S3 Electricals and Electronics Private Limited Vs. Brian Lau & Anr.

[Civil Appeal No. 103/2018 with Civil Appeal No. 835/2018]

On the matter getting settled between the parties, the NCLAT closed the proceedings and directed that AA shall fix the fee of IRP for the period he has worked and that shall be borne by the CD. While noting the provisions of regulation 33 of the CIRP Regulations, the Supreme Court (SC) held: "A bare reading of regulation 33(3) indicates that the applicant is to bear expenses incurred by the RP, which shall then be reimbursed by the Committee of Creditors to the extent such expenses are ratified. We are informed that, in this case, no Committee of Creditors was ever appointed as the interim resolution process did not reach that stage. In these circumstances, it is clear that whatever the Adjudicating Authority fixes as expenses will be borne by the creditor who moved the application

State Bank of India Vs. M/s. Manibhadra Polycot & Ors. [Civil Appeal Nos. 4392-4393/ 2019]

The NCLAT, vide its order dated 1 May 2019, excluded a period of 21 days from being counted as part of the 270 days period for a CIRP. These 21 days comprised three sets of (i) 7 days, (ii) 11 days and (iii) 3 days. The SC, while setting aside the impugned order of the NCLAT, held: "We are of the view that the first two sets of days, namely, 7 days and 11 days, cannot be excluded for the simple reason that they are not incurred in any litigation process.

Pioneer Urban Land and Infrastructure Limited & Anr. Vs. Union of India & Ors. [WP(C) No.43/2019 and other petitions]

While dismissing the various petitions filed by builders and upholding the constitutional validity of status of allottees as FCs, the SC made several important findings and rulings as under

(a) In real estate projects, money is raised from the allottees, against consideration for the time value of money. The amounts raised from allottees is subsumed within section 5(8)(f) even without adverting to the explanation introduced by the Amendment Act. The deeming fiction that is used by the explanation is to put beyond doubt the fact that allottees are regarded as FCs. The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The explanation was added in 2018 merely to clarify doubts that had arisen.

(b) The provisions of RERA are in addition to and not in derogation of the provisions of any other law for time being in force. Further, Parliament was aware of RERA when it added explanation to section 5(8)(f) of the th Code which came into force on 6 June 2018. Therefore, the Code as amended, must be given precedence over RERA. Even by a process of harmonious construction, RERA and the Code must be held to co-exist, and, in the event of a clash, RERA must give way to the Code. The Code and RERA operate in completely different spheres. The Code deals with a proceeding in rem in which the focus is the rehabilitation of the CD by means of a resolution plan, so that the CD may be pulled out of the woods and may continue as a going concern, thus benefitting all stakeholders involved. On the other hand, RERA protects the interests of the individual investor in real estate projects by requiring the promoter to strictly adhere to its provisions

(c) The remedies under RERA to allottees are additional and not exclusive remedies. The allottees have concurrent remedies under the Consumer Protection Act, 1986, RERA as well as the triggering of the Code

Jignesh Shah & Anr. Vs. Union of India & Anr. [WP(C) No. 455/2019 with other CP, TP, CA & WP C)]

The SC observed: “With the introduction of Section 238A into the Code, the provisions of the Limitation Act apply to applications made under the Code. Winding up petitions filed before the Code came into force are now converted into petitions filed under the Code. What has, therefore, to be decided is whether the Winding up Petition, on the date that it was filed, is barred by lapse of time. If such petition is found to be time-barred, then Section 238A of the Code will not give a new lease of life to such a time-barred petition.”

It held that the petition filed on 21 October 2016 being beyond the period of three-years mentioned in Article 137 of the Limitation Act is time-barred and cannot, therefore, be proceeded with any further and set aside the impugned judgment of the NCLAT

Gaurav Hargovindbhai Dave Vs. Asset Reconstruction Company (India) Ltd. & Anr. [Civil Appeal No. 4952/2019]

Applying Article 62 of the Limitation Act, which allows the limitation period of 12 years from the date on which the money suit has become due, the AA admitted the application

The NCLAT upheld the admission order following its earlier judgment that the time of limitation would begin running for the purposes of limitation only on and from 1 December 2016, when the Code came into force.

While setting aside the orders of the AA and the NCLAT, the SC held: “…what is apparent is that Article 62 is out of the way on the ground that it would only apply to suits. The present case being “an application” which is filed under Section 7, would fall only within the residuary article 137”. Therefore, the application filed under section 7 is clearly time-barred

Committee of Creditors of Amtek Auto Limited through Corporation Bank Vs. Dinkar T. Venkatasubramanian & Ors. [Civil Appeal No(s). 6707/2019 and 7567-7569/2019]

The resolution plan, which had consumed the time available under section 12 of the Code, has failed owing to nonfulfillment of the commitment by Liberty House. However, the SC noted that the recent Amendment Act permits resolution process to be completed within 90 days from the date of the commencement of the Amendment Act. It also noted that expression of interest had been indicated by eight other parties. It permitted the RP to invite fresh offers within a period of 21 days.

Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors.

[Civil Appeal No(s). 5344/2019]

The SC upheld the order of the NCLAT which had held:

“19. Admittedly, the 'Corporate Debtor' is a 'MSME' and the promoters are not ineligible in terms of Section 29A of the 'I&B Code'. Therefore, it is not necessary for the 'Committee of Creditors' to find out whether the 'Resolution Applicant' is ineligible in terms of Section 29A or not. …..

22. Therefore, we hold that in exceptional circumstances, if the 'Corporate Debtor' is MSME, it is not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the 'Corporate Debtor'.” ==========

Committee of Creditors through Punjab National Bank & Anr. Vs. Ravi Prakash Goyal & Ors.
[Petition(s) for Special Leave to Appeal (C) No. 13755/2019]

A director of the Bhushan Power & Steel Limited filed a writ petition before the High Court of Punjab & Haryana. The High Court (HC) disposed of the same on 18 April 2019, with the following directions : "i)The issue raised by the present petitioner for providing all aforesaid documents and thereafter to convene a meeting of the CoC "afresh" to deliberate and consider the suggestions and objections of the erstwhile Board of Directors before passing any Resolution Plan (including CA No.286 of 2019) (P19) will be treated as a preliminary issue.

ii) The preliminary issue will be decided by the Adjudicating Authority before considering other Applications or before approval of any Resolution Plan (CA No.254 of 2019)…

The CoC filed an appeal before NCLAT seeking early disposal of matter (CIRP of Bhushan Bhushan Power & Steel Limited) pending before the AA since long. The judgement of the HC was brought to the notice of the NCLAT. The NCLAT, observed: "However, it is not clear as to how the Hon'ble Punjab & Haryana High Court, that too the vacation Bench had passed an order …. The records shows that the said writ petition was heard ex-parte and disposed of without notice to the Respondent - Punjab National Bank and others... it is not clear as to how the Punjab and Haryana High Court can pass an order, which has no territorial jurisdiction over Delhi, where Principal Bench of National Company Law Tribunal, New Delhi is situated, who is considering the matter." It directed: "The Adjudicating Authority is supposed to decide the case on merit in accordance with law uninfluenced by any order except the decision of this Appellate Tribunal and the Hon'ble Supreme Court."

The CoC approached the Supreme Court against the directions of the HC. The SC, vide order dated 3 July 2018, stayed the judgement of the HC.—refer IBBI site

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.

High Courts

SSMP Industries Ltd. Vs. Perkan Food Processors Pvt. Ltd.

[CS (COMM) 470/2016 & CC(COMM)73/2017]

Section 14(1)(a) of the Code prohibits a proceeding which has the effect of endangering, diminishing, dissipating or adversely impacting the assets of the CD. The issue was whether counter claim is covered by moratorium under section 14 of the Code. The HC observed: "Section 14 has created a piquant situation i.e., that the corporate debtor undergoing insolvency proceedings can continue to pursue its claims but the counter claim would be barred under Section 14(1)(a). When such situations arise, the Court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed and the Court cannot blindly stay the counter claim and refer the defendant to the NCLT/RP for filing its claims."

It held: "…the Plaintiff's and the defendant's claim ought to be adjudicated comprehensively by the same forum. At this point, till the defence is adjudicated, there is no threat to the assets of the corporate debtor and the continuation of the counter claim would not adversely impact the assets of the corporate debtor. Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered."

Ved Prakash Abbot Vs. Kishore K. Avarsekar & Ors. [CONT.CAS (C) No.579/2017]

The petitioner supplied building material for a project of the respondent. It filed a suit before the Trial Court for recovery of money due for the supplies made to respondent. A joint application for settlement was filed before the Court on 21 April 2017. The respondent failed to make payment as per settlement. It filed an application under section 10 of the Code, which was admitted, and an IRP was appointed on 20 June 2017. The trial court recorded a settlement between the parties and issued a compromise decree on 10 July 2017. The respondent again failed to make payment as per settlement. The IRP filed an application on 20 March 2018 that respondent could not be revived, and a liquidator be appointed. The petitioner filed a contempt petition before the HC against the key officers/directors for willful disobedience of the settlement dated 21 April 2017 and compromise decree dated 10 July 2017. The HC observed that in order to hold a person guilty of civil contempt, it has to be established that the alleged contemner was guilty of a wilful breach or a wilful disobedience of a decree of any Court. In this case, the IRP can't break the queue and allow preferential treatment to the petitioner, over the other financial and operational creditors, to discharge their liability under the compromise decree. The disbursement of payments by the respondent to clear the liabilities towards its creditors, including the petitioner, is governed by the proceedings under the Code and thus the respondents are prevented by law to satisfy the decree in favour of the petitioner and there is no wilful disobedience of the compromise decree and hence the respondents cannot be punished for civil contempt. It further observed: "Any direction by this Court in contempt proceedings would virtually amount to overriding the proceedings under the IBC which are the appropriate proceedings for determining the settlement of claims of the petitioner in the order of priority amongst the list of claimants therein."

