LIST OF IMPORTANT CASES FOR LIMITED INSOLVENCY EXAMINATION

W.E.F 1ST JANUARY, 2021

SUPREME COURT CASES

S.NO	CASE LAWS	Relevant Section of IBC	Gist of the case
1.	Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (Civil Appeal Nos. 8337-8338 of 2017)	7	Innoventive Industries proposed for CDR which was duly admitted. The issue was whether MRU Act which provided relief from enforcement of certain liabilities will prevail over IBC due to non obstante clause. Held NO, IBC will prevail. IBC is covered under Entry 9, List III of the Seventh Schedule to the constitution.

			Maharashtra Relief undertakings (Special Provisions Act), 1958 is made under Entry 23, List III of the Seventh schedule to the constitution. Three list for legislation by union and the states as per the constitution are Union List State List Concurrent List An application under Section 7 can be made in case of

			a) Undisputed debt. b) Disputed debt. c) Both a and b are correct. d) None of the above is false. After an IRP is appointed and a moratorium declared a) Directors are no longer in the management. b) Cannot appeal before NCLAT/SC. c) Lose the voting right in COC. d) All are correct.

			IBC is based on the model of a) US Law b) UK Law c) Australian Law d) None of the above NCLT has to inform about the rejection of an application submitted before it u/s 7 it to: a) Corporate Debtor b) Financial Creditor c) All the interested parties d) All the above Assignment of an operational debt to the

			Financial creditor has the effect of a. Making the operational creditor as financial creditor b. Voting right in COC c. No voting right in COC d. Maintaining the status quo An IRP asks the Bank of the Corporate Debtor to effect certain debits without the approval of COC a. Such action is voidable b. It is void c. It can be ratified by COC d. All of the above

			How many parts are there in Form 1? a. 3 b. 4 c. 5 d. 6 Evidence of default is to be given in a. Part IV b. Part V c. None of the above Which article of the constitution deals with Repugnancy? Meaning of Repugnancy is a. Inconsistency b. Similarity c. Concurrency

			d. Consistency In case of a direct conflict between the provisions of two statutes, the same shall mean a. Repugnancy b. Supremacy of the central legislation except in exceptional cases c. Supremacy of the exhaustive code laid down by the Parliament over the state legislative All of the above **Issues :-**

			▶ What is concept of default under IBC? ▶ How it must be ascertained? ▶ What is the scope of enquiry at the time of admission? ▶ Scope of hearing to be provided to corporate debtors? **A. <u>Concept of default under IBC</u>** ▶ Non-payment of debts when become due.

			▶ Even non-payment of part of defaulted due. ▶ Even non-payment of disputed financial debts would constitute a default. **B. <u>Scope of enquiry at the time of admission in Section 7 Petition</u>:** *Must admit if* **<u>Admission:-</u>** ▶ To see default has occurred on the basis of evidence or record of information utility.

			▸ Application is complete. **<u>Rejection:-</u>** ▸ only if CD is able to justify that there is no default occurred or debt is not due **OR** ▸ Application is incomplete. ▸ 7 days time to rectify the defects.

2.	Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited(Civil Appeal No. 9405 of 2017)	9	Nach Baliye on Star TV Non-Disclosure agreement. Violation by Kirusa. Held Dispute exists **Model Questions / Inferences based on Mobilox Innovations** Whether a NDA could be made effective from a date prior to the date of its execution? Date of NDA 26th Dec 2014

			Effective from 1st Nov 2013 As per Section 8 (2) (a), the expression “existence of a dispute, if any, and record of the pendency of the suit or arbitration proceeding filed__” must be read as existence of a dispute “or” record of the pendency of the suit or arbitration proceeding filed i.e. disjunctively. A dispute may exist even if a. Exchange of emails may establish dispute b. Definition of dispute is inclusive c. No legal proceedings are filed

			Pursuant to promulgation of IBC, Section 255 read with Eleventh Schedule of the Code has amended Section 271 of the Companies Act, 2013, So that a company being unable to pay its debts is no longer a ground for winding up a company. Fresh notice is required under section 8. How will the adjudicating authority ascertain whether any disciplinary proceeding is pending against the proposed resolution professional? Cite the relevant regulations.

			The word attested used in Section 8 means: a. Attested by notary b. Attested by oath commissioner c. Self-attested Whether the following can be operational creditors? a. Central Govt. b. State Govt. c. Local Authority. d. Workmen/employee Workmen/employees may file application a. In an individual capacity b. In joint capacity by one of them who is duly

			authorized for the purpose c. Through a stranger advocating a public cause d. A & B are correct Form 5 says it has to be filed with requisite fee. What is the amount of requisite fee? The period of 10 days mentioned in Section 8 is a. From the date of issue b. From the date of despatch c. From the date of receipt What is the mode of communication in section 10

			a. Registered Post b. Speed Post with Acknowledgement c. Courier d. Electronic Mail Place of service of notice u/s 10 is a. Registered office b. Whole time director c. Designated partner d. KMP The adjudicating authority shall give an opportunity to rectify the defect in the application within seven days of date of receipt of such notice. How you will establish date of receipt?

			Name of the committee set up under the chairmanship of the Sh. T.K. Viswanathan. Ministry and Department by which this committee was set up. Ministry of Finance. Department of Economic Affairs. Each order of NCLT contains a unique ID issued for the case which contains all reports and records that are generated during IRP will be stored and accessed. Where such records shall be maintained. Unique ID means mail ID or something else

			What is the difference between notified, prescribed and specified? An operational creditor gave notice on 18th July which was received by the corporate debtor on 21st July. When at the earliest can the operational creditor file application in case of no response from the corporate debtor? Whether holidays shall be counted?
3.	Dharani Sugars and Chemicals Limited		The Supreme Court in *Dharani Sugars and Chemicals Limited vs. Union of India & Others (***Dharani**

			Sugars*)* has struck down the circular dated February 12, 2018, containing the revised framework for resolution of stressed assets (**RBI Circular**) issued by the Reserve Bank of India (**RBI**) on the ground of it being *ultra vires* Section 35AA of the Banking Regulation Act, 1949 (**Banking Regulation Act**). Section 35AA was introduced by Parliament in 2017 to confer power on Central Government to authorise the RBI to give directions to any bank or banks to initiate an

			insolvency resolution process under the provisions of the Insolvency and Bankruptcy Code, 2016 (**IBC**) in respect of 'a default'. The RBI Circular was challenged, *inter alia,* on the basis that Section 35AA does not empower the RBI to issue directions for reference to the IBC of all cases without considering specific defaults. The Supreme Court has upheld the regulatory powers of the RBI under various provisions including the power of Central Government

			and the RBI under Section 35AA. But it has struck down the RBI Circular as a whole on account of it being *ultra vires* Section 35AA since it had been issued without the authorisation of Central Government and in respect of debtors generally as opposed to ‘specific’ defaults by ‘specific’ debtors as required under Section 35AA. The Supreme Court has further declared that: • All actions taken under the RBI Circular,

			including initiation of IBC proceedings, will fall away along with the RBI Circular. ▸ All cases in which banks have initiated proceedings under the IBC against debtors 'only' because of the operation of the RBI Circular, will not survive. **Key Take-Aways from the Judgment** Some of the key questions that arise because of the

			Supreme Court judgement are considered below: ▸ **Does the judgement affect the individual cases referred to the IBC by the banks in view of specific RBI directions (through the RBI's first and second list)?** The RBI had identified specific cases of defaults in the first and second lists based on certain criteria. Further, the RBI had already been authorised by Central

			Government to issue directions to any bank to initiate an insolvency resolution process under the IBC in respect of the default by way of the Notification bearing S.O. 1435(E) dated May 5, 2017. Therefore, the decision in *Dharani Sugars* will not affect referral of cases to IBC pursuant to the first and second lists. **2. Does the *Dharani Sugars* judgement invalidate the entire RBI Circular or only the**

			mandatory reference to the IBC? Whilst it was possible for the Supreme Court to only invalidate the mandatory reference to the IBC that was stipulated by the RBI, the Supreme Court has struck down the entire RBI Circular. Consequently, all the other provisions of the RBI Circular including preparing a resolution plan within 180 days from March 1, 2018 or the first date of default, as applicable, the minimum credit rating for an acceptable

			resolution plan, etc., have been struck down. **3. Does the Supreme Court judgement come in the way of the RBI's expansive regulatory powers under the Banking Regulation Act?** The Supreme Court judgment has upheld the RBI's: a. Broad and expansive powers under the Banking Regulation Act for regulation of banks including powers to issue directions for resolution

			of stressed assets outside the IBC. b. Powers to issue directions to banks to initiate an insolvency resolution process under the IBC against 'specific' debtors. The *Dharani Sugars* judgement does not hinder the RBI's powers to come up with a resolution framework for stressed assets except that the RBI cannot give a general direction for mandatory reference to the IBC in

			respect of debtors generally. Large parts of the RBI Circular can be reintroduced as they have sound regulatory basis for such measures. **4. Will resolution plans implemented under the RBI Circular be affected?** Since the resolution plans that have already been implemented under the RBI Circular have been largely done on a consensual basis, we believe there is sufficient basis for the consensual

			resolution plan implemented to be unaffected by the *Dharani Sugars* judgement. It was not the intent of the Supreme Court to undo consensual actions. The crux of the *Dharani Sugars* judgement was against RBI's mandatory referral to the IBC in respect of debtors generally instead of 'specific' cases of defaults. Since the resolution plans implemented were consensual, those can continue. Individual cases

			that have relied on specific measures of the RBI Circular will have to rely on the other provisions of the RBI's regulatory framework (including the provisions of the Mater Circular-Prudential Norms on Income Recognition, Asset Classification and Provisioning Pertaining to Advances issued by RBI bearing number DBR. No. BP.BC.2/21.04.048/2015-16 dated July 1, 2015) or equivalent provisions in the

			new framework that will be issued by the RBI. **5. Will the judgment impact cases that have been initiated by banks under the IBC between March 1, 2018 and April 2, 2019?** The Supreme Court has held that cases which were initiated only on account of the RBI Circular will not survive. However, in cases where the banks have filed the insolvency applications not solely because of the mandatory referral to the IBC

			requirement (as set out under the RBI Circular), but in exercise of their respective independent legal right to proceed under the IBC, the same shall not be affected by the *Dharani Sugars* judgment. **6. Will the old framework which was repealed by the RBI Circular, the Framework for Revitalising Distressed Assets, the Corporate Debt Restructuring Scheme, Flexible Structuring of Existing Long Term Project**

			Loans, the Strategic Debt Restructuring Scheme (SDR), Change in Ownership outside SDR, and the Scheme for Sustainable Structuring of Stressed Assets (S4A) (collectively the "Prior Regulatory Framework") revive? The RBI was within its powers to repeal the Prior Regulatory Framework and the same will not revive automatically even though the RBI Circular has been declared *ultra vires* and as

			having no effect in law. Therefore, it is not possible to prepare resolution plans on the basis of the Prior Regulatory Framework. **Way Forward** The RBI has, by way of its press release dated April 4, 2019, mentioned that in light of the *Dharani Sugars* judgment, it will take necessary steps, including issuance of a revised circular, as may be necessary, for expeditious and effective resolution of stressed assets.

			The RBI will be expected to quickly put in place a revised framework for resolution of stressed assets which will be in compliance with the existing legal provisions and the Supreme Court judgment, bearing in mind that large parts of the RBI Circular are founded on the RBI's regulatory powers that are not dependent on Section 35AA and a large number of cases that are presently under resolution will need to be implemented within the

			existing regulatory framework. **Issues :-** ▶ Existence of dispute ▶ Breach of NDA was sufficient to construe the existence of dispute to invalidate the CIRP application filed by the operational creditor. ▶ It was held that existence of dispute means that pre-existing dispute which

			should exist prior to receipt of the Demand Notice. **Issue :- Existence of Dispute** ▶ SC while deciding the matter scrutinized the background of IB Code. It observed that the Insolvency and Bankruptcy Bill 2015 defined "dispute" as "a bona fide suit or arbitration proceedings". However, when the Bill was passed the term "dispute" under Section 5 (6) was dropped from the

			definition. The SC stressed upon the interpretation that the previous jurisprudence with respect to the definition "dispute" does not apply to the current IB code. Instead, the SC provided a new test "plausible contention" to determine the "existence of dispute". ▶ In Section 9 petition Adjudicating Authority has to see:

			▶ Whether there is operational debt of more than rupees one lakh ▶ Whether documentary evidence is provided that debt is due and payable and has not yet paid. ▶ Whether there is existence of dispute between the concerned parties before the receipt of demand notice.

			If any one of the above conditions is not satisfied, NCLT must reject the application.

4.	**Pioneer Urban Land and Infrastructure Limited and Another Vs. Union of India & Others [(2019) 8 SCC 416]**	Section 5(8) (f) of the IBC.	In this case, while dismissing the various petitions filed by builders, the Supreme Court upheld the constitutional validity of the status of allottees as FCs. The Supreme Court also observed that delays in completing apartments have become a common phenomenon, and that amounts raised from home buyers contribute significantly to the financing of

			the construction of such apartments. It was important, therefore, to clarify that home buyers are treated as FCs so that they can trigger the IBC under section 7 and take their rightful place on the COC when it comes to making important decisions on the future of the construction company, which is executing the real estate project in which such home buyers are ultimately to be housed. It also observed that in real estate projects, money is raised from the allottee, against consideration for the time value of money, and the amounts raised from allottees

			under real estate projects are subsumed within section 5(8)(f) even without adverting to the explanation introduced by the amendment act. This puts beyond doubt the fact that allottees are to be regarded as FCs within section 5(8) (f) of the IBC.

5.	Arcelor Mittal India Private Limited Vs Satish Kumar Gupta &Ors. (Civil Appeal Nos. 9402-9405 of 2018)	Section 29A	Resolution professional found both AMIPL and Numetal Ltd. Both ineligible as resolution applicant. One opportunity was given to RAs to pay off the NPAs of their related corporate debtors. Issues decided by Supreme Court:- ▶ Role of CoC in CIRP ▶ Scope of Judicial review of NCLT / NCLAT

			▶ Treatment of secured / unsecured creditors ▶ Constitution of sub-committee by CoC ▶ Liability of Personal Guarantors after approval of plan ▶ Utilization of profit of CD during CIRP **A. <u>Role of CoC in CIRP</u>** ▶ Key decision maker ▶ Commercial wisdom including distribution of

			proceeds under Resolution Plan ▶ To consider feasibility and viability of Resolution ▶ Modification / to Resolution Plan and to negotiate Pass / approve Resolution Plan by 66% of voting **<u>CoC's decision must reflect</u>** ▶ Ensuring that CD is kept as going concern

			▶ Maximizing the value of CD's assets ▶ Balancing the interest of all stake holders. **B. <u>Scope of Judicial Review of NCLT / NCLAT</u>** **(i) <u>NCLT</u>** ▶ NCLT has limited Judicial review on business decision ▶ RP to ensure the compliance of Section 30(2) of code ▶ Payment of CIRP cost ▶ Payment of operational creditor etc.

			▶ Compliances of provisions of Act. **(ii) <u>NCLAT</u>** ▶ Review must be within the parameters of Section 32 read with section 61(3) of code: ▶ Resolution plan is in contravention of provision of any law ▶ Material irregularity in exercising powers by RP during CIRP

			▶ Debt owed to OCs not provided in Resolution Plan. ▶ CIRP cost not provided in Resolution Plan ▶ Does not comply any other criteria by Board **<u>NCLT & NCLAT</u>** ▶ Cannot transfer the commercial decision of majority to CoC. ▶ No power to act as court of equity

			C. <u>Principle of equality secured & unsecured creditors</u> Rejecting the judgment of NCLAT that ▶ Financial creditors/ operational creditors deserve the equal treatment. **<u>SC held:-</u>** ▶ Equal treatment would defeat the very purpose and scheme of code and article 14 (Fundamental Right to equity) **<u>SC held:-</u>**

			▶ Amended Regulation 38 of CIRP Regulation require how interest of all the stakeholders has been dealt with. ▶ It is permitted to treat different classes of creditors differently (equitable and based on reasonable ground) ▶ NCLT does not have power to reject the Resolution Plan on the Ground of Unfair & Unjust to a class of creditors, so long as interest of all creditors is taken care of.

			D. <u>Appointment of Sub-committee by CoC</u> **SC held:-** ▶ Yes, allowed for Ministerial / Administration Acts / negotiation ▶ Acts of sub-committee should be ratified by CoC ▶ However sub-committee cannot be exercise powers u/s 28 of IBC ▶ Creating any security interest over assets of CD

			▶ Raising interim finance in excess of amount approved by CoC ▶ Changing capital structure of CD ▶ Related party transaction ▶ Power to approve Resolution Plan cannot be delegated to sub-committee **E. <u>Liability of Guarantors after approval of plan</u>** **NCLAT held:-**

			▸ Once guaranteed debt stood cleared pursuant to the approval of Resolution Plan, deed of guarantee would no longer be effective. **SC held:- Set aside the finding of NCLAT** ▸ Section 31(1) provide "If plan is approved by CoC, it shall be binding on all stakeholders including guarantor ▸ Guarantee constitutes an independent obligation taken by guarantor

			▶ Even where debts of CD is satisfied pursuant to a Resolution Plan, the lender have ability to pursue the guarantee for recovery of remaining claim from guarantors. **F. <u>Utilization of profits of CD during CIRP</u>** **NCLAT held:-** ▶ Can be distributed amongst financial /operational creditors on Pro-rata basis of their claim.

			SC held:- Set aside the finding of NCLAT and held ▶ Distribution of profit during CIRP cannot be applied for payment of debt of any creditor. **G. <u>Constitutional validity of Amendment Act 2019</u>** **Section 4 of IBC:-** ▶ CIRP be completed within 330 days (mandatorily) including extension of time and time taken in legal proceedings

			▶ Failing which CD to be referred to liquidation **SC held /observed:-** ▶ Time taken in legal proceedings should not harm litigation where litigant is not responsible for delay. (Mandatorily to be read as ordinarily)
6.	COC of Essar Steel India Ltd.		The Hon'ble Supreme Court vide its judgment dated November 15, 2019 has cleared the way for Arcelor Mittal's takeover of Essar Steel India Limited. Further, the Hon'ble Supreme Court also dealt

			with and provided clarity on certain important concepts of the IBC by the way of this judgment: The Hon'ble Supreme Court laid down the following important observations with respect to provisions of IBC: i. The role of the resolution professional under the IBC is administrative and not adjudicatory. ii. The decision taken by the majority of the committee of creditors would prevail in any case. NCLT or NCLAT cannot take away this power of the committee of creditors. The earlier decision of the

			NCLAT in this case which substituted its wisdom for the commercial wisdom of the committee of creditors and directed the admission of a number of claims which were made by the resolution applicant, was set aside by the Hon'ble Supreme Court. iii. Limited judicial review is available to NCLT and NCLAT and they shall not trespass upon a business decision of the majority of the committee of creditors. They can look into whether the committee of creditors has taken into account the fact that the corporate debtor needs to keep going as a

			going concern during the CIRP; that it needs to maximise the value of its assets; and that the interests of all stakeholders including operational creditors has been taken care of, but it cannot adjudicate on merits. Further, the Hon'ble Supreme Court noted that NCLT and NCLAT can only review the fairness and equitability of a resolution plan. iv. The Hon'ble Supreme Court clarified that the amended Regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons)

			Regulations, 2016 ("**CIRP Regulations**") does not put all the creditors at an equal footing. Fair and equitable treatment of operational creditors means that a resolution plan should protect their interests but it did not mean proportionate payment of debts. Treatment of unequals equally would violate the object and purpose of the IBC. Secured and unsecured financial creditors were differentiated in resolution plans and operational creditors are viewed separately. v. The committee of creditors has the power to approve a

			resolution plan under section 30(4) of the IBC and this power cannot be delegated to any other body by the committee of creditors. Sub-committees can be formed for administrative work but their acts need to be ratified by the committee of creditors. vi. Section 31(1) of IBC laid down that once a resolution plan is approved by the Committee of Creditors, it shall be binding on all stakeholders, including guarantors. vii. The Hon'ble Supreme Court also gave the legislature

			some freedom in the sphere of economic legislations. The rule of presumption of constitutionality was applied and it was laid down that the legislature had not directly set aside the judgment of the NCLAT by the Amendment Act and hence the Amendment Act could not be struck down. viii. The constitutional validity of Section 30(2) (b) of IBC was upheld as the Hon'ble Supreme Court held that there was no residual equity jurisdiction in the NCLT or the NCLAT to interfere in the merits of a business decision taken by the majority of the

			committee of creditors, as long as it was otherwise in conformity with the provisions of the IBC and the CIRP Regulations. ix. Distribution of profits made during the CIRP would not go towards payment of debts of any creditor. x. The Hon'ble Supreme Court struck down the word 'mandatorily ' from Section 12 of the IBC. Section 12 posed a requirement to finish a CIRP compulsorily in a certain number of days, which the court found to be violative of Articles 14 and 19 of the Constitution of

			India. The effect of this declaration was that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. However, if the delay is attributable to the NCLT and/or the NCLAT itself, the time could be extended beyond 330 days in exceptional cases. * Civil Appeal No. 8766-67 of 2019.

7.	Shivam Water Treaters Pvt. Ltd. Vs. Union of India Secretary to Govt. Ministry of	Limitation on High Court	High court to address the relief to any action by the respondents or any order passed by NCLT. High court not to enter into debate pertaining to validity of the IBC.

	Corporate Affairs &Ors. (SLP (C) No. 174/2018)		

8.	B K Educational Services Pvt. Ltd. Vs. Parag Gupta and Associates (Civil Appeal No. 23988/2017)	Section 238A	Whether Limitation Act applicable to applications under Section 7and 9?If yes, since when. Held, Limitation Act shall apply since the inception of the code i.e. 1.12.2016. **BK Educational Services Pvt. Ltd v. Parag Gupta and Associates**

			Section of the Code Discussed in the Case: **Section 238A:** The provisions of the Limitation Act, 1963 (36 of 1963) shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.] **Facts:** In this case appeal was filed against the NCLAT order, where it was held that the provisions of the Limitation Act, 1963 are not applicable for filing of Application under section 7 under the IBC Code, 2016. **Issues:**

			The Supreme Court was dealing with Section 238A, which was inserted into the Code by an amendment which states that the Limitation Act "shall, as far as may be," apply to the proceedings before the National Company Law Tribunal (NCLT). The issue that arose before the Supreme Court was whether the Limitation Act is applicable to applications that are made under Section 7 and/or Section 9 of the Code from its commencement on December 1, 2016 till June 6, 2018 i.e. the date on which the Amendment Act came into force. **Decision Held:** The Court came to the conclusion that the Limitation Act would apply to NCLT proceedings. As for Section 238A, the Court said that it should be applied

			retrospectively, “otherwise, applications seeking to resurrect time-barred claims would have to be allowed, not being governed by the law of limitation.” However condonation of delay application can be considered in respect of such application. The Code cannot be triggered in the year 2017 for a debt which was time-barred, say, in 1990, as that would lead to the absurd and extreme consequence of the Code being triggered by a stale or dead claim….” Further issue decided in the case were as under:- ‣ Limitation Bars the remedy but not the right. Limitation, being the procedural in nature, would ordinarily be applied retrospectively

			except that new law if limitation cannot revive a dead remedy. An application that is filed after the code came into the force, cannot revive a debt which it time barred and no longer due. ▸ The expression "debt due" in the definitions section of the code would obviously refer to the debts which are "due and payable" in law i.e. the debts that are not time barred. ▸ When the expression "due" and "due and payable" occurs in section 3(11) and 3(12) of the code, they refer to a default which is non-payment of a debts that is due in law i.e. such

			debts is not time barred by the law of limitation. ▸ Section 433 of the Companies Act specifically applies the Limitation Act to the Tribunal and Appellate Tribunal including the NCLAT, insofar as applications or petitions are filed under section 7 and section 9 of the Code, NCLAT will decide such applications on the footing that the Limitation act will apply to the same. ▸ Both Section 433 and Section 238A of the Code apply the provisions of the Limitation Act "as far as may be" Therefore, where period of the

			limitations have been laid down in the code, these period will apply notwithstanding anything to the contrary. **Question Expected:** ▸ What was the issue involved in the case of B K Education Services Private Limited vs. Parag Gupta and Associates. Ans. Whether Limitation Act, 1963 is applicable to CIRP maintained under Section 7 of the Code. Whether application under section 7 of the code can be filed in respect of a debts which is time barred under the limitation Act, 1963.

			▸ Which Section of the IBC Code states the provision of the Limitation Act, 1963? Ans. Section 238A of the Code discusses about the applicability of Limitation Act, 1963. ▸ Which Section of the Companies Act was discussed regarding the applicability of the Limitation Act, 1963? Ans. Section 433 of the Companies Act was discussed about the applicability of the Companies Act. It say that the Provisions of the Limitation Act shall as far as may be, apply to proceedings or appeals before the Tribunal or Appellate Tribunals as the case may be. Since many of the

			provisions of IBC have been taken from the Companies Act, 2013. ▸ What does the term "due and payable" means in regard to a debt. Ans. The term "due and payable" means a debts which is due and payable but which is not time barred. ▸ What is the recourse available if the debt has become time barred? Ans. If debt has become time barred the Section 5 of the Limitation Act can be applied for the condonation of delay. **Issues settled:-** ▸ Limitation Act, 1963 will apply to application u/s 7 & 9 of IBC, 2016.

			▶ Applicability of Limitation Act from the commencement of IBC on 01.12.2016. **SC held:-** ▶ Application filed after IBC code came into force in 2016 cannot revive the debt which is no longer due as it is time barred. ▶ The legislature did not contemplate enabling a creditor who has allowed the period of limitation to set in to allow such delayed claims through the mechanism of IBC ▶ Section 433 of the Companies Act, 2013 which makes the provisions of

			Limitation Act applicable to proceedings or appeals before the NCLT or NCLAT was applicable from the very inception of IBC. ▶ Hon'ble Supreme Court has already interpreted that debt due in the definition of IBC or the debt are the debt due and payable in law (i.e. debts that are not time barred) ▸ Since the Limitation Act is applicable to applications filed under Sections 7 and 9 of IBC from the inception of IBC, Article 137 of the Limitation Act gets attracted. Article 137 of the Limitation Act

			provides the period of limitation in case of "any other application for which no period of limitation is provided elsewhere" **as three years from the time when the right to apply accrues**. "The right to sue", therefore, accrues when a default occurs. ▶ If the default has occurred over three years prior to the date of filing of application under IBC, the application would be barred under Article 137 of the Limitation Act, except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to

			condone the delay in filing such application

9.	Chitra Sharma vs. Union of India (WP No.744 of 2017)	Section 7 IDBI Vs JIL	Whether inclusion of home buyers in the definition of Financial creditors will have commercial effect of borrowing? Held Yes, They will constitute part of COC. Promoters

			ineligible to participate in CIRP.

10.	**Anuj Jain, Interim Resolution Professional for JaypeeInfratech Limited Vs. Axis Bank Limited etc. [Civil Appeal No. 8512-8527**		In this matter, JaypeeInfratech Limited (JIL) had mortgaged some land owned by it in favor of the lenders of its holding company, Jaiprakash Associates Limited (JAL). The IRP filed an application for reversal of the mortgages, claiming that the said transaction is a preference,

	of 2019 before the Supreme Court		undervalued, and fraudulent transaction. The AA allowed the application, directing the lenders of JAL to transfer the land back to JIL. The order of the AA was set aside by the NCLAT. The RP of JIL filed an appeal before the Supreme Court. The Supreme Court allowed the appeal, holding that the mortgage transaction was a preferential transaction. The Supreme Court held as follows: (a) Orders under section 44: Under section 44, the AA may pass orders to reverse the effect of an offending preferential transaction. Amongst others, the AA may require any property transferred in connection with giving of preference to be vested in the CD; it may also release or discharge (wholly or in

			part) any security interest created by the CD. The consequences of offending preferential transactions are, obviously, drastic and practically operate towards annulling the effect of such transactions. (b) Look-back period: If twin conditions specified in subsection (2) of section 43 are satisfied, the transaction would be deemed to be of preference. However, merely giving of the preference and putting the beneficiary in a better position is not enough. For a preference to become an offending one for the purpose of section 43 of the IBC, another essential and prime requirement is that the event of giving preference happened within and during the specified time, referred to as the "relevant time." In respect of the argument that section 43

			would come into operation at least one year after the enactment of the IBC, else it would be giving retrospective effect to these provisions, the Supreme Court held that after the coming into force of the provisions, if a look-back period is provided for the purpose of any particular enquiry, it cannot be said that the operation of the provision itself would remain in hibernation until such look-back period from the date of commencement of the provision comes to an end. **Issues :-** ▶ Whether transactions are liable to be avoided being preferential, undervalued and fraudulent.

			▸ Whether <u>lenders of JAL could be recognized as financial creditor of JIL as loan given to JAL were secured by mortgage of properties of JIL</u>. ▸ **<u>Avoidable transaction being preferential / undervalued & fraudulent</u>** ▸ Shall be preferential transaction u/s 43(2) & 43(4) if: ▸ Transaction is of transfer of property or interest of CD, for the benefit of creditor or surety or guarantor, for or on account of any antecedent

			financial debt or operational debt or other liability. ▶ Such transfer has effect of putting such creditor/guarantor/ surety in a beneficial position than it would have been in the event of distribution of assets u/s 53 of IBC. ▶ Such transfer are carried on ▶ if related party -- 2 years before commencement of CIRP

			▶ Other – 1 year before commencement of CIRP ▶ However following transaction will not be covered under section 43 ▶ Entered during the ordinary course of business ▶ Resulting in provision of new value to CD ▶ SC also held ▸ <u>When analyzing preferential transaction, intent of parties for ascertaining fraudulent transaction is immaterial</u>

			B. <u>Whether lenders of JAL could be recognized as financial creditor of JIL for loan given to JAL on the equitable mortgage of properties of JIL</u> **SC held : "No"** ▶ CD does not owe debt to lenders of JAL ▶ Class of financial creditors shall be either principal debtors or assignee of principal debtor ▶ Since third party security provider are only interested in realizing the value of its security and not concerned with revival of CD

			▶ Basic object of IB Code is defeated, if allowed.

11.	Swiss Ribbons Pvt. Ltd. & Anr. vs Union of India & Ors. [Writ Petition (Civil) No.99of 2018]	1. Appointment of members of NCLT and NCLAT 2.Administrative support should be from Ministry of Law & Justice. However it is coming from MCA. 3. NCLAT should be in every state since no HC jurisdiction. 4. No real difference	1. Held through selection committee. Need no interference. 2. Needs to be rectified. 3. Circuit branches to be established soon. 4. Intelligible differentia 5.Held Valid. Ineligibility u/s 29A may be due to some other reasons e.g. disqualification of directors. **Issue:**

		between financial and operational creditor. 5. Retrospective application of Section 29	▶ Priority of payment to OC over FC ▶ Withdrawal of petition after admission ▶ Withdrawal of petition before CoC constituted. **Key Findings:** ▶ The distinction between promoters / management and the corporate debtor has been judicially recognized. Displacement of the promoter or the management of a company in default can now be done relatively

			quickly to protect the company and its assets. ▶ The recognition that the insolvency proceedings by nature are not adversarial to the corporate debtor. The Supreme Court has concluded that the IBC is a beneficial legislation and is for the benefit of the corporate debtor and therefore the admission of a company into Corporate Insolvency Resolution Process (CIRP) cannot be seen from the

			traditional lens of adversarial proceedings. ▶ The Supreme Court has imported fair and equitable treatment for operational creditors as a requirement for the approval of resolution plans. This was prompted largely by amendments to the regulations that provide that operational creditors need to be paid ahead of financial creditors (without stating the amount that needs to be paid).

			▸ In addition to the provision for withdrawal under Section 12A, withdrawal of a corporate debtor from CIRP has been permitted up to the time the Committee of Creditors is constituted with the approval of the National Company Law Tribunal (NCLT). What is important, though, is that the Supreme Court applied Rule 11 of the NCLT Rules (which provides for inherent power) to permit the withdrawal after admission but prior to

			constitution of the Committee of Creditors. ▶ The recognition of the inherent powers of NCLT may introduce flexibility to the IBC process in situations that are not contemplated by the Code. Further, if the Committee of Creditors rejects a settlement proposal, it can be subjected to an appeal before the NCLT and thereafter, the NCLAT. ▸ The Supreme Court has also upheld Section 29A in its

			entirety whilst reading down the list of 'related parties' who have to be tested for the disqualification under Section 29A, to those who have a business connection with the Resolution Applicant.
12.	**Sagar Sharma &Anr. Vs. Phoenix ARC Pvt. Ltd. &Anr. [Civil Appeal No. 7673/2019]**		The **SC** reiterated that the date of coming into force of the Code is wholly irrelevant for triggering of any limitation period for the purposes of the Code. It observed that since applications under section 7 are petitions filed under the Code and do not purport to be an application to enforce any mortgage liability, Article 137 of

			the Limitation Act would apply to such applications. Accordingly, it set aside the judgment under appeal and directed that the matter be determined afresh. The issue before the **NCLAT** was whether the claim of the appellant was barred by limitation. The immovable property of the CD was mortgaged in favour of the FC by a deed of mortgage. Thereafter, by an 'assignment agreement' the debt payable by the CD was assigned on 11 September 2014. The NCLAT held: “The 'Financial Creditor' has right to get immovable property mortgaged and thereafter may transfer the mortgage assets for a valuable

			consideration for which 12 years of limitation has been prescribed for filing a suit relating to immovable property under Article 61 of Part V of the First Division of the Schedule of Limitation Act. Therefore, we hold that the claim of the 1st Respondent is not barred by limitation.”
13.	**BabulalVardharjiGurjar Vs. Veer GurjarAluminium Industries Private Limited & Another [Civil Appeal No. 6347 of 2019],**		the Supreme Court examined the limitation period for filing section 7 applications and observed: • The period of limitation for an application to initiate a CIRP under section 7 of the IBC is governed by article 137 of the Limitation Act and is, therefore, three years from

			the date when the right to apply accrues. • The right to apply under the IBC accrues on the date when the default occurs. If the default had occurred over three years prior to the date of filing the application, the application would be time barred, save and except in those cases where, on facts, the delay in filing may be condoned. • An application under section 7 of the IBC is not for enforcing mortgage liability and article 62 of the Limitation Act does not apply to this application. • The date of the IBC's coming into force on 01.12.2016 is irrelevant to

			the triggering of any limitation period for the purposes of the IBC. In this case, the court observed that the FC never made any arguments other than stating the date of default as “08.07.2011” in the application. Therefore, no case for extending the period of limitation is available to be examined. In other words, even if section 18 of the Limitation Act – (which allows the period of limitation to be extended if the defaulter had acknowledged the debt) – and the principles thereof were applicable, they would not apply to the application under consideration, looking at the averment made in the application

			regarding default and for want of any other averment in regard to acknowledgement. The court annulled the insolvency proceedings, holding that because the application of the FC is barred by limitation, no proceedings undertaken after the order of admission could be of any effect. Please read this also The AA, by an order dated August 9, 2018, admitted an application filed in March 2018, seeking initiation of CIRP in respect of default that arose on July 8, 2011. On appeal against the said order, the NCLAT observed that the Code having come into force on December 1, 2016, the application

			made in 2018 is within limitation. It further observed that mortgage security having been provided by the CD, the limitation period of 12 years is available for the claim as per Article 61(b) of the Limitation Act, 1953 and hence the application is within limitation. The Supreme Court (SC) set aside the orders of the AA and NCLAT on the ground that the application under section 7 of the Code is barred by limitation. The SC noted the following basics of the Code: (a) the Code is a beneficial legislation intended to put the CD back on its feet and is not a mere money recovery legislation; (b) CIRP is not intended

			to be adversarial to the CD but is aimed at protecting the interests of the CD; (c) intention of the Code is not to give a new lease of life to debts which are time-barred; (d) the period of limitation for an application seeking initiation of CIRP under section 7 of the Code is governed by Article 137 of the Limitation Act and is, therefore, three years from the date when right to apply accrues; (e) the trigger for initiation of CIRP by an FC is default on the part of the CD, that is, the right to apply under the Code accrues on the date when default occurs; (f) the default referred to in the Code is that of actual non-payment by the CD

			when a debt has become due and payable; (g) if default had occurred over three years prior to the date of filing of the application, the application would be time-barred, save and except in those cases where, on facts, the delay in filing may be condoned; and (h) an application under section 7 of the Code is not for enforcement of mortgage liability and Article 62 of the Limitation Act does not apply to the application. The SC observed that the date of the Code's coming into force is wholly irrelevant to the triggering of any limitation period for the purposes of the Code. There is nothing in the Code to even

			remotely indicate if the period of limitation for the purpose of an application under section 7 is to commence from the date of commencement of the Code itself. Similarly, nothing provided in the Limitation Act could be taken as the basis to support the proposition. **Issue: -** **Whether limitation is applicable to IBC?** **Court held :-** ▶ The Code is a beneficial legislation intended to put the CD back on its feet and is not

			mere money recovery legislation; ▶ CIRP is not initiated to be adversarial to the CD but is aimed at protecting the interests of CD; ▶ Intention of the Code is not to give a new lease of life to debts which are time-barred; ▶ The period of limitation for an application seeking initiation of CIRP u/s 7 of the code is governed by Art. 137 of Limitation Act, therefore,

			three years from the date when right to apply accrues; ▶ The trigger for initiation of CIRP by a FC is default on the part on the part of the CD, this is to say, that the right to apply under the Code accrues on the date when default occurs; ▶ Default referred to in the code is that of actual non-payment by the CD when a debt has become due and payable;

			▶ If default has occurred over three years prior to the date of filing of the application, the application would be time-barred save and except, in those cases, where the delay in filing maybe condoned;

14.	K. Sashidhar vs Indian Overseas Bank & Ors. [Civil Appeal 10673-2018]	Approval by majority of less than 75%	Whether the resolution plan which could not be approved by 75% and no alternative resolution plan was presented within statutory period of 270 days, liquidation was the only alternative. Held yes Observations: COC is the authority to analyze and evaluate the commercial decisions taken and needs no interference by adjudicating authorities. **Issue :-** **Jurisdiction of NCLT in approval of Resolution Plan** **Court Held:**

			▶ The SC held that the NCLT's jurisdiction is limited to the NCLT being satisfied that the resolution plan meets the requirements specified in Section 30(2) of the Insolvency and Bankruptcy Code, 2016 (Code). ▸ This is namely that the resolution plan contains provisions in relation to **(i) priority of payments (as prescribed), (ii) management of the corporate debtor, (iii) implementation and supervision of resolution**

			plan, and (iv) compliance with applicable law, and nothing more. Hence, the role of the NCLT while considering a resolution plan has been clearly circumscribed ▶ The SC further observed that the legislature, while enacting the Code, has consciously ensured that no ground is available to question the 'commercial wisdom' of the individual financial creditors or the collective decision of the CoC before the NCLT in approving or rejecting a

			resolution plan and such commercial considerations are outside the scope of judicial review. ▶ However, SC did clarify that if the CoC were to reject a resolution plan for any of the grounds mentioned under Section 30(2) of the Code, including a decision on the eligibility of a resolution applicant under Section 29A of the Code, the said decision would be subject to judicial review.

			▸ The SC further held that **the amendment to Section 30 (4) of the Code** in June 2018, which introduced the requirement for the CoC to consider the feasibility and viability of a resolution plan before approval, **is a mere restatement of the factors that the CoC is expected to take into consideration in any event whilst considering a resolution plan.** ▸ Additionally, the SC also held that the amendments to the Code reducing the voting

			percentage for approval of a resolution plan from 75% to 66%, as well as the requirement to record reasons for approval or rejection of a plan by CoC are prospective and the decisions already taken by the CoC prior to the amendment cannot be undone.

15.	**Union of India Vs. Association of Unified Telecom Service Providers of India Etc. [M.A. (D) No. 9887 of 2020 in Civil Appeal Nos. 6328-6399 of 2015],**		The Supreme Court had by an earlier order calculated that a certain sum was due from various telecommunication service providers, including some under insolvency. The Supreme Court queried whether dues under the license can be said to be operational dues. It is also to be examined whether a deferred/default payment installment of a spectrum acquisition cost can be deemed as operational dues in addition to AGR dues. As per the revenue-sharing regime and the provisions of the Indian Telegraph Act, 1885, can the dues be said to be operational dues? Whether natural resources would be available to use without paying the requisite dues, whether doing so can be wiped

			off by resorting to the proceedings under the IBC and comparative dues of the government and secured creditors and bona fides of proceedings are also questions to be considered. The court held that it is appropriate that these questions should first be considered by the NCLT. Let the NCLT consider these aspects and pass a reasoned order after hearing all the parties.

16.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. (Civil Appeal Nos. 21824 & 21825-		Arbitration Award had been passed against the operational debtor which was not finally adjudicated upon. In this scenario, whether section 9 application

	2017)		can be filed. Held No because dispute exists. **K. Kishan Vs. Vijay Nirman Company Limited** **Dated 14/08/2018** **Background of the Case** A tripartite Memorandum of Understanding was entered into between Vijay Nirman Company Ltd. (Respondent) , Ksheerabad Construction Pvt. Ltd (KCPL) and SDM Projects Private Limited. Arbitration was invoked as disputes arose out of the tripartite agreement. Two claims were awarded in favour of the Respondent and Three

			Counter-Claims that were filed before the Tribunal were rejected. Aggrieved by the decision of the arbitrator, the Appellant filed a section 34 petition challenging the award on the grounds of rejection of counterclaim filed by the applicants without proper grounds. Simultaneously a petition was filed under section 9 of the Insolvency and Bankruptcy code before the NCLT by the Respondent i.e. Vijay Nirman Company Limited. A notice was sent by the Respondent to KCPL to pay the amount of award decided in favour of the respondent. This notice was stated to be a notice under

			Section 8 of the Code. Within 10 days KCPL disputed the notice stating that this matter was the subject matter of the Arbitration proceedings. Finally a petition was filed by the Respondent under Section 9 of the IBC. NCLT and NCLAT both held that the non-obstante clause in section 238 of the code shall override the Arbitration Act. Then matter moved to the Supreme Court. **Issues Before the Supreme Court**

			▸ Whether the non-obstante clause in section 238 of the code shall override the Arbitration Act? ▸ Is it necessary that the debt which is disputed must be a bona fide dispute? ▸ Whether proceedings can be initiated under section 9 if the value of the counter claim is exceeding of that of the claim itself? ▸ At what stage does the debt stand to be disputed or accepted? **Section 238 of the IBC:** The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or

			any instrument having effect by virtue of any such law. **Decision** The Court relied upon the decision of the Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited which observed the Guide on Insolvency Law of the UNCITRAL which laid down that the disputed amount shall be equal to or greater to the amount of debt. The Supreme Court also laid down points to determine while examining an application under section 9 of the code, that the operational debt shall be above one lakh rupees, the documentary evidence shall show the amount as payable and lastly whether there is a

			dispute existing regarding the amount of the debt. The Court in the same case also observed that the operational creditors shall not misuse the provisions of insolvency proceedings for nominal amounts of debts and moreover the duty of the court is only limited to decide whether there exists any dispute or not, the court shall need not be satisfied that the defense is likely to succeed. Thus, the Supreme Court finally concluded that in so far as operational debt is concerned it has only to be seen that whether the debt is disputed or not and that the filing of petition under section 34 shows a pre-existing dispute and that it does not end here but also after passing of award up to final

			adjudicatory process, the court also made it clear that insolvency proceedings can be initiated if the operational debtor exceeds the limitation period for filing petition under section 34. Finally the Judgement of NCLAT was set aside and reversed and the Appeal was allowed. **Likely Questions:** ▸ Whether the Code can be invoked in respect of an operational debt where an arbitral award is passed against the Operational Debtor and appeal against that award has been filed? Ans. Cannot be invoked since the Arbitration Proceedings was termed as dispute. ▸ Which section of the code was referred regarding the dispute which

			shows that the application must be rejected if notice of dispute has been received by the Operational creditor? Ans. Section 9(5)(ii)(d). **Issue:-** **Whether pendency of appeal u/s 34 of A & C Act considered as existing dispute** **Court Held:- "YES"** ▸ The SC followed its decision in Mobilox Innovations Private Limited v. Kirusa Software Private Limited and held that the mere <u>factum of challenge of an Arbitral Award under Section 34 of the Act</u> would be sufficient to state that the

			CD disputes the Award and that such a case would be treated as a case of a pre-existing ongoing dispute. ▸ As far as the non-obstante clause contained in Section 238 of the IBC is concerned, the SC observed that **Section 238 of the IBC would apply in case there is an inconsistency between the IBC and the A&C Act.** However, the SC held that there was no such inconsistency demonstrated in the present case. ▸ Therefore, the SC held that the pendency of objections u/s 34 or of

			an appeal u/s 37 of the A&C Act will render the subject matter of the award as a 'disputed debt' for the purposes of the IBC and an Operational Creditor cannot invoke the provisions of the IBC to initiate the Corporate Insolvency Resolution Process against a Corporate Debtor.

17.	**State Bank of India Vs. M/s. Metenere Limited [CP No. IB-639(PB)/2018]**		The CD objected to the appointment of IRP on the ground that he was an ex-employee of FC from 1977 to 2016. While granting an opportunity to FC to substitute the IRP, the AA observed that the proposed IRP is unlikely to act fairly and cannot be expected to be an independent umpire. The **NCLAT,** by the impugned order, upheld the order of the AA requiring substitution of IRP. While disposing of the appeal, the SC observed that merely because a person was

			in the service of the FC and is getting pension does not disentitle him to act as the IRP. It, however, noted that the parties have agreed to substitute the IP. It observed that the substitution of the IP shall not reflect adversely upon the integrity of the IP concerned and the impugned order shall not be treated as a precedent.

HIGH COURT

CASES

S.NO	Case Laws	Relevant Section	Gist of Cases
1.	SreeMetaliks Ltd. and Anr Vs. Union of India and Anr. (W.P. 7144 (W)-2017) in High Court of Judicature at Calcutta	Section 7	Section 7 is ultravires as it does not afford an opportunity of hearing to the corporate debtor. Held: Section 424 of Companies Act,2013 requires NCLT and NCLAT to adhere to the principles of natural justice. Section 7(4) requires the NCLT to ascertain the default. This ascertainment implies examination and offering opportunity.

2.	Cushman and Wakefield India Private Limited vs UOI [W.P.(C) 9883/2018, CM No. 38508/2018]	criterion for Companies to qualify as a valuer	A company is not eligible to be a registered valuer if it is a subsidiary, joint venture or associate of another company or body corporate. This restriction impairs the right to carry on trade and business. Held: Rule has been made to introduce higher standards of professionalism in valuation industry. It obviates the

			possibility of conflict of interest on account of diverging interests of constituent/associate entities. It is based on intelligible differentia as a separate class has been carved out.

3.	**Ultra TEch**		**Ultra Tech Nathdwara** **[DB Civil Writ Petition N** After implementation of re Tax Department issued sev that the resolution profess Department as claimed in t at the time of approval of r that the Code has been en not fade into oblivion and noted that a resolution pl concerned to whom the C section 31. The OCs, incl audience in the resolution amount of claim as assesse already been deposited d notices issued by the D observation: *"The authorit* *and immediately withdrawn* *frivolous litigation."*

4.	**Univalue Projects Pvt. Ltd. Vs. The Union of India & Ors. [W.P. No. 5595 (W)/2020 with C.A.N. 3347/2020]**		The petitioners challenged the order of the NCLT requiring all FCs to submit record of default from the IU along with the application under section 7 of the Code, and requiring the parties to submit such records in respect of

			applications filed earlier but waiting for admission. As regards authority of the NCLT, the HC observed: “Therefore, what becomes clear to me is that while both the NCLT and NCLAT have been conferred with powers to regulate

			their own procedure, such use of its power is circumscribed and subject to inter alia, the principles of natural justice as well as the provisions of CA, 2013 or the IBC, 2016, inclusive of any rules/ regulations made under the IBC, 2016 by the

			regulatory body, IBBI. Therefore, the powers of the NCLT and NCLAT is limited both by principles of natural justice as well as statutory provisions and regulations framed under such legislations.”

			As regards evidence of debt, the HC of Calcutta observed: “On a close due diligence of the various provisions above, including section 7 of the IBC, 2016 read with Rule 4 of the AA Rules, 2016 and Form-1 therein, and

			regulation 8 of the CIRP Regulations, 2016, observations of the Supreme Court in paragraph32 (provided above), it becomes crystal clear that apart from the financial information of the IU, eight classes of documents can be considered to

			be sources that evidence a “financial debt”. As regards evidence that can be provided along with section 7 application, the HC observed: “The three categories of evidence that can be provided are as follows: (a) record of

			the default recorded with the information utility; (b) such other record; (c) evidence of default as may be specified…. three different categories of documents are available to a financial creditor to prove proof of default by a

			corporate debtor.” As regards retrospective effect, the HC observed: “Therefore, any delegatee, let alone the NCLT, not even the IBBI can make regulations, by way of the impugned order or of such nature, to make a

			delegated legislation retrospective under the IBC, 2016." Accordingly, the HC struck down the impugned order to be ultra vires the Code.

5.	**Tata Steel BSL Limited &Anr. Vs. Union of India &Anr. [W.P.(CRL) 3037/2019]**		The trial Court took cognizance of the offences punishable under the Companies Act, 2013 and the Indian Penal Code, 1860, based on a complaint filed by SFIO. The petitioner has submitted that it took over the CD through a resolution plan and section 32A of the Code discharges it from the proceeding before the trial Court. The HC held that the CD would

			not be liable for any offence committed prior to commencement of the CIRP. It also clarified that this order will not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences.

6.	Jotun India Pvt. Ltd. Vs. PSL Ltd. (CA No. 572 of 2017 in CP No. 434 of 2015),in High Court of Judicature at Bombay	Whether company court while dealing with winding up petitions shall have jurisdiction to stay proceedings before NCLT?	Held,No. First let NCLT handle. If NCLT fails to revive or successfully implement the resolution plan, Company Judge can take over.

7.	Dr. Vidya Sagar Garg Vs. Insolvency and Bankruptcy Board of India (W.P. (C)9520/ 2017, CM Appl. 38726-38727/2017), in High Court of Judicature at New Delhi	Fit and Proper Person	FIR was lodged against the IP. Court said Come to us again after the discharge application is disposed of by the concerned trial court.

8.	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central), Income Tax Dept., (Hyderabad)and others (W.P. No. 8560 of 2018), in High Court of Judicature at Hyderabad	Attachment order issued by Income Tax Department prior to initiation of liquidation proceedings. Whether Income Tax Department can claim any priority in payment over secured creditors.	Held No. Section 36(3) (b) talks of liquidation estate assets which may or may not be in possession of the corporate debtor, including but not limited to encumbered assets. As per Section 53(1), the claim of secured creditors gets priority.

9.	***The Deputy Director, Directorate of Enforcement, Delhi vs. Axis Ban & Ors.***		the High Court of Delhi held that regulations such as the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the PMLA and the Code must co-exist and each shall be construed and enforced harmoniously, without one being in derogation of the other The HC in that case was dealing with the interplay of

			PMLA with Recovery of Debt Due to Banks and Financial Institutions Act, 1993 (RDDBFI), Securitization and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) and the Code. After going through the objects and reasons for enactment of the four legislations, the HC noted that all these laws are distinct and operating in different fields. They must co-exist with each other and

			each to be construed and enforced harmoniously, without one being in derogation of the other. This view taken by the HC is different from the view taken by the NCLT, Mumbai Bench. The reasoning that prevailed with the HC was that the object and purpose of these legislations being very different from each other, there was no overlap and therefore, none of the legislations was in derogation of the other.

			The views of the two forums being different, the decision of the SC will aid in interpreting the interplay of these two enactments and ultimately, put a quietus to the issue.

NATIONAL COMPANY LAW APPLELLATE TRIBUNAL (NCLAT) CASES

S.NO	CASE LAWS	Relevant Section	Gist of Cases
1.	Edelweiss Asset Reconstruction Co. Ltd. Vs. Synergies Dooray Automotive Ltd. & Ors. [CA (AT) (Insolvency) No. 169 to 170-2017]	Challenging the assignment of debt Challenging merger and amalgamation	The order dated 2nd August, 2017 of the AA approving resolution plan was challenged on two major grounds: First Ground: It was argued that on the eve of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 coming into force on 1st December, 2016, Synergies Casting Ltd., a related party of the CD, assigned

			its debt (accounting for 78% of voting power) to a NBFC, Millennium Finance Limited on 24" November, 2016, with the ulterior motive of reducing the voting share of the appellant and such assignment was illegal. The NCLAT held: “The Appellant doesn‘t have any locus standi to question those documents in the insolvency proceedings initiated

			under 'I&B Code' on a farfetched argument that they are going to be effected if the rights of 'Synergies Castings Limited' and 'Millennium Finance Limited' are recognized basing on the Assignment Agreements in question and the Appellant cannot assume jurisdiction to question the documents in question basing on baseless allegations.

			apprehension etc. . . . In the result. we hereby declare that both 'Synergies Castings Limited ‘and 'Millennium Finance Limited were eligible to execute the assignment agreements in question and all rights flow those agreements to 'Millennium Finance Limited. ” Second Ground: It was argued that resolution plan provided for merger

			and amalgamation, which is not permissible being violative of section 30 (2) (e) of the Code. It was noted that a resolution plan may provide for merger or consolidation of the CD with one or more persons in terms of regulation 37(1) (c) of the CIRP Regulations. The NCLAT held: “The 'I&B Code' is a code by itself and Section 238 provides

			overriding effect of it over the provisions of the other Acts. If any of the provisions of an Act is in conflict with the provisions of the 'I&B Code.

2.	**State Bank of India Vs. Anuj Bajpai (Liquidator) [Company Appeal (AT) (Insolvency) No. 509 of 2019]**		In the context of sale by a secured creditor outside the liquidation process, the NCLAT held that even if section 52(4) of the IBC is silent relating to the sale of secured assets to one or other persons, the explanation below section 35(1)(f) makes it clear that the assets cannot be sold to persons who are ineligible under section 29A, and that the said provision is applicable not only to the liquidator but also to the secured creditor, who can opt out of section 53 to realize the claim in terms of section 52(1)(b) (read with section 52(4)) of the IBC. If it comes to the notice of the liquidator that a secured

			creditor intends to sell the assets to persons who are ineligible in terms of section 29A, it is always possible to reject the application under section 52(1) (b) (read with section 52(2) and (3) of the Code).

3.	SKS Power Generation Chattisgarh Ltd. Vs. V Nagarajan (in the matter of M/s Cethar Ltd. & Ors.) [CA (AT) (Insolvency) No. 206-2018]	Case of Preferential/ Undervalued transactions	NCLT by way of interim order directed SKS power Generation to repay Rs.158 crores the amount which was paid to it by Cethar Ltd. without deciding the question of maintainability of application under Section 43 and Section 45 of the code. NCLAT reversed the order and remitted it back to the NCLT **Issues :-** ▶ Interim orders cannot be passed against third party without impleading it and without hearing the third party.

			▶ Order without deciding the question, whether application u/s 43 of IBC is maintainable or not, is non-speaking order, has to be set aside. ▶ Final prayer cannot be granted as interim relief.

4.	Export Import Bank of India &Anr Vs Astonfield Solar (Gujarat) Pvt. Ltd &	Section 10	In this case the issue was whether the shareholders who had pledged their shares in terms of a deed of pledge of securities have any right to approve or

	Anr [CA (AT) (Insolvency) No. 754 of 2018]		disprove the decision of the corporate debtor. NCLAT held that shareholders have a right of voting on the resolution for moving application under section 10 even if they have pledged their shares. Pledge of shares does not curtail their right of voting. **Issues :-** ▶ Whether by pledging the shares, shareholders right is curtailed to pass the resolution for initiation of CIRP u/s 10 of IBC. **Held : 'No'** ▶ In case of default the voting rights of the shareholders shall cease to

			exist upon occurrence of an event of default. ▶ It will not deprive the shareholder to continue to be shareholder and their shares do not stand transferred to financial creditor. ▶ The pledger may lose their right to vote under deed of pledge but they continue to be shareholder even thereafter. ▶ Shareholder has right to decide whether approving or disapproving the decision to be proceeded with CIRP u/s 10 of IBC but such right does not stand

			curtailed by deed of pledge of shares.

5.	**State Bank of India Vs. Moser Baer Karamchari Union &Anr. [CA (AT) (Ins) No. 396/2019]**		The AA by impugned order held that 'Provident Fund Dues', 'Pension Fund Dues' and 'Gratuity Fund Dues' cannot be part of section 53 of the Code. An FC filed an appeal on the ground that workmen's dues have the same meaning as assigned in section 326 of the Companies Act, 2013, which includes PF, pension and gratuity fund. The NCLAT held: “In terms of subsection (4) (a) (iii) of Section 36, as all sums due to any workman or employees from the provident fund, the pension fund and the gratuity fund, do not form part of the liquidation estate/ liquidation assets of the 'Corporate Debtor', the question of distribution of the provident fund or the pension fund or the gratuity fund in

			order of priority and within such period as prescribed under Section 53(1), does not arise…” the issue arose as to whether the amount due to workmen of the CD (in liquidation) towards their provident fund, pension fund and gratuity trust fund should be paid to the workers by the liquidator (outside the distribution mechanism) or whether such assets formed part of the liquidation estate under section 53 of the IBC (in which case it would be distributed as per section 53). It was argued by the workmen that these amounts did not form part of the liquidation estate. The AA held that provident fund dues, pension fund dues, and gratuity fund dues cannot be part of the estate as per

			section 53 of the IBC. An FC filed an appeal against the order of the AA. The NCLAT examined the meaning of "liquidation estate" under section 36 of the IBC and held that in terms of subsection (4) (a) (iii), all sums due to any workmen or employees from the provident fund, the pension fund, and the gratuity fund should not be included in the liquidation estate assets and could not be used for recovery in the liquidation. Since they do not form part of the liquidation estate assets of the CD, the question of distribution of the provident fund, pension fund, or gratuity fund does not arise. As the liquidation estate assets of the CD under section 36(1), read with section 36(3), do not include any sum due to

			any workman or employee from the provident fund, the pension fund, or the gratuity fund, for the purpose of distribution of assets, these funds cannot be included. An appeal against the order has been filed by the FC and as of this writing, the matter is pending in the Supreme Court.

6.	Gammon India Limited v/s Neelkanth Mansions and Infrastructure Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 698 of 2018]	Whether Section 9 application can be moved against a partnership firm of which a company is a partner	Held No. Gammon India filed petition under Section 433 and 434 against Neelkanth for winding up due to default. When IBC came into force, the case was transferred to NCLT pursuant to rule 5 which relates to transfer of proceedings. A partnership was entered into between Gammon India Ltd and Neelkanth Mansions and Infrastructure Ltd. Which was named as Gammon Neelkanth Realty Corporation? Gammon India Ltd. Filed application under section 9.NCLT rejected the application on the plea that application was not maintainable against a partnership firm. **Issue :-**

			Whether section 9 petition is maintainable against one of the partner of Partnership Firm **Held :-** ▶ Application u/s 9 of IBC initiated against one of the partner as CD is not maintainable as petition is filed against the partnership in which such company is a partner. ▶ The petition u/s 9 is not maintainable against one of the partner of partnership firm.

7.	S. C. Sekaran Vs Amit Gupta & Ors. [CA(AT) (Insolvency)495 & 496-2018]	Section 40	NCLT recommended liquidation since there was no RA and the RA had withdrawn their offer. Without interfering in the decision of the NCLT, NCLAT held that while liquidating the liquidator shall take steps under Section 230 of the Companies Act Section 230 is a mechanism to ensure institutional settlement of disputes between creditors and the **company**. It ensures that the **company** has a chance to save itself from insolvency or liquidation by doing a deal with at least majority of creditors.

8.	M/s Era Infra Engineering Ltd. Vs. Prideco Commercial	Section 8 and 9	The issue in this case was whether before submitting application under section 9, giving notice under section 8 is

	Projects Pvt.Ltd.(Company Appeals (AT) (Ins) No. 31 of 2017)		essential and whether application can be rejected on this ground. Operational creditor admitted that before submitting application, he did not give notice under section 8.Although he said that he had given notice under Section 271 of the Companies Act. NCLAT held that giving notice under section 8 is essential.

9.	Ferro Alloys Vs. Rural electrification [CA (AT)	Whether CIRP can be initiated against the corporate	NCLAT held yes. It observed that the provisions of the Indian Contract Act, 1872 will govern

	(Insolvency) No. 92 of 2017]	guarantor, without initiating the process against the principal debtor	inter—se rights, obligations and liabilities of a guarantor qua FC, in absence of any express provision providing for the same in the Code. It held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the corporate guarantors. Without initiating CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC qua corporate guarantor. **Issues :-**

			▶ Whether suspended Board of Director can file appeal against the order of NCLT? ▶ Power of AA with respect to disputes. ▶ Whether CIRP can be initiated against corporate debtors without initiation of CIRP against principal borrower? **Held :-** ▶ Suspended Board of Directors have no right to move an appeal on behalf of corporate debtors, though it is open to the director or

			shareholder to challenge the admission of petition under IBC. ▶ Consortium members have role only after they file claim, their claim are admitted and they become members of CoC. ▶ Adjudicating Authority has no jurisdiction to decide any disputed question or claim based on evidence. ▶ AA is required to satisfy itself about existence of debt, more than rupees one lakh and the party has defaulted and application if complete.

			Whether application u/s 7 of IB code is maintainable against corporate debtor without initiation of CIRP against principal borrower. **Held : 'YES'** ▶ NCLAT held that it is not necessary to initiate CIRP against Principal Borrower before initiating CIRP against corporate guarantor.

10.	Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprise	whether CIRP can be initiated against two corporate guarantors	The NCLAT noted that an FC cannot file claim for the same debt in two separate CIRPs and therefore two applications cannot be admitted against the same default. It held that there is no bar in the

	Ltd.[CA(AT)(Insolvency) 346/2018]	simultaneously for the same set of debt and default	Code for filing simultaneously two applications under section 7 against the principal borrower as well as the corporate guarantor or against two guarantors. However, once an application is filed under section 7 is admitted against either principal borrower or corporate guarantor, the second application by the same applicant for the same set of claim and default cannot be admitted against the other. Further, though there is a provision to file joint application under section 7 by FCs, no application can be filed by them against two or more CDs on the ground of joint liability. **Issue:-**

			Whether CIRP can be initiated against corporate guarantor if principal borrower is not a corporate person? **Held : 'YES'** ▶ It is not necessary to initiate CIRP against principal borrower before initiating CIRP against corporate guarantor. ▶ It is always open to financial creditor to initiate CIRP u/s 7 against corporate guarantor as the creditor is also the financial creditor qua corporate guarantor. **Issue:-**

			Whether CIRP can be initiated against two corporate guarantors simultaneously for the same set of debt and default? **Held : 'NO'** ▶ NCLAT held that there is no bar in code for filing simultaneously two applications u/s 7 against the principal borrower as well as corporate guarantor or against both the guarantors. ▸ Once for same set of claim application u/s 7 filed by the financial creditor is admitted against one of the corporate debtor (principal borrower or corporate guarantor), second

			application by the same financial creditor for same set of claim and default cannot be admitted. • Though there is a provision to file joint application u/s 7 by the financial creditors, no application can be filed by the financial creditor against two or more corporate debtor on the ground of joint liability till it is shown that the corporate debtors combined are Joint Venture Company. •

11.	Ashok B. Jiwrajka, Director of Alok	Whether CIRP can be initiated	Held Yes. CIPR already going on against Alok

	Infrastructure Ltd. Vs. Axis Bank Ltd.[Company Appeal (AT) (Insolvency) No. 683 of 2018]	against both the holding and subsidiary company?	Industries Ltd. Another insolvency application against Alok Infrastructure Ltd challenged by Directors. NCLAT ordered "we make it clear that we have not stayed the Corporate Insolvency Resolution Process initiated against 'Alok Infrastructure Ltd.' and the Resolution Professional, the Committee of Creditors and the Adjudicating Authority will continue with the same in accordance with law within the time specified in the law". **Issue:-** **Whether CIRP against subsidiary company can be considered separate proceedings of CIRP against holding company?** **Held : 'YES'**

			▶ The plea that CIRP of subsidiary company cannot be initiated till the CIRP of holding company adjudicated is rejected.

12	Export Import Bank V. CHL Limited [CA(AT) (Insolvency) No. 51 of 2018]	Whether Banker can proceed against the guarantor directly without first approaching the borrower?	Held no. Reconciliation was pending with the borrower. Without reconciling the amount and interest with the borrower, the Banker invoked the Bank Guarantee of the guarantor. **Issue:-**

			Whether CIRP against corporate guarantor can be initiated where there is dispute in calculation? **Held:-** NCLAT observed that the creditor can invoke corporate guarantee only in the event the principal debtor fails to pay the recalculated interest and since the accounts had not been reconciled between the principal debtor and the creditor till date, there was no debt which was due and

			payable and on which the principal debtor had defaulted. Therefore, petition u/s 7 is liable to be dismissed.

13.	**In Mr. Anil Goel, the Liquidator appointed in respect of VarrsanaIspat Limited Vs. Deputy Director, Directorate of Enforcement, Delhi and SBER Bank Vs. VarrsanaIspat Limited [IA (IB) No. /KB/2020 in CP (IB) No. 543/KB/2017]**,		The liquidator filed an application under sections 60(5) and 32A of the IBC, seeking permission to sell the assets of the CD that were attached by the Directorate of Enforcement. The Directorate of Enforcement objected to the application on three grounds: (a) an application under section 32A can be made only after the liquidation process is over or a resolution plan is approved; (b) an application under section 32A can be filed only by the successful resolution applicant and not the liquidator; and (c) the rights of the parties had already been crystallized through proceedings before the

			PMLA Appellate Authority (constituted under the Prevention of Money Laundering Act, 2002) and hence subsequent changes in law (insertion of section 32A) would not take away such rights, which had attained finality. The AA observed that section 32A specifically deals with preventing insolvency where a company goes into a CIRP or liquidation process. It held that section 32A is also applicable to the assets of the CD undergoing liquidation, and that a liquidator can file an application like the one in hand. It further held that a liquidator can proceed with the sale of the

			assets even if they are under attachment by the Directorate of Enforcement, to continue the time-bound process of liquidation under the IBC, and, upon completion of the sale proceedings, the buyer can take appropriate steps to release the attachment.

14.	**Santosh WasantraoWalokar Vs. Vijay Kumar V. Iyer and Anr. [CA(AT)(Ins) No. 871-872/2019]**		One of the issues was whether the claims that are not dealt with under the resolution plan can be extinguished under the Code. The NCLAT, relying on the Essar Steel judgment of SC, held that all claims must be submitted to and decided by the RP, so that a prospective resolution applicant knows exactly who has to be paid, for it to take over and run the business of the CD. Therefore, claims that are not submitted or are not accepted or dealt with by the RP and such resolution plan submitted by the RP is approved, then, those claims would stand extinguished.

			Code (Amendment) Ordinance, 2019 (Ordinance) was promulgated on December 28, 2019, which inserted section 32A in the Code. The NCLAT observed that section 32A suggests that the ED/other investigating agencies do not have the powers to attach assets of the CD, once a resolution plan stands approved and the criminal investigations against the CD stand abated. It further observed that it is ex facie evident that being clarificatory in nature, the Ordinance must be made applicable retrospectively. It held that the intent and purpose of section 32A is to

			provide certainty to the resolution applicant that the assets of the CD, as represented to him, and for which he proposes to pay value/ consideration in terms of the resolution plan, would be available to him in the same manner as at the time of submission of the resolution plan. It observed that mere assertion of the ED in its reply, that it needs to further investigate the matter to examine or comment if there has been any abetment or conspiracy by the Appellant, establishes that it has no reason to believe on the basis of

			material in its possession, as on date, for denial of immunity to the Appellant and the CD. It reiterated the position held by SC that the successful resolution applicant cannot be asked to face with undecided claims after the resolution plan accepted by the COC as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant. **Issue:-** **Whether conditional resolution plan can be approved?** **Held:-**

			▶ The AA cannot go into the feasibility and viability of plan which require commercial wisdom of CoC. ▶ The AA and appellate authority has to go by the various propositions of law. According to which they have to go by commercial wisdom of CoC while approving the resolution plan. ▶ In the present case resolution plan is conditional but since

			according to the express directions given by Supreme Court in the various cases, the AA perse will have to go the commercial wisdom of CoC. **Issue:-** **Whether those claims that are not dealt in resolution plan can be held to be extinguished under provision of IBC Act?** **Held : 'YES'** ▶ All claims must be submitted to and decided by the RP so that a

			prospective resolution applicant knows exactly who has to be paid in order that it may then take over and run the business of corporate debtor. ▶ Therefore, claims that are not submitted or are not accepted or dealt with by the RP and such resolution plan submitted by the RP is approved then those claims would stand extinguished. **Issue:**

			Whether the AA has power to modify its own order? **Held : 'NO'** ▸ **Only rectification of mistake can be done within two years from the date of order.**

15.	**.JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Ors. [CA(AT)(Ins) No. 957/2019 & Ors.]**		In JSW Steel Ltd. Vs. Mahender Kumar Khandelwal & Others Company Appeal (AT) (Insolvency) No. 957, 1034, 1035, 1055, 1074, 1126, 1461 of 2019, differential treatment was given in the resolution plan in respect of payment to OCs whose claims were contingent (as opposed to OCs who's claims were not). The NCLAT held that the Appellant who claims to be OC but his claim has not been crystalized which made him 'contingent creditor' and as such cannot claim equitable treatment with all other creditors.

			The NCLAT considered whether after approval of a resolution plan by the AA, it is open to the Directorate of Enforcement (ED) to attach the assets of the CD on the alleged ground of money laundering by erstwhile promoters. During the pendency of the proceedings, the Insolvency and Bankruptcy proceedings, any action under SARFAESI and other reliefs, and effectively a moratorium was imposed. It held that section 242(4) of the Act empowers the NCLT to pass just and equitable interim orders. Further, it is not correct to say that principles of the Code cannot be followed by

			the NCLT while dealing with a winding up matter under section 241 read with section 242 of the Act. It observed that moratorium under section 14 of the Code may be imposed under section 242(4) of the Act by an interim order if the tribunal deems fit. It also held that distribution under section 53 will not be followed as it would be against the public interest, as the shareholders had purchased shares by investing public money and accepted pro-rata distribution proposed by the Central Government.

