NCLT & IBC Committee, PHDCCI

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IBC Pulse

Monthly Updates on Insolvency & Resolution

CONFERENCE ON IBC PULSE – "TRENDS, TRANSITIONS & TRAJECTORIES" (BASED ON RECENT AMENDMENTS)

18th April 2026 at PHD House, New Delhi

NCLT & IBC Committee, PHDCCI successfully organized the **Conference on IBC Pulse – "Trends, Transitions & Trajectories" (Based on Recent Amendments)** on **Saturday, 18th April 2026 at PHD House, New Delhi** . The conference served as a significant platform for deliberations on the evolving landscape of the Insolvency and Bankruptcy Code (IBC), recent amendments, and emerging trends shaping the insolvency ecosystem.

The Welcome Address was delivered by **Shri Sanjay Singhania** , Vice President, PHDCCI and the Theme Address by **Shri GP Madaan** , Chair, NCLT & IBC Committee, PHDCCI, highlighting key developments and challenges in the IBC framework. **Dr. Jatinder Singh** , DSG, PHDCCI, gave introductory remarks.

The conference was further enriched by the esteemed presence and addresses of distinguished dignitaries, including **Shri Chetan Sharma** , Additional Solicitor General, Hon'ble High Court of Delhi; **Shri R. J. R. Kasibhatla** , Joint Secretary, Ministry of Law and Justice; **Shri Debajyoti Ray Chaudhury** , Managing Director & CEO, National E-Governance Services Limited; **Justice Rakesh Kumar Jain** , Former Member (Judicial), NCLAT; and **Shri Ashok Kumar Bhardwaj** , Hon'ble Member (Judicial), NCLT.

MoU Signing Ceremony

A key highlight of the conference was the **MoU Signing Ceremony between PHDCCI and National E-Governance Services Limited (NeSL)** , marking a significant step towards strengthening collaboration in the insolvency ecosystem.

The conference featured insightful sessions and panel discussions focusing on recent amendments, practical challenges, jurisprudential developments, and the future trajectory of the IBC framework, providing participants with valuable perspectives and actionable insights.

Forthcoming Events

- **National Summit & IBC Awards at Delhi** *Sep'26*
- **Residential Workshop on Board Governance at Vishakhapatnam.** *Oct'26*

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The inaugural session was concluded with engaging interactions and networking among participants. **Rachit Mittal** , Co-Chair, NCLT & IBC Committee, PHDCCI, delivered the Vote of Thanks, expressing gratitude to all speakers, dignitaries, and participants for their valuable contributions.

The NCLT IBC Committee Co-Chairs, **Ms. Ranjana Roy Gawai, Shri Abhishek Anand** and **Shri Harish Taneja** moderated the technical sessions.

INAUGURAL SESSION

The conference witnessed an overwhelming response with participation from more than **300** professionals, including insolvency practitioners, legal experts, policymakers, bankers, and industry leaders, making the sessions highly engaging and insightful.

Session : 1

Session : 2

Session : 3

A. LIMITATION FOR FILING APPLICATION UNDER SECTION 7 OF THE IBC RUNS FROM DATE OF DEFAULT (NPA); ADMISSION OF CLAIM BY IRP/RP IS NOT AN ACKNOWLEDGMENT UNDER SECTION 18 OF THE LIMITATION ACT; APPLICATION FILED BEYOND LIMITATION REMAINS TIME-BARRED EVEN AFTER EXCLUSIONS – HON'BLE SUPREME COURT

The Hon'ble Supreme Court in **Shankar Khandelwal v. Omkara Asset Reconstruction Pvt. Ltd. and Anr., Civil Appeal Nos. 13158–13159 of 2025, decided on 29.04.2026**, held that limitation for filing a Section 7 application under the Insolvency and Bankruptcy Code, 2016 begins from the date of default, i.e., when the account is classified as NPA. The Court further clarified that admission of a claim by the IRP/RP does not amount to acknowledgment of liability under Section 18 of the Limitation Act, 1963. Even after excluding periods covered by moratorium and COVID-19 extensions, if the application is filed beyond limitation, it is liable to be rejected.

The case arose from orders of the NCLT and NCLAT admitting a Section 7 application filed by the financial creditor. The account had been declared NPA on 06.12.2016. After several intervening events—including CIRP against the lender, assignment of debt, and an earlier CIRP against the corporate debtor—the creditor filed a fresh Section 7 application on 23.09.2024. The NCLAT upheld admission, inter alia, on the basis that admission of the claim by the IRP in the earlier CIRP amounted to acknowledgment extending limitation.

The Hon'ble Supreme Court rejected this approach. It reiterated that limitation under Section 7 is governed by Article 137 of the Limitation Act and starts from the date of default itself. It expressly held that subsequent proceedings, including SARFAESI actions, do not shift or extend this starting point.

While computing limitation, the Court excluded (i) time spent in CIRP under Section 60(6) of the IBC, (ii) the COVID-19 exclusion period, and (iii) time during prior CIRP proceedings. Even after such exclusions, the Court found that limitation expired on 01.08.2024, whereas the application was filed on 23.09.2024, rendering it time-barred.

On acknowledgment, the Court clarified that Section 18 requires a clear and conscious admission of liability by the debtor or an authorised person within the limitation period. The IRP/RP merely collates and verifies claims in an administrative capacity and does not adjudicate liability. Therefore, admission of a claim by the IRP/RP cannot be treated as acknowledgment to extend limitation.

The Court also noted that any acknowledgment, to be effective, must be made before expiry of limitation. In the present case, the alleged acknowledgment occurred after limitation had already expired and was therefore irrelevant.

Accordingly, the Hon'ble Supreme Court held the Section 7 application to be time-barred, set aside the orders of the NCLT and NCLAT, and allowed the appeals.

B. DEMAND NOTICE UNDER SECTION 13(2) OF THE SARFAESI ACT CONSTITUTES VALID INVOCATION OF PERSONAL GUARANTEE; LIABILITY OF PERSONAL GUARANTOR ARISES UPON EXPIRY OF NOTICE PERIOD AND LIMITATION RUNS THEREFROM; PARALLEL SARFAESI/DRT PROCEEDINGS DO NOT BAR INITIATION OF INSOLVENCY UNDER SECTION 95 OF THE IBC – NCLT

The National Company Law Tribunal, Mumbai Bench, in **Canara Bank v. Shewta Deepak Patel, C.P. (IB) No. 377/NCLT/MB/2025,** decided on 06.04.2026, held that a demand notice issued under Section 13(2) of the SARFAESI Act, 2002, addressed to both borrower and guarantor, constitutes valid invocation of a personal guarantee where it contains a specific demand for repayment, and that the liability of the personal guarantor arises upon failure to comply within the stipulated notice period. The Tribunal further held that limitation for proceedings against a personal guarantor runs from such date of default, and that pendency of proceedings under SARFAESI or before the DRT does not bar initiation of insolvency proceedings under Section 95 of the Insolvency and Bankruptcy Code, 2016.

The petition was filed by the financial creditor under Section 95 of the IBC seeking initiation of insolvency resolution process against the personal guarantor in respect of credit facilities extended to the principal borrower. The respondent contested the maintainability of the petition, inter alia, on grounds that (i) the underlying document was in the nature of an indemnity and not a guarantee, (ii) the Section 13(2) notice did not constitute invocation of guarantee, (iii) the date of default was incorrectly computed, and (iv) parallel proceedings under SARFAESI and the Recovery of Debts and Bankruptcy Act, 1993 barred recourse to insolvency proceedings.

On examination of the guarantee deed dated 21.02.2019 and the surrounding transaction documents, the Tribunal rejected the contention that the contract was one of indemnity, holding that the document expressly created an unconditional and continuing guarantee within the meaning of Section 126 of the Indian Contract Act, 1872. The clauses unequivocally established that the guarantor undertook joint and several liability to repay the dues of the borrower upon default.

On the issue of invocation, the Tribunal held that the demand notice dated 06.07.2024 issued under Section 13(2) of the SARFAESI Act, which specifically called upon the borrower and guarantor to discharge the outstanding liability within 60 days, constituted valid invocation of the personal guarantee. Relying on NCLAT precedent, the Tribunal observed that such notice, when addressed to the guarantor and containing a clear demand, satisfies the requirement of invocation under the terms of the guarantee.

Consequently, the Tribunal held that the liability of the personal guarantor crystallised upon failure to comply with the demand within the stipulated period, and the date of default was correctly computed as 04.09.2024, i.e., upon expiry of 60 days from the date of notice. The Tribunal further clarified that, in cases of “on demand” guarantees, limitation begins to run from the date of demand and breach thereof, and not from the date of default of the principal borrower.

Rejecting the contention regarding parallel proceedings, the Tribunal held that initiation of action under SARFAESI or filing of recovery proceedings before the DRT does not preclude insolvency proceedings under Section 95 of the IBC. In view of Section 238 of the IBC, the Code overrides other statutes, and insolvency proceedings are independent and not in the nature of recovery actions.

The Tribunal also rejected objections relating to insufficiency of stamping and alleged defects in proof of disbursement, holding that the existence of debt and default stood established from the record, including sanction letters, acknowledgments, and statements of account.

Accordingly, the NCLT held that the requirements under Sections 95 and 99 of the IBC were satisfied, admitted the application under Section 100, and initiated insolvency resolution process against the personal guarantor, along with commencement of moratorium under Section 101.

C. SURPLUS CASH FLOW GENERATED DURING CIRP, WHERE THE RESOLUTION PLAN IS SILENT ON ITS TREATMENT, FORMS PART OF THE INSOLVENCY ESTATE AND MUST BE DISTRIBUTED UNDER SECTION 53; SUCH SURPLUS DOES NOT VEST IN THE SUCCESSFUL RESOLUTION APPLICANT – NCLAT

The National Company Law Appellate Tribunal in **Manjeet Cotton Pvt. Ltd. v. Phoenix ARC Pvt. Ltd., Company Appeal (AT) (Ins.) No. 1676 of 2025, decided on 27.04.2026,** held that surplus cash flow generated during the Corporate Insolvency Resolution Process (CIRP), prior to approval of the resolution plan, does not vest in the Successful Resolution Applicant where the resolution plan is silent on its treatment, and such surplus forms part of the insolvency estate to be distributed in accordance with Section 53 of the Insolvency and Bankruptcy Code, 2016.

The appeal arose from an order of the NCLT directing distribution of surplus funds of approximately Rs.1 crore generated during the CIRP period among financial creditors under Section 53. The Appellant, being the Successful Resolution Applicant, contended that upon approval of the resolution plan under Section 31, all assets of the corporate debtor, including accretions and cash balances, stood vested in it, and that redistribution of such surplus would amount to impermissible modification of the approved plan.

On facts, the Tribunal noted that the corporate debtor was run as a going concern during CIRP under the supervision of the Resolution Professional, and the surplus was generated entirely during this period, prior to takeover by the Successful Resolution Applicant. It was further noted that the resolution plan neither contemplated nor provided for treatment or allocation of such surplus.

Rejecting the Appellant's contention that such surplus constituted an "accretion" to the assets of the corporate debtor, the Tribunal held that only those assets and values which are identified, evaluated, and provided for in the resolution plan can vest in the resolution applicant. Any value not contemplated or accounted for in the plan cannot be subsequently claimed by implication.

The Tribunal further held that surplus generated during CIRP retains the character of CIRP-period accrual forming part of the insolvency estate, particularly where it is generated under the management of the Resolution Professional and without any contribution or risk borne by the resolution applicant. The mere fact that such surplus was held in the form of fixed deposits or cash equivalents does not alter its legal character.

On interpretation of the resolution plan, the Tribunal found that clauses relating to vesting of assets and transfer of the corporate debtor as a going concern could not be extended to include CIRP-generated surplus not contemplated under the plan. The Tribunal emphasised that the plan was completely silent on treatment of such surplus, and the only clause referring to surplus merely enabled its utilisation for foreclosure purposes, without conferring any ownership rights on the resolution applicant.

Distinguishing precedents such as Essar Steel and Ebix Singapore, the Tribunal held that those decisions turned on express contractual stipulations in the resolution framework, which were absent in the present case. In the absence of any such provision, the statutory mechanism under Section 53 would apply for distribution of such surplus.

The Tribunal also rejected the contention that such distribution would amount to modification of the resolution plan, holding that the direction merely addressed a situation not contemplated in the plan and applied the statutory framework of the Code.

Accordingly, the NCLAT held that the surplus generated during CIRP formed part of the insolvency estate, upheld the direction for its distribution under Section 53, and dismissed the appeal.

D. CHANGE IN COMPOSITION OF CONSORTIUM AFTER APPROVAL OF RESOLUTION PLAN BY CoC IS IMPERMISSIBLE; SUCH CHANGE VIOLATES RFRP AND CIRP REGULATIONS AND CANNOT BE CURED BY RE-APPROVAL – NCLAT

The National Company Law Appellate Tribunal in **Consortium of Wafi Investments Ltd. and Anr. v. Vishal Jain (RP) and Ors., Company Appeal (AT) (Insolvency) No. 433 of 2026,** decided on 23.04.2026, held that a consortium whose resolution plan has been approved by the Committee of Creditors cannot subsequently alter its composition by inducting a new member, and any such reconstitution followed by re-approval of the plan is contrary to the Request for Resolution Plan (RFRP), the CIRP Regulations, and the scheme of the Insolvency and Bankruptcy Code, 2016.

The appeal arose from an order of the NCLT remanding a resolution plan to the CoC on the ground that the plan, as re-approved after induction of a new consortium member, was not compliant with Section 30(2)(e) and (f) of the Code and relevant CIRP Regulations. The Appellant, being the Successful Resolution Applicant, contended that the RFRP permitted change in consortium composition with CoC approval and that such induction enhanced financial strength without affecting the plan's commercial terms.

On facts, the Tribunal noted that the original resolution plan submitted by a consortium of two members was approved by the CoC on 11.11.2024. Thereafter, the Appellant sought induction of a third entity into the consortium, which was approved by the CoC, followed by re-approval of the resolution plan on 09.12.2024 with modified shareholding and structure.

The Tribunal held that such post-approval alteration in consortium composition is impermissible. Interpreting the RFRP, particularly the clause permitting change in consortium with CoC approval, the Tribunal clarified that such changes are permissible only prior to approval of the resolution plan, and not thereafter. Acceptance of post-approval changes would undermine the structured process under the Code, including evaluation of eligibility, feasibility, and viability of the resolution plan based on the original consortium.

The Tribunal emphasised that evaluation of a resolution plan is intrinsically linked to the credentials, financial strength, and obligations of the consortium members, as reflected in the evaluation matrix and submission documents. A change in composition after approval alters the identity of the resolution applicant itself and renders the earlier evaluation process otiose.

Further, the Tribunal held that a reconstituted consortium, not forming part of the final list of prospective resolution applicants, cannot be treated as the same applicant for purposes of approval. Such re-approval violates Regulation 39(1B) of the CIRP Regulations, which prohibits consideration of plans from persons not included in the final list.

Rejecting reliance on clauses permitting changes in shareholding of the Special Purpose Company post-approval, the Tribunal clarified that such provisions operate at the implementation stage and cannot be equated with alteration of the consortium itself at the plan approval stage.

The Tribunal also distinguished precedents on commercial wisdom of the CoC, holding that while commercial decisions are ordinarily non-justiciable, they remain subject to compliance with statutory provisions and the procedural framework of the Code. Where the process itself violates the RFRP and regulations, the Adjudicating Authority is justified in intervening.

Accordingly, the NCLAT upheld the order of the Adjudicating Authority remanding the resolution plan for reconsideration, held that post-approval reconstitution of the consortium was legally impermissible, and dismissed the appeal.

E. OPERATIONAL DEBT CANNOT BE CLUBBED ACROSS DIFFERENT LEGAL ENTITIES TO MEET SECTION 4 THRESHOLD; DEBT OF PROPRIETORSHIP CANNOT BE FASTENED ON COMPANY – NCLAT

The National Company Law Appellate Tribunal in **Bhushan Power & Steel Ltd. v. A.G. Pipes Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 2057 of 2024, decided on 21.04.2026,** held that debts arising from transactions with different legal entities cannot be aggregated to meet the minimum threshold under Section 4 of the Insolvency and Bankruptcy Code, 2016. It further held that invoices raised against a proprietorship concern cannot be treated as debt of a company merely because both are under common management.

The case arose from dismissal of a Section 9 application by the NCLT on the ground that the default attributable to the corporate debtor was below Rs.1 crore. The Operational Creditor claimed that a total sum of about Rs.1.49 crore was due and argued that there was no pre-existing dispute.

On examining the record, the Tribunal found that most of the invoices—about Rs.1.42 crore—were issued in the name of "A.G. Pipes", a sole proprietorship, while only about Rs.13.09 lakh related to "A.G. Pipes Pvt. Ltd.", the corporate debtor. This was also evident from the invoice table (page 12), where almost all entries were in the name of the proprietorship.

The Tribunal held that a proprietorship and a company are separate legal entities, even if managed by the same person. Therefore, the debt of the proprietorship cannot be imposed on the company, and such amounts cannot be combined to meet the Section 4 threshold.

It was further clarified that the minimum default requirement under Section 4 is a jurisdictional condition. If the debt against the corporate debtor alone does not meet this threshold, the application is not maintainable, irrespective of whether any dispute exists.

The Tribunal also noted that the Operational Creditor failed to show any legal basis to treat both entities as one. Mere reliance on common management or GST-related explanations was held insufficient to disregard their separate legal identity.

Accordingly, the NCLAT upheld the NCLT's order, held that the debt attributable to the corporate debtor was below the statutory threshold, and dismissed the appeal as not maintainable.

F. APPROVAL OF RESOLUTION PLAN WITHOUT DISCLOSURE AND PROPER CONSIDERATION OF AVOIDANCE (PUFE) TRANSACTIONS, AND PROVIDING FOR SHARING OF SUCH RECOVERIES WITH SRA, VIOLATES IBC AND CIRP REGULATIONS; COMMERCIAL WISDOM OF CoC IS SUBJECT TO STATUTORY COMPLIANCE – NCLAT

The National Company Law Appellate Tribunal in **Sandeep Lucky v. Sh. Rajeev Lochan (RP) and Ors., Company Appeal (AT) (Insolvency) No. 1904 of 2025 and Company Appeal (AT) (Insolvency) No. 3 of 2026, decided on 24.04.2026**, held that approval of a resolution plan without proper disclosure, consideration, and timely initiation of avoidance (preferential, undervalued, fraudulent and extortionate) transactions is contrary to the Insolvency and Bankruptcy Code, 2016 and CIRP Regulations, and that recoveries from such transactions cannot be shared with the Successful Resolution Applicant, as they form part of the assets of the corporate debtor.

The appeals arose from an order of the NCLT rejecting a resolution plan approved by the CoC with 100% voting share, removing the Resolution Professional, and directing re-initiation of CIRP. The Appellant contended that the commercial wisdom of the CoC is non-justiciable and that avoidance applications are independent proceedings which do not affect plan approval.

On facts, the Tribunal noted that although a transaction auditor had identified substantial avoidance transactions—approximately Rs.83 crore (including preferential and fraudulent transactions)—the details of such transactions were neither adequately placed before nor meaningfully considered by the CoC at the time of approval of the resolution plan.

It was further observed that the resolution plan provided that the Successful Resolution Applicant would pursue avoidance proceedings post-approval and that recoveries would be shared between creditors and the SRA in a 50:50 ratio. The Tribunal held that such a stipulation is contrary to Section 36(3)(f) of the Code, as recoveries from avoidance transactions form part of the assets of the corporate debtor and are required to be distributed in accordance with the statutory framework, and cannot be appropriated or shared with the SRA.

The Tribunal also found that the Resolution Professional failed to comply with mandatory timelines under Regulation 35A, which requires formation of opinion, determination, and filing of avoidance applications within prescribed timelines during CIRP. Filing such applications after approval of the resolution plan, without apprising the CoC, was held to be a serious procedural lapse undermining transparency of the process.

Further, the Tribunal noted additional infirmities in the CIRP process, including non-disclosure of material information to prospective resolution applicants, improper structuring of performance security, and overall lack of transparency and fairness in conduct of the process. It was observed that such deficiencies could have impacted value maximization and deprived other bidders of the opportunity to submit competitive plans.

Rejecting the argument based on commercial wisdom, the Tribunal reiterated that while the CoC's commercial decisions are generally non-interferable, such deference operates only within the bounds of statutory compliance. Where the process itself is vitiated by violations of the Code and Regulations, the Adjudicating Authority is justified in rejecting the plan.

Accordingly, the NCLAT upheld the order of the Adjudicating Authority rejecting the resolution plan, affirmed the direction for re-initiation of CIRP, declined to interfere with findings against the Resolution Professional, and dismissed the appeals.

NCLT & IBC Committee Leadership

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

In case of any query:

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