections 43 and 45 of the IBC cannot be recorded suo motu or incidentally, particularly when no avoidance application has been filed by the resolution professional or other authorised person, and when the affected party has not been put to notice through proper pleadings. Such an approach was held to be violative of principles of natural justice and beyond the jurisdictional limits of the NCLT.

Accordingly, the Supreme Court set aside the declaration of title and the avoidance-related findings, reiterating that Section 60(5)(c) is not a substitute for independent civil adjudication or statutorily prescribed avoidance proceedings, and cannot be used to confer rights on an SRA beyond what is expressly provided in the resolution plan.

Forthcoming Events

- Residential Workshop on Corporate Governance at Goa
11th - 13th Mar'26
- National Summit & IBC Awards at Delhi
Sep'26

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B. ANY CLAIM THAT DOES NOT FORM PART OF THE LIQUIDATION PROCEEDINGS STANDS EXTINGUISHED IN LAW AND CANNOT CONTINUE OR BE ENFORCED THEREAFTER – NCLAT

The NCLAT in **Jaipur Vidyut Vitran Nigam Ltd. v. Starlink Call Concepts Pvt. Ltd. and Anr., Comp. App. (AT) (Ins) No. 1941 of 2025**, was faced with a question of whether an electricity distribution company could insist on payment of past dues of the corporate debtor as a pre-condition for granting/restoring a fresh electricity connection to a successful bidder in liquidation, when such dues were never claimed in the CIRP or liquidation proceedings.

The appeal arose from an order of the NCLT directing Jaipur Vidyut Vitran Nigam Ltd. to provide electricity connection to Starlink Call Concepts Pvt. Ltd., which had emerged as the successful bidder of the corporate debtor, Hema Automotive Pvt. Ltd., in liquidation. The electricity utility claimed outstanding dues of approximately Rs. 76.99 lakhs against the erstwhile corporate debtor and contended that it was entitled to recover the same, at least by being permitted to approach the liquidator.

The NCLAT noted that it was undisputed that the appellant had not filed any claim either during the CIRP or during liquidation. Relying on the scheme of the Insolvency and Bankruptcy Code, 2016, the Appellate Tribunal held that all claims must be submitted and dealt with strictly in accordance with the Code, and once the process reaches liquidation, distribution can only be as per the waterfall under Section 53. The Tribunal emphasised the overriding effect of the IBC under Section 238 and observed that no party can bypass or override the statutory mechanism by asserting claims outside the insolvency framework.

The NCLAT ultimately held that any claim not forming part of the CIRP or liquidation proceedings stands extinguished in law and cannot survive thereafter. Consequently, the electricity distribution company could not withhold or condition the grant/restoration of electricity connection on payment of such extinguished dues.

C. EXCLUSION FROM COC REQUIRES DUE PROCESS AND OPPORTUNITY OF HEARING - NCLAT

The NCLAT in **Joghali Wind Energy Pvt. Ltd. v. Yogesh Mehra and Ors., Company Appeal (AT) (Ins) No. 1249 of 2022**, held that exclusion of any member from the Committee of Creditors (CoC), irrespective of how small its voting share may be, is a serious matter and cannot be undertaken without affording the affected party a full and fair opportunity of hearing.

The Appellate Tribunal observed that the NCLT had made adverse observations regarding the eligibility of the appellant to be part of the CoC, allegedly on the ground of pending money laundering proceedings, without any supporting material on record and without examining the appellant's detailed response. Such observations, though not essential to the rejection of the resolution plan, had the effect of questioning the appellant's status as a financial creditor and its participation in the CoC.

The NCLAT underscored that CoC membership goes to the root of the insolvency process, as it directly impacts voting, commercial decisions, and the overall integrity of the CIRP. Therefore, any direction or observation leading to exclusion of a creditor from the CoC must be preceded by adherence to principles of natural justice, including adequate notice, consideration of relevant material, and a meaningful opportunity to be heard.

On this reasoning, the NCLAT held that the impugned observations were unsustainable and expunged them, reaffirming that procedural fairness is indispensable when CoC composition is questioned, regardless of the creditor's voting percentage.

D. DISTINGUISHING HOMEBUYERS FROM COMMERCIAL INVESTORS: INDUSTRIAL UNIT PURCHASERS NOT FINANCIAL CREDITORS UNDER THE IBC – NCLT MUMBAI BENCH

The NCLT Mumbai Bench in **Jasvinder Paramjit Seehra and Ors. v. Birendra Kumar Agarwal (RP), C.P. No. 979(IB)/MB/2022**, was concerned with the issue of whether purchasers of an industrial unit, investing under a guaranteed licence/assured return arrangement, could be classified as financial creditors under Section 5(8) of the Insolvency and Bankruptcy Code, 2016.

The applicants had entered into an MoU and a registered agreement for sale with the corporate debtor for purchase of an industrial unit and had paid the entire consideration. Their claim for the principal amount was admitted by the resolution professional, but they were categorised as "other creditors" and not as financial creditors in a class. The applicants challenged this classification, contending that the project was a real estate project under RERA and that, as allottees, they were entitled to be treated as financial creditors, including admission of the interest component.

The Tribunal held that while the definition of “real estate project” under RERA is wide and does not exclude industrial units per se, the deeming fiction under Section 5(8)(f) of the IBC is intended to protect genuine homebuyers and not commercial or speculative investors. On the facts, the applicants had invested in an industrial unit with assured returns, indicating a commercial, profit-oriented transaction rather than an intent to acquire residential shelter. Relying on Supreme Court jurisprudence distinguishing homebuyers from speculative or commercial investors, the NCLT concluded that the applicants’ claim did not constitute a financial debt.

Accordingly, the Tribunal affirmed the RP’s decision to classify the applicants as “other creditors”, rejected their claim for recognition as financial creditors and membership of the CoC, and dismissed the application.

E. INDEPENDENT FORENSIC AUDIT BY BANK PERMISSIBLE DURING LIQUIDATION – NCLT AHMEDABAD BENCH

The NCLT in **Bhavarlal Mangilal Jain and Anr. v. Indian Overseas Bank and Ors., IA No. 105 (AHM) 2021 in CP (IB) No. 68 of 2017**, considered whether a financial creditor could be restrained from conducting an independent forensic audit of the corporate debtor during liquidation, particularly for periods beyond the IBC look-back window.

The application was filed by the suspended management of the corporate debtor seeking to restrain the respondent bank from initiating a forensic audit for the period 2011–2014, contending that such an audit was impermissible under the IBC, beyond the statutory look-back period for avoidance transactions, and that only the resolution professional or liquidator had authority to examine past transactions. It was further argued that the records were already in custody of the RP/liquidator and that earlier forensic audits had already been undertaken during the insolvency process.

The Tribunal rejected these contentions and held that the proposed forensic audit was not intended for the purposes of initiating avoidance proceedings under the IBC, but was being carried out pursuant to statutory obligations under RBI regulations and directions issued by the CBI in connection with fraud examination and criminal proceedings. The NCLT emphasised that the look-back periods under Sections 43 and 45 apply only to avoidance actions under the Code and do not restrict independent forensic audits conducted under banking or criminal law frameworks. It further observed that during liquidation there is no moratorium akin to Section 14, and the IBC does not shield the corporate debtor or its promoters from regulatory or criminal investigations.

Accordingly, the NCLT held that a financial creditor is not barred from conducting an independent forensic audit to comply with RBI or investigative agency directions, even during liquidation, and that such actions cannot be restrained under Section 60(5) of the Code. The application was therefore dismissed.

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- **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

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