15.	**In JSW Steel Ltd. Vs. Mahender Kumar Khandelwal& Others [Company Appeal (AT) (Insolvency) No. 957, 1034, 1035, 1055, 1074, 1126, 1461 of 2019]**		The NCLAT examined the applicability of section 32A to a resolution plan of JSW Steel Limited (the successful resolution applicant) for Bhushan Power Steel Limited. In this case, the resolution plan was approved by the AA. After the approval, the Directorate of Enforcement attached the assets of the CD under the Prevention of Money Laundering Act, 2002, and a question arose as to whether the successful resolution applicant can get the benefit of section 32A of the IBC. The Directorate of Enforcement argued that section 32A will not be applicable because it is

			prospective; a self- declaration needs to be made by the successful resolution applicant that it fulfills the conditions of section 32A; and the successful resolution applicant is a related party to the CD. The NCLAT rejected these contentions and held that: (a) There is no mandate under section 32A that the successful resolution applicant, after approval of the plan, is required to give any such declaration as to whether the benefit of section 32A will be applicable to them or not. Only the competent authority can decide this if an allegation is leveled. (b) On a review of

			section 32A (1) (a) of the IBC read with the definition of the related party, it is evident that the successful resolution applicant is not an associate company/related party of the CD. Although Rohne Coal Company Private Limited is an associate company of the CD and of the successful resolution applicant because they are both invested in this downstream joint venture company, this does not make Rohne Coal Company Private Limited, the successful resolution applicant, and the CD related parties of each other. (c) The interpretation that section 32A is prospective in nature and

			the benefit of such provision cannot be claimed by the appellant is wrong and misplaced. A plain reading of section 32A(1) and (2) clearly suggests that the Directorate of Enforcement/other investigating agencies do not have the power to attach assets of a CD, once the resolution plan is approved and the criminal investigations against the CD stand abated. Section 32A does not in any manner suggest that the benefit provided thereunder is only for such resolution plans that are yet to be approved. Further, there is no basis to make a distinction between a resolution

			applicant whose plan has been approved before or after the promulgation of the ordinance. It is clear that subsequent promulgation of the ordinance is merely a clarification in this respect and must be made applicable retrospectively. (d) The following persons/authorities are empowered to decide whether a resolution applicant is ineligible, being a related party in terms of section 29A or not: (e) The RP in terms of section 30(1) is to find out whether such statement has been made or not. (f) The COC is empowered to decide whether the resolution applicant is

			ineligible in terms of section 29A; therefore, the COC is also required to decide whether it is a related party to the CD or not. (g) The AA, while passing an order under section 31, can find out whether the resolution applicant fulfills the conditions under section 30(2), which includes section 30(2)(e) and, in terms of section 29A, can decide whether the resolution applicant is a related party to the CD. The Directorate of Enforcement has not been empowered under the IBC to decide the question. JSW Steel Ltd. Vs. Mahender Kumar Khandelwal& Ors. [CA(AT)(Ins)No.

			957,1034,1035,1055,1074/2019] In its order dated October 14, 2019, the NCLAT stayed the order of attachment passed by the Deputy Director, Directorate of Enforcement (DoE) with regard to certain part of the property of the CD (Bhushan Power & Steel Limited), considering the fact that the stand taken by the DoE is contrary to the stand taken by the Government of India. It prohibited DoE from attachment of any property of the CD without its prior approval. It directed that the property already attached by them be released in favour of the RP

			immediately. In its order dated October 25, 2019, the NCLAT held a prima facie view that if the assets seized by the DoE were purchased out of the proceeds of crime, the amount as may be generated out of the assets would come within the meaning of operational debt payable to the DoE for which it may file claim in terms of the Code. Note: The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019, with effect from December 28, 2019, insulates the corporate debtor and its property from liability of offences committed prior to

			CIRP commencement subject to certain conditions. **Issue:-** Whether after approval of resolution plan, is it open to the Directorate of Enforcement to attach the assets of the Corporate debtor on the alleged ground of money laundering by erstwhile promoters? **Held : 'NO'** ▶ In view of section 32 A of IBC. **Issue:-**

			Whether provisions of section 32A are retrospective or prospective? ▶ In the present case, resolution plan was approved on 05.09.2019. Section 32A was enacted w.e.f. 28.12.2019 and the attachment of the assets of corporate debtor by ED was done on 10.10.2019. ▶ The preamble of the amendment suggests that a need was felt to give the highest priority in

			repayment to last mile funding to corporate debtors to present insolvency in case the company goes into CIRP or liquidation. ▶ To provide immunity against prosecution of the corporate debtor. ▶ To prevent action against the property of such corporate debtor and the successful resolution applicant subject to

			fulfillment of certain conditions ▶ To fill the critical gaps in the corporate insolvency framework. ▶ In the present case, after approval of the resolution plan, as the attachment order was passed by the Deputy Directorate of Enforcement, we left the matter to the Central Govt. to decide as to whether to provide immunity against the prosecution to the

			corporate debtor or to take action against the corporate debtor and the Successful Resolution applicant. ▸ The Ordinance having issued pursuant to direction of this appellate tribunal to the Central Govt. which on deliberation resulted into issuance of ordinance, we hold that Section 32 A will be applicable to the present case and the plain reading of Section 32A(1) and (2) clearly suggests that the Directorate of Enforcement

			/ other investigating agencies do not have the powers to attach assets of a corporate debtor, once the resolution plan stands approved and the criminal investigations against the corporate debtor stands abated. Section 32A of IBC does not in any manner suggest that the benefit provided there-under is only for such resolution plans which are yet to be approved. Further, there is no basis to make distinction between a

			resolution applicant whose plan has been approved post or prior to the promulgation of the Ordinance. **Issue:-** **Related party under section 29A** ▶ NCLAT also held that where a party for the purpose of its business, if mandated by the Central Govt. to join hands together and are forced a consortium or as joint associate, such person cannot be held ineligible in

			terms of Section 32A (1)(a) on the ground of related party. ▶ NCLAT also held that only Committee of creditors is empowered to decide whether the resolution applicant is ineligible in terms of Section 29A of IBC and decide whether it is a related party to the corporate debtor or not?

16.	**Flat Buyers Association Winter Hills-77, Gurgaon Vs. Umang Realtech Pvt. Ltd. through IRP & Ors. [CA(AT)(Ins) No. 926/2019]**		The NCLAT held that CIRP against a real estate CD is project specific. It is limited to a project as per the plan approved by the competent authority and does not cover other projects which are separate at other places for which separate plans have been approved. The NCLAT noted peculiar nature of real estate projects from the perspective of CIRP that: (a) FCs (Banks/ Financial Institutions/ NBFCs) would not like to take the flats in lieu of the money disbursed by them; (b) FCs (allottees) cannot take a haircut of flats, and (c) the allottees do not have expertise to assess 'viability' or 'feasibility'

			of a CD or commercial wisdom as other FCs. Relying on the observations of the SC in Essar Steel, about experimentation in economic matters, the NCLAT experimented as to whether during the CIRP, the resolution can reach finality without approval of the third-party resolution plan. It opined that a 'Reverse CIRP' can be utilised in cases of real estate infrastructure companies in the interest of allottees and to ensure their survival and completion of the projects. It directed one of the promoters to disburse amount from outside as

			lender and the AA will complete the CIRP. **Issues decided :-** ▶ CIRP against Real Estate Company is limited to a project as per approved plan by the competent authority and no other projects which are separate at other places for which separate plans are approved. ▶ The secured creditor cannot be provided with flat / apartment by preference over the allottees for whom

			the project has been approved.

17.	**Liberty House Group Pte. Ltd. Vs. State Bank of India & Ors. [CA(AT)(Ins) No. 724/2019]**		The AA approved resolution plans submitted by the appellant in the CIRPs of two CDs, namely, Adhunik Metaliks Limited and Zion Steel Limited. As appellant failed to implement resolution plans, the AA cancelled the resolution plans and passed orders of liquidation of CDs with direction to the Liquidator to liquidate the CD as a going concern. While appeal in the matter was pending, the appellant filed an affidavit to allow it to comply with the resolution plans and to set aside the orders of liquidation of both the CDs. Noting that the appellant has implemented both

			the resolution plans, the NCLAT by order set aside liquidation. It directed that the said order be served on IBBI to withdraw complaints, if any, made before the Special Judge.

NATIONAL COMPANY LAW TRIBUNAL (NCLT) CASES

S.NO	CASE LAWS	Relevant Section	Gist of the Cases
1.	Corporation Bank Vs Amtek Auto Limited [CA.Nos. 567/2018 & 601/2018 in CP (IB) No. 42/Chd/Hry/2017]	Section 60(5) and Section 74(3) Section 60(5) Notwithstanding anything to the contrary contained in any other law for the time being in force, the National Company Law Tribunal shall have jurisdiction to entertain or dispose of— (a) any application or proceeding by or against the corporate debtor or corporate person; (b) any claim made by or against the corporate debtor or corporate person, including claims by or	Two resolution applicants qualified Liberty House Group and Deccan Value Investors LP.DVI only backtracked because there was some better amount of bid offered by LHG. Since LHG did not comply with the conditions of resolution plan.NCLT allowed COC to discuss the resolution plan submitted by DVI only by exclusion of certain time while

		against any of its subsidiaries situated in India; and (c) any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this Code. Section 74(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and willfully contravenes any of the terms of such resolution plan or abets such contravention, such	calculating 270 day. No fresh applications to be considered. Financial creditor or RP can complain to IBBI or Central Govt. against the conduct of LHG.

		corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.	
2.	Sterling SEZ and Infrastructure Limited [M.A 1280/2018 in CP 405/ 2018]	Section 14(Moratorium),Section 63(No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code. Civil court not to have jurisdiction.	Held; Handover to RP. Attachment order is a nullity and non –est in law.

		Whether ED, PMLA can be directed to release the provisional attachment or final if confirmed attachment on all the assets and properties of the company and hand over the charge to the RP.	
3.	**In the matter of Aircel Limited [MA-337/2018 in C.P. (IB)-298/(MB)/2018 and MA-336/2018 in C.P. (IB)-**		The question was whether the Telecom Licence granted by the Department of Telecom (DoT) to the applicant under section 4 of the Indian Telegraph Act,

	302/(MB)/2018]		1885 can be cancelled because the latter is under CIRP. The AA observed that a resolution applicant would show interest in the business of the CD if it holds Licence. Since no other valuable asset is available to the CD, no resolution applicant would show interest in

			its business revival. Licence is, thus, sine qua non for getting good resolution plan. Section 14(1) (d) of the Code prohibits recovery of any property by an owner or lessor in possession of the CD. This prohibition is also applicable to DoT. Use of Licence / spectrum is

			akin to “essential goods or services” without which the CD cannot run its telecom business. The AA instructed the DoT not to make any attempt to cancel the CD’s Licence.
4.	**In the matter of M/s. GNB Technologies**		CD filed an application under section 10 read with section 33 seeking CIRP/ liquidation. It submitted that it did not