National Company Law Appellate Tribunal

Standard Chartered Bank Vs. Satish Kumar Gupta, R. P. of Essar Steel Ltd. & Ors.

[CA (AT) (Ins) No. 242/2019 and Ors.]

While approving the resolution plan with modification, the NCLAT made several important findings and rulings as under:

(a) A Sub-Committee or Core Committee is unknown and against the provisions of the Code. The Code or Regulations do not empower the CoC to delegate any of its duties to Core Committee/ Sub-Committee
(b) The distribution of amount to the OCs and FCs and other stakeholders is to be made by the Resolution Applicant. The CoC has no role in the matter of distribution of amount amongst the creditors, including the FCs or OCs. The members of the CoC being interested parties are not supposed to decide the manner of distribution. The inter se distribution amongst the FCs and OCs cannot be held to be purely commercial in nature to be in the domain of the CoC
(c) A huge discrimination has been made by the CoC in distribution of amount to the OCs qua FCs. Majority of the FCs have been allowed 99.19% of their claim amount, whereas 0% in favour of the OCs. Such distribution is not only discriminatory but also arbitrary

(d) FCs cannot be discriminated on the ground of 'Secured' or 'Unsecured' for the purpose of distribution of amount realised under a resolution plan.
(e) The OCs can be classified in three different classes for determining the manner in which the amount is to be distributed to them. However, they are to be given the same treatment, if similarly situated.
(f) The distribution of amount to FCs and OCs during the CIRP cannot be equated with distribution to all stakeholders after the liquidation. Section 53 of the Code cannot be made applicable for distribution of amount under resolution plan amongst the stakeholders.
(g) Where the successful resolution applicant does not pay the total dues to the creditors (pays lesser amount than the claim), the profit generated during the CIRP should be distributed amongst all the FCs and OCs on prorata basis.
(h) Where the AA or the NCLAT could not decide the claim on merit, such claimants can raise the issue before an appropriate forum in terms of Section 60(6) of the Code. The FCs and OCs whose claims have been decided by the AA or the NCLAT, such decision being final is binding on all such FCs and OCs in terms of section 31 of the Code. Their total claims stand satisfied and, therefore, they cannot avail any remedy under section 60(6) of the Code

Saravana Global Holdings Ltd. & Anr. Vs. Bafna Pharmaceuticals Ltd. & Ors.
[CA (AT) (Ins) No. 203/2019]

The promoter of CD, which is an MSME, submitted resolution plan which was approved by the AA. The order of approval of resolution plan was challenged before the NCLAT on the ground that appellants were also interested to submit the resolution plan, and that the resolution plan was approved without complying with the provisions of the Code, as no prospective resolution applicants were invited. The NCLAT noted that the Parliament with specific intention amended the Code to allow the promoters of MSME to submit Resolution Plan. It observed: “The intention of the legislature shows that the Promoters of 'MSME' should be encouraged to pay back the amount with the satisfaction of the 'Committee of Creditors' to regain the control of the 'Corporate Debtor' and entrepreneurship by filing 'Resolution Plan' which is viable, feasible and fulfills other criteria as laid down by the 'Insolvency and Bankruptcy Board of India". It held: “…in exceptional circumstances, if the 'Corporate Debtor' is MSME, it is not necessary for the Promoters to compete with other 'Resolution Applicants' to regain the control of the 'Corporate Debtor'.”

Peter Johnson John (Employee) Vs. M/s KEC International Limited
[CA (AT) (Ins) No. 188/2019]

The issue for consideration before the NCLAT was whether in absence of adjudication of the foreign decree passed by a court in a non-reciprocating territory, the appellant was legally justified in seeking initiation of CIRP under section 9 of the Code against the CD. While dismissing the appeal, the NCLAT observed: “It is not disputed that such ex-parte decree of a foreign court would not be executable in India until adjudicated upon by a Civil Court in India within the ambit of Section 13 of CPC and having regard for the same, the Appellant has chosen to file suit before Hon'ble High Court of Bombay, which is still subjudice. Unless the decretal amount is adjudicated upon by the Hon'ble High Court of Bombay as a legally payable claim, the same would not constitute a “Debt” in the hands of Appellant - Operational Creditor and unless the debt is crystallized and payable in law, the issue of default would not be attracted.”

Insolvency and Bankruptcy Board of India (IBBI) