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IBC Pulse

Monthly Updates on Insolvency & Resolution

A. RESIGNATION OF A DIRECTOR DOES NOT, BY ITSELF, DISCHARGE A PERSONAL GUARANTOR FROM LIABILITY UNDER A CONTINUING AND IRREVOCABLE DEED OF GUARANTEE; A CONTINUING GUARANTEE CAN BE REVOKED ONLY BY NOTICE TO THE CREDITOR UNDER SECTION 130 OF THE INDIAN CONTRACT ACT, 1872; RENEWAL OF CREDIT FACILITIES WITHOUT SUBSTITUTION OF THE ORIGINAL CONTRACT DOES NOT AMOUNT TO NOVATION UNDER SECTION 62 OR A VARIATION DISCHARGING THE SURETY UNDER SECTION 133; ADMISSION OF AN APPLICATION UNDER SECTION 95 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 UPHELD – NCLAT

The National Company Law Appellate Tribunal, in ***Nakul Gupta v. State Bank of India & Anr*****. [Company Appeal (AT) (Insolvency) No. 494 of 2024, decided on 06.07.2026]**, upheld the admission of personal insolvency proceedings against a personal guarantor under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("IBC"). The Tribunal held that resignation from the directorship of the corporate debtor does not, by itself, discharge a guarantor from liability under a continuing and irrevocable deed of guarantee. It further held that renewal of existing credit facilities, without substitution of the original contract or enhancement of the lender's exposure, does not constitute novation under Section 62 or a variance discharging the surety under Section 133 of the Indian Contract Act, 1872 ("Contract Act").

The corporate debtor had availed consortium credit facilities aggregating 907 crores, including facilities of 117 crores from State Bank of India ("SBI"). The appellant, along with two other directors, executed a deed of guarantee on 17.10.2017 securing these facilities. Although the appellant resigned as a director on 08.03.2018, the consortium subsequently renewed the facilities, and SBI also issued a fresh sanction letter. The appellant neither executed a fresh guarantee nor consented to the renewed facilities. After the corporate debtor's account was classified as an NPA, SBI initiated proceedings under Section 95 of the IBC against the appellant, which were admitted by the Adjudicating Authority on the basis of the Resolution Professional's report under Section 99.

Before the NCLAT, the appellant contended that his resignation and the subsequent renewal and enhancement of the credit facilities discharged him as guarantor under Sections 62, 129, 130 and 133 of the Contract Act. He argued that the guarantee was confined to the original 2017

Forthcoming Events

- **Round Table on IBC Amendment Act 2026**
  24th July'26, New Delhi
- **IBC Pulse 2.0**
  5th Sep'26, Chandigarh
- **National Summit & IBC Awards**
  12th *Sep'26, New Delhi*
- **International Study Delegation to the USA on "Global Best Practices in Insolvency"**
  16th- 25th Oct'26
- **Residential Workshop on Board Governance.**
  25th- 27th Nov'26, Kochi

For More Details:
Mr. Joyan Das
+91 8638376562

facilities and that the subsequent sanction letters amounted to a new contractual arrangement to which he had never consented. SBI, on the other hand, submitted that the guarantee was expressly continuing, irrevocable and unaffected by future variations, that no notice of revocation had ever been issued under Section 130, and that there had been no enhancement of SBI's facilities after the original sanction.

Rejecting the appeal, the Tribunal held that the deed of guarantee unequivocally provided that the guarantee was continuing, irrevocable, payable on demand and unaffected by subsequent variations in the contractual terms. The appellant's resignation from the corporate debtor therefore had no bearing on his contractual liability as guarantor. The Tribunal observed that under Section 130 of the Contract Act, a continuing guarantee can be revoked only prospectively by notice to the creditor, and no such notice had ever been issued to SBI.

The Tribunal further held that there was no novation under Section 62 since SBI had not enhanced its sanctioned exposure of 117 crores after the original sanction, and the subsequent renewal letter had never become operative as it was not accepted by the borrowers and guarantors. It also held that Section 133 discharges a surety only in respect of transactions subsequent to an unauthorised variance and, in any event, mere renewal of facilities did not amount to such variance. The Tribunal relied upon H.R. Basavraj v. Canara Bank, Sita Ram Gupta v. Punjab National Bank, State Bank of India v. Gourishankar Poddar and Sri Vibu Venkatsubramanian v. State Bank of India in support of these principles.

The NCLAT also rejected the appellant's reliance on Dilip B. Jiwrajka v. Union of India, observing that the Adjudicating Authority had independently considered the appellant's objections before admitting the application under Section 95. Holding that the guarantee remained valid and enforceable and that no ground existed to interfere with the admission order, the Appellate Tribunal dismissed the appeal along with all pending interlocutory applications.

B. PROCEEDINGS UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002 OPERATE IN A DISTINCT FIELD FROM THE INSOLVENCY AND BANKRUPTCY CODE, 2016; THE MORATORIUM UNDER SECTION 14 OF THE IBC DOES NOT BAR ATTACHMENT OF "PROCEEDS OF CRIME" OR ACTIONS TAKEN UNDER THE PMLA; NCLT AND NCLAT HAVE NO JURISDICTION TO EXAMINE THE VALIDITY OF ATTACHMENT ORDERS OR NOTICES ISSUED UNDER THE PMLA; CHALLENGES TO SUCH ACTIONS MUST BE PURSUED BEFORE THE ADJUDICATORY FORUMS CONSTITUTED UNDER THE PMLA – NCLAT

The National Company Law Appellate Tribunal, in Value ***Wise Consultancy Pvt. Ltd. v. Deputy Director, Directorate of Enforcement & Ors.*** **[Company Appeal (AT) (Ins.) Nos. 1226 and 1227 of 2022, decided on 30.06.2026]**, upheld the dismissal of applications filed by the Liquidator of Siddhi Vinayak Logistics Ltd. seeking refund of monies withdrawn by the Enforcement Directorate, release of attached assets, and quashing of notices issued under Section 50 of the PMLA. The Tribunal held that proceedings under the PMLA operate in a distinct field from the IBC, and that the jurisdiction of the NCLT and NCLAT does not extend to examining the legality of attachment proceedings or other actions taken by authorities under the PMLA.

The dispute arose after the ED initiated proceedings against the Corporate Debtor and its promoters on allegations of bank fraud and diversion of loan funds. Prior to commencement of the CIRP, the ED provisionally attached the Corporate Debtor's assets under the PMLA. During the subsistence of the moratorium under Section 14 of the IBC, the ED withdrew approximately 2.29 crores from the Corporate Debtor's bank account. Following commencement of liquidation, the ED also issued a fresh provisional attachment over several vehicles belonging to the Corporate Debtor. The Liquidator challenged these actions under Section 60(5) of the IBC, contending that they violated the statutory moratorium and frustrated the insolvency and liquidation process.

The Liquidator argued that the ED's withdrawal of funds and restraint notices issued to the Corporate Debtor's debtors amounted to coercive recovery actions prohibited by Section 14 of the IBC. It was also contended that since the PMLA Appellate Tribunal had set aside the earlier attachment order and no stay had been granted by the Bombay High Court, the ED could not continue retaining the withdrawn amounts. The ED, however, maintained that the proceedings concerned "proceeds of crime", that the PMLA is a special penal statute operating independently of the IBC, and that any challenge to attachment orders or notices under the PMLA could be entertained only by the authorities constituted under that enactment.

The NCLAT held that the controversy essentially concerned the interplay between the IBC and the PMLA. Emphasising the legislative object of the PMLA, the Tribunal observed that the statute is intended to combat money laundering and facilitate attachment and eventual confiscation of proceeds of crime in furtherance of larger public interest. In contrast, the IBC is designed to resolve insolvency and maximise value of the legitimate assets of a corporate debtor. The Tribunal observed that Parliament never intended the IBC to become a mechanism for protecting or legitimising assets tainted by criminality, and therefore the moratorium under Section 14 and the liquidation bar under Section 33(5) cannot be interpreted to shield proceeds of crime from action under the PMLA.

Relying upon Embassy Property Developments Pvt. Ltd. v. State of Karnataka, Deputy Director, Directorate of Enforcement v. Axis Bank, Kiran Shah v. Enforcement Directorate and Ashok Kumar Sarawagi v. Enforcement Directorate, the Tribunal reiterated that the jurisdiction of the NCLT and NCLAT is confined to matters necessary for implementation of the IBC and cannot extend to adjudicating the legality of actions taken under another Parliamentary enactment such as the PMLA. The Tribunal also noted the IBBI Circular dated 04.11.2025 advising insolvency professionals to seek restitution of attached assets before the Special Court under the PMLA. Since the challenge was essentially directed against attachment orders and notices issued under the PMLA, the Tribunal held that the appropriate remedy lay before the authorities and courts constituted under that statute. Accordingly, the appeals were dismissed without costs.

C. THE NCLT CANNOT, IN EXERCISE OF ITS SUMMARY JURISDICTION UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016, OVERRIDE OR NULLIFY A CONSENT DECREE PASSED BY A COMPETENT CIVIL COURT; POSSESSORY RIGHTS PROTECTED UNDER SECTION 53A OF THE TRANSFER OF PROPERTY ACT, 1882 CANNOT BE DISTURBED MERELY BECAUSE A REGISTERED CONVEYANCE HAS NOT BEEN EXECUTED; PENDING ADJUDICATION OF AN APPLICATION UNDER SECTION 66 OF THE IBC, STATUS QUO OVER THE DISPUTED PROPERTY OUGHT TO BE MAINTAINED – NCLAT

The National Company Law Appellate Tribunal, in ***AKJ Metals Pvt. Ltd. v. Brijesh Singh Bhadauriya & Ors.*** **[Company Appeal (AT) (Ins.) Nos. 1606 and 1607 of 2025, decided on 30.06.2026],** held that the Adjudicating Authority exceeded its jurisdiction by directing a third party to hand over possession of two immovable properties to the Resolution Professional, despite a subsisting consent decree passed by a competent Civil Court recognising the appellant's possessory rights. The Tribunal held that the NCLT, while exercising jurisdiction under the IBC, cannot sit in appeal over or nullify judicial orders passed by Civil Courts, and that disputes relating to title and possessory rights cannot be adjudicated in summary insolvency proceedings.

Prior to commencement of the CIRP, the appellant had entered into agreements to purchase the Baddi and Nalagarh properties from the Corporate Debtor, paid the entire consideration and obtained physical possession. Since the sale deeds were not executed, the appellant instituted suits for specific performance, which culminated in a settlement and consent decrees appointing a Court Receiver to complete the transfer formalities. After commencement of CIRP, the RP sought possession of both properties under Sections 18 and 25 of the IBC on the ground that they continued to be assets of the Corporate Debtor. Simultaneously, the RP also initiated proceedings under Section 66 of the IBC alleging that the transactions were fraudulent and intended to defraud creditors. The NCLT approved the resolution plan while simultaneously directing the appellant to hand over possession of both properties to the RP.

The appellant contended that the properties had ceased to be assets of the Corporate Debtor prior to CIRP, that its possession was protected under Section 53A of the Transfer of Property Act, 1882, and that the consent decrees passed by the Civil Court could not be disregarded by the NCLT. It was further argued that, in view of the Supreme Court's decision in Piramal Capital and Housing Finance Ltd. v. 63 Moons Technologies Ltd., Section 66 contemplates monetary contribution and does not empower the Adjudicating Authority to dispossess third parties or cancel transactions. The RP and Financial Creditors, however, alleged that the transactions were collusive, undervalued and intended to defeat the interests of creditors, justifying recovery of possession.

Allowing the appeals, the NCLAT held that the appellant had established the essential ingredients for protection under Section 53A of the Transfer of Property Act, having entered into written agreements, paid the consideration, taken possession and pursued specific performance, resulting in consent decrees recognising its rights. The Tribunal observed that a compromise decree carries the same legal effect as any other civil decree and cannot be ignored unless recalled or set aside by the competent Civil Court. Relying upon Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta, the Tribunal reiterated that the IBC does not create an omnibus forum for adjudicating disputes relating to title or ownership and that the NCLT cannot override or invalidate decrees passed by Civil Courts.

The Tribunal further observed that the RP's application under Section 66, alleging fraudulent transactions, remained pending before the Adjudicating Authority and should be decided independently in accordance with law. Since the rights of the Financial Creditors would remain protected depending upon the outcome of those proceedings, there was no justification for directing immediate dispossession of the appellant. Accordingly, the NCLAT set aside the directions requiring the appellant to hand over possession of the Baddi and Nalagarh properties, directed expeditious disposal of the pending Section 66 application, ordered maintenance of status quo over the properties until its adjudication, and restrained the appellant from transferring or creating any third-party rights in the properties in the meantime.

D. THE EXISTENCE OF A PLAUSIBLE PRE-EXISTING DISPUTE, SUPPORTED BY CONTEMPORANEOUS DOCUMENTARY EVIDENCE, GST INVESTIGATION RECORDS, AND QUALIFIED REPLIES TO THE DEMAND NOTICE, BARS ADMISSION OF AN APPLICATION UNDER SECTION 9 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016; THE IBC CANNOT BE INVOKED AS A DEBT RECOVERY MECHANISM FOR DISPUTED CLAIMS – NCLAT

The National Company Law Appellate Tribunal, in ***Abhishek Singh v. Rajaram Foods Products India Ltd. & Anr.*** **[Company Appeal (AT) (Insolvency) Nos. 1833 of 2025 and 105 of 2026, decided on 30.06.2026]**, held that where contemporaneous material establishes a genuine and plausible pre-existing dispute, an application under Section 9 of the IBCis not maintainable. Applying the test laid down by the Supreme Court in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd., the Tribunal reiterated that the Adjudicating Authority is required only to ascertain whether a real dispute exists and not to adjudicate its merits.

The first appeal arose from the admission of a Section 9 application filed by Rajaram Foods Products India Ltd. (formerly Capricorn Food Products India Ltd.) against Manpasand Beverages Ltd. The Operational Creditor alleged default in payment for supplies of mango and guava pulp. The Corporate Debtor challenged the admission order on the ground that the alleged operational debt was disputed, relying upon contemporaneous correspondence evidencing defective goods, short supply, non-supply, quality issues, dispatch discrepancies, and rejection of consignments. It further relied upon GST investigation records, which allegedly disclosed fake invoicing and circular transactions, and CBI communications showing that the alleged receivables had already been written off in the Operational Creditor's books.

Allowing the appeal, the NCLAT found that the contemporaneous emails, correspondence and minutes of meetings exchanged between the parties clearly demonstrated disputes regarding quality, quantity, dispatch and supply of goods long before issuance of the Section 8 demand notice. These communications were directly exchanged with the Operational Creditor and could not be dismissed as self-serving or afterthoughts. The Tribunal held that such material satisfied the Mobilox threshold of a plausible pre-existing dispute requiring adjudication by a competent forum, thereby rendering the Section 9 application liable to rejection.

The Tribunal also attached significance to the findings emerging from GST proceedings, wherein officers of the Operational Creditor had admitted before the tax authorities that several transactions constituted mere paper transactions unsupported by actual movement of goods and were undertaken for wrongful availment of input tax credit. Since these findings had neither been stayed nor set aside, they constituted substantial material evidencing serious disputes regarding the genuineness of the underlying transactions. The Tribunal observed that insolvency proceedings cannot be invoked where such disputed claims require detailed adjudication, particularly when the IBC confers only summary jurisdiction upon the Adjudicating Authority.

The NCLAT further held that the admitted write-off of the alleged receivables in the Operational Creditor's own books, noticed during CBI investigations, constituted another circumstance indicating that the claim was disputed. While observing that a write-off may not, by itself, extinguish a legal claim, the Tribunal held that such disputed receivables cannot be recovered through the insolvency process, which is intended for resolution of insolvency and not for recovery of contested debts. Similarly, the Corporate Debtor's reply to the Section 8 demand notice, stating that accounts would be reconciled and settled "if any payable", was held not to constitute an unequivocal admission of liability but rather a notice of dispute within the meaning of Section 8(2) of the IBC.

In the second appeal, the NCLAT considered whether a subsequent Section 9 application could be admitted while an earlier CIRP admission order against the same Corporate Debtor had been stayed by the Appellate Tribunal. Referring to its earlier decision in Axis Bank Ltd. v. Asset Reconstruction Company (India) Ltd., the Tribunal noted that an interim stay merely keeps the admission order and moratorium in abeyance without reviving the pre-admission status quo or altering the in rem character of insolvency proceedings. Consequently, the Tribunal held that parallel insolvency proceedings against the same Corporate Debtor are impermissible. In view of the findings on the existence of pre-existing disputes, the NCLAT set aside the admission orders passed in both Section 9 proceedings.

E. SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 DOES NOT PROHIBIT APPOINTMENT OF DIRECTORS DURING THE MORATORIUM PERIOD; WHILE THE POWERS OF THE BOARD OF DIRECTORS STAND SUSPENDED UNDER SECTION 17, THE BOARD ITSELF IS NOT DISSOLVED; CHANGES IN THE MANAGEMENT OF THE CORPORATE DEBTOR MAY BE EFFECTED WITH THE REQUISITE APPROVAL OF THE COMMITTEE OF CREDITORS UNDER SECTION 28(1)(J); SUCH APPOINTMENTS DO NOT ATTRACT PENAL CONSEQUENCES UNDER SECTION 74 – NCLT

The National Company Law Tribunal, New Delhi Bench, in ***Indure Pvt. Ltd. v. B.K. Coal Fields Pvt. Ltd.* [I.A. No. 1311/2018 in Company Petition (IB) No. 227/(PB)/2017, decided on 04.06.2026],** held that the appointment of new directors during the CIRP does not violate the moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code, 2016. The Tribunal held that while Section 17 suspends the powers of the Board of Directors, it does not dissolve the Board itself, and changes in the management of the Corporate Debtor are permissible with the prior approval of the Committee of Creditors under Section 28(1)(j). Consequently, no action under Section 74 of the IBC could be initiated for such appointments.

The Operational Creditor, at whose instance CIRP had been initiated, filed an application under Sections 74 and 60(5) of the IBC alleging that the Corporate Debtor had violated the moratorium by appointing two new directors during CIRP. It was contended that the appointments, though approved by the CoC, were illegal since an application challenging the constitution of the CoC on the ground that its members were related parties was already pending before the Adjudicating Authority. The applicant accordingly sought initiation of penal proceedings under Section 74 of the IBC.

Rejecting the application, the Tribunal observed that Section 14 merely prohibits institution or continuation of proceedings against the Corporate Debtor, transfer or alienation of its assets, enforcement of security interests, and recovery of property in its possession. The provision contains no prohibition against appointment of directors during the moratorium period. Referring to Sections 17 and 28(1)(j) of the IBC, the Tribunal held that although the powers of the Board vest in the Interim Resolution Professional or Resolution Professional, the Board itself continues to exist for purposes of statutory compliances, and changes in management may be undertaken with the requisite approval of the CoC. The Tribunal relied upon the decisions of the NCLAT in Steel Konnect (India) Pvt. Ltd. v. Hero Fincorp Ltd. and Subasri Realty Pvt. Ltd. v. N. Subramanian to reiterate that directors continue to remain on the records of the company during CIRP and are required to assist the Resolution Professional in ensuring that the Corporate Debtor remains a going concern.

The Tribunal further rejected the contention that the appointments became invalid merely because the composition of the CoC was under challenge in separate proceedings. Relying upon Regulation 12(3) of the CIRP Regulations and the decisions in DBS Bank India Pvt. Ltd. v. Rakesh Kumar Jain and Mehar Bhoomi Bhawan Pvt. Ltd. v. Shashi Bhushan Prasad, the Tribunal held that subsequent reconstitution or challenge to the CoC does not invalidate decisions already taken by it. Holding that the appointment of the new directors had been duly approved by the CoC and did not contravene Section 14, the NCLT dismissed the application and declined to initiate proceedings under Section 74 of the IBC.

F. THE ADJUDICATING AUTHORITY IS EMPOWERED TO EXAMINE THE THRESHOLD MAINTAINABILITY OF AN APPLICATION UNDER SECTION 94 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 BEFORE APPOINTING A RESOLUTION PROFESSIONAL UNDER SECTION 97; DETERMINATION OF THE APPLICANT'S LOCUS STANDI CONSTITUTES AN INQUIRY INTO JURISDICTIONAL FACTS AND NOT AN ADJUDICATION ON THE MERITS; A PERSON CLAIMING TO BE A PERSONAL GUARANTOR MUST PRIMA FACIE ESTABLISH SUCH STATUS BEFORE INVOKING THE INSOLVENCY PROCESS – KARNATAKA HIGH COURT

TThe High Court of Karnataka, in ***K. C. M. Gowda v. Aditya Birla Capital Ltd. & Ors.* [Writ Petition No. 16159 of 2026 (GM-RES), decided on 03.06.2026]**, upheld the order of the National Company Law Tribunal dismissing an application filed under Section 94 of the IBC. The Court held that the Adjudicating Authority is not required to mechanically appoint a Resolution Professional upon presentation of an application under Section 94 and is entitled to first examine whether the applicant possesses the requisite locus standi to invoke the provision. Such an inquiry, the Court held, is confined to determining jurisdictional facts and does not amount to adjudication on the merits of the insolvency proceedings.

The petitioner had approached the NCLT under Section 94 of the IBC claiming to be a personal guarantor in respect of credit facilities extended by Aditya Birla Capital Ltd. to a corporate debtor. The NCLT dismissed the application after finding that the petitioner had failed to establish that he was a personal guarantor. Challenging the said order, the petitioner contended before the High Court that the NCLT was bound to appoint a Resolution Professional under Section 97 before examining any disputed question regarding his status, and that the issue of whether he was a personal guarantor could be considered only subsequently during the insolvency process.

Rejecting the contention, the High Court held that Section 94 confers the right to initiate insolvency proceedings only upon a person satisfying the statutory requirements prescribed therein. The existence of the applicant's status as a debtor or personal guarantor constitutes a foundational jurisdictional fact which the Adjudicating Authority must ascertain before permitting the statutory process to commence. The Court observed that every judicial and quasi-judicial authority possesses the inherent power and obligation to determine whether the jurisdictional facts necessary for assumption of jurisdiction exist, and that such threshold scrutiny is distinct from adjudication of substantive rights.

Applying these principles, the Court found that the transaction documents relied upon by the petitioner consistently described him as a co-borrower and not as a personal guarantor. Neither the sanction letter, the facility agreement nor the mortgage documents evidenced the execution of a deed of guarantee. The Court held that the mere description of the petitioner as a personal guarantor in a subsequent demand notice issued by the creditor could not create or establish the legal status of a guarantor in the absence of any contractual instrument of guarantee. Holding that the petitioner had failed to establish the foundational jurisdictional fact necessary to invoke Section 94, the High Court dismissed the writ petition, declined to interfere with the NCLT's order, and imposed exemplary costs of 1,00,000 in view of the petitioner's failure to establish maintainability despite the availability of an efficacious statutory appellate remedy.

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In case of any query:

Mr. Joyan Das
Executive Officer
Joyan.das@phdcci.in