	(India) Private Limited [C.P.(IB) No. 167/BB/2019] The		have any operations in the past five years, its liability was Rs.42.89 crore, and it did not have any assets. The AA directed liquidation of the CD without admission and appointment of IRP. It observed: "…there is hardly any possibility of any Resolution plan likely to be received during first stage of CIRP, if initiated, and thus it would be just and proper to put the Corporate Applicant Debtor under the

			liquidation process, in order to liquidate the Company, rather than to put it in CIRP in the first instance.”
5.	**State Bank of India &Anr. Vs. Videocon Industries Limited & Ors. [MA 1306/2018 & Ors. CP 543/2018 & Ors.]**		There were applications demanding and opposing consolidation of proceedings. The AA observed that a blanket view is not possible to declare that the entire Group is fit to be consolidated simply being connected or controlled by common management. Each unit or subsidiary should be

			examined on its merits. Many factors need to be considered to distinguish the units in two categories: “a. A category/ classification of those cases can be made where the business operations are so dove-tailed that their management, deployment of staff, production of goods, distribution system, arrangement of funds, loan facilities etc. are so intricately interlinked that segregation may result in an unviable

			solution. Over and above, most important is that if segregated, the possibility of restructuring or the option of maximization of value of assets become so bleak which shall overweigh the consolidation. b. The other category/ classification can be of such group cases where the accounts are interlinked and due to the existence of debt agreement, the liabilities have become common but assets are

			identifiable. Hence, on segregation the independent structure of each unit shall survive which shall also result into viable profitable restructuring proposals. Therefore, in this category of cases, although for the limited purpose of signing of certain documents through which loan facilities might have been commonly availed but that can be segregated so that the assets and liabilities are identifiable separately

			thus facilitating a good investor.” Keeping in view the facts and circumstances, the AA ordered that the assets and liabilities of 13 Videocon companies should be substantively consolidated due to common control, common directors, common assets, common liabilities, interdependence, interlacing of finance, co-existence for survival, pooling of resources, intertwined accounts, interloping of debts,

			singleness of economics of units, common financial creditors and common group of corporate debtors.
6.	**State Bank of India Vs. Adhunik Metaliks Ltd. [CA No. 118/CTB/ 2019 connected with TP No. 44/CTB/2019 in CP(IB)No. 373/KB/2017]**		The liquidator filed application seeking clarity about the treatment of claims received between July 18, 2018 and July 7, 2019 when the CD was supposed to be revived under resolution plan approved on July 17, 2018. The AA held that the claims received during the period can

			neither be treated as part of insolvency resolution process costs nor do they fall under liquidation cost, and hence, cannot be accorded priority over other dues.
7.	**In the matter of Andhra Bank v. Hammerle Textiles Limited CA No. 893/2019 In CP(IB) No. 30/Chd/Pb/2017**	Claim which is not matured can still be accepted by Resolution Professional	NCLAT held that it is not necessary that all the claims submitted by the creditor should be a claim matured on the date of initiation of CIRP. Even in respect of debt, which is due in future on its

			maturity, the 'Financial Creditor' or 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can file such claim. The 'Resolution Professional' cannot reject a claim on the ground that only claims that have matured can be looked into and others cannot be entertained. Therefore, unmatured claims including uninvoked guarantees

			can be included in the total liabilities of the corporate debtor.
8.	State Bank of India vs Coastal Projects Ltd [CP (IB) No.593 /KB/2017]	Section 7	SBI filed application through its duly authorized AGM. Advocate of the corporate Debtor submitted that the respondent has no objection if the application of the financial creditor is admitted. NCLT admitted the case.

9.	**Gujarat NRE Coke Ltd. [IA(IB) No. 122, 305 & 194/KB/2020 in C.P. (IB) No. 182/KB/2017]**		The liquidator sought direction of the AA against the secured creditors to either relinquish their security interest or to proceed under section 52. Considering the fact that liquidation process cannot be completed without the cooperation of all FCs, it directed that their security interests stand relinquished.
10.	**State Bank of India Vs. Jet Airways (India) Ltd. [MA**		The application had been filed by the RP seeking direction

	2955/2019 in C.P.(IB)-2205/(MB)/2019]		against the COC to sanction and disburse funds towards interim finance since he was facing tremendous hardship in running the CD as a going concern due to non-availability of funds to meet essential costs. The AA held: “It is pertinent to mention that Resolution

			Professional is duty bound to maintain Corporate Debtor as going concern. COC has approved to arrangement of interim finance of 63 Crores. However, some of the members of the COC has not yet sanctioned interim finance. In the circumstance, we have

			passed an Order that the members of the COC who have sanctioned Interim finance, they should make an available fund to the Corporate Debtor immediately and we further direct to other members of COC to sanction and make the

			payment within 15 days to those persons.”
11.	**In the matter of Kiran Global Chem Limited [MA/1298/2019 in IBA/130/2019]**		The RP sought permission to have access to GST Portal Account to file GST Returns during CIRP and to pay the net GST liability from the date of commencement of CIRP till its completion, notwithstanding non-payment of arrears for the period prior to CIRP. The AA observed that the Tax authority cannot

			raise an objection saying since no provision has been made in GST or in its software to accept such accounts, the business happening in the market after initiation of CIRP through debtor company will come to stand still and in such situation no company under CIRP can function as going concern. It directed the authorities to allow the CD to have access to its GST Net Portal Account and permit the RP to file GST

			Returns of the CD generated after commencement of CIRP without insisting upon payment of past dues.
12.	**Indus BiotEch**		In this case, Kotak India Venture Fund-I **(Financial Creditor)** filed a petition under section 7 of the Insolvency and Bankruptcy Code, 2016 for seeking initiation of the Corporate Insolvency

			Resolution Process [“CIRP”] against Indus Biotech Private Limited **(Corporate Debtor)**. Kotak India, while filing the petition claimed that the debtor wasn't able to redeem Optionally Convertible Redeemable Preference Shares (“**OCRPS**“) amounting to Rs. 367,07,50,000 crores, as per the clause provided under the

			Share Subscription and Shareholders Agreement (“SSSA”). Before the application under section 7 could be decided by the NCLT, Indus filed an interim application under section 8 of the Arbitration Act, before the NCLT seeking that the application filed under section 7 of the IBC be dismissed because of the existence of an

			arbitration agreement between the parties. On the other hand, Kotak contended that a Section 7 IBC petition belongs to that class of litigation which falls out of the scope and ambit of arbitration as these matters are in rem. Thus, the issue that fell for consideration before the NCLT was whether the provisions of the Arbitration Act

			prevail over the provisions of the IBC. The NCLT, Mumbai Bench had refused to admit an application under section 7 of the IBC on grounds that there existed an arbitration agreement between the parties. In this post, while the decision of the NCLT was correct for reasons other than the ones given by the NCLT, the Arbitration

			Act cannot prevail over the IBC.
12	**Indus BioTEch**		**Indus Biotech Private Limited V No. 3597/2019 in CP (IB) No. 30** The applicant filed an interlocutory refer the parties to arbitration f admitting the application under sec the Optionally Convertible Redeem by the FC, in terms of the sh agreement, which provided for observed that since the subject mat valuation of shares and fixing of which are arbitrable, an attemp differences between the parties application, it held that admitting th push an otherwise solvent, debt fr undesirable.

13.	**Tax Recovery Officer 4 & Another**		Liquidator filed an application to unfreeze the accounts of the CD that were attached by the Tax Recovery Officer. The Income Tax Department submitted that the income tax proceedings have an overriding effect against other enactments and money attached by it is no longer an asset of the CD. The liquidator submitted that the Income Tax Department had filed its claim against the CD and the same would be

			considered for distribution under section 53 of the IBC. The AA held that the monies of the CD in its bank accounts should be construed as an asset of the CD even if an attachment order had been passed against them. It noted that section 178 of the Income-tax Act, 1961, has been amended to allow the IBC to have an overriding effect. It directed the bank to unfreeze the accounts and release the

			amounts of the CD within 30 days. In Om Prakash Agarwal Vs. Chief Commissioner of Income Tax (TDS) & Another [CP/294/2018], the liquidator filed an application seeking direction against the successful bidder and the Income Tax Authority not to deduct tax deducted at source (income tax) from the sale of assets made in favor of the bidder, on the grounds that tax dues cannot be collected by the

			government in priority to the waterfall mechanism under section 53, and section 238 has an overriding effect upon other enactments. The AA observed that the overriding effect under section 238 is applicable to the issues between the creditor and the debtor but not to tax deducted at source deductions. When the government comes before the liquidator as creditor, it is bound by sections 53 and 238 of

			the IBC. In this case, the government is not making any claim as an OC. While directing the purchaser to pay the tax deducted at source amount, it held that deduction of tax at source is not tantamount to payment of government dues in priority to other creditors, since it is not a tax demand for realization of tax dues. It observed that the liquidator is not asked to pay tax deducted at source; it is the duty of

			the purchaser to credit this to the Income Tax Department.

14			**SCSL Buildwell Private L** **Development Pvt. Ltd. [IA** **2208/2020 in (IB)-755(PB)/20** An application was filed seekin computed by the IRP. The voting and appoint another IP as RP associations that homebuyers as of voting share in CoC voted for 38.92%. In terms of section 25A than 50% voting share of FCs i voting by the class in favour of th an application for his replaceme application made by FCs for his legal position, the AA held that no replacement of the IRP. It obser *neutral, has come against the CoC of the CD.*" It lamented that th because of objections raised by the last six months in view of this.

S.No.15			**In the matter of Om Boseco Rail Products Limited [CP(IB)No.1735/KB/2019]** The OC filed an application for initiation of CIRP. The CD contested the application on the ground that the threshold default for CIRP has been raised to ₹ 1 crore by a notification on March 24, 2020. The AA observed that it is a well settled law that a statute is presumed to be prospective unless it has been held to be retrospective either expressly or by implication. While admitting the application, it held that the amendment shall be considered as prospective as nothing contrary to it was mentioned in the notification.

16				**Mr. Harish P. Vs. M/s. Chemizol Additives Pvt. Ltd. [CP(IB)No. 62/BB/2020]** Application under section 9 of the Code was filed against the employer on the ground of failure of payment of the employment dues. The AA observed that the party before knocking at the doors of judiciary should have exhausted the alternate remedy available under the Arbitration and Conciliation Act, 1996, in terms of the employment agreement which is binding on both the parties. It noted that it is a settled position of law that the provisions of the Code cannot be invoked to settle dispute or recover outstanding amounts. It also noted that the CD prima facie appears to be solvent to resolve the outstanding amount. While declining to admit the application, the AA directed the CD to settle the issue amicably, failing which the applicant is at liberty to invoke the arbitration clause and to invoke appropriate remedy if he is aggrieved by the outcome of arbitration.
17.	**Bharati Defence**			**Company classified as 'going concern'** The National Company Law Appellate Tribunal (NCLAT) has upheld the decision of the NCLT to liquidate debt-laden Bharati Defence and Infrastructure. The insolvency court in Mumbai had ordered liquidation of the company after rejecting the resolution plan submitted by Edelweiss Asset Reconstruction Co Ltd, leaving two dozen

			defence vessels stranded. A clutch of lenders stand to lose ₹11,373.40 crore which the firm owes them. **Going concern** The NCLAT, while upholding the National Company Law Tribunal's (NCLT) decision, said the company should be classified as a "going concern". In accounting parlance, a going concern means a company can continue to operate. There are more than 850 employees on the rolls of what was once India's second biggest private shipyard with a much sought-after licence from the government to build warships. Earlier, a resolution plan was backed by the Committee of Creditors (COC) in which Edelweiss ARC had an 82.7 per cent voting share as a financial creditor after taking over debt of ₹6,248.84 crore from some 20 lenders by paying ₹1,813.90 crore. **NCLT apprehensive** NCLT had cast doubts over the genuineness of the plan. "The resolution applicant has not given a practical and viable plan

			to manage the affairs of the corporate debtor (Bharati). The plan contains a lot of uncertainties, a lot of speculation. The public shareholding in the company would be reduced to a mere 2 per cent from the current substantial level of approximately 60 per cent," the NCLT had noted. The NCLT order was challenged on the ground that liquidation order has been passed with "material irregularity" due to fraud committed by the 'Resolution Professional'. While NCLAT rejected the challenge, the Tribunal pointed out that considering the national importance attached to product line of the company, the customers, especially Ministry of Defence, Indian Coast Guard, Customs, the order book size, in addition to advances paid by various government departments, Bharati Defence and Infrastructure has been classified as a "going concern". Vijay Kumar V Iyer has been appointed as the liquidator and the tribunal has directed that work should be taken from existing employees and workmen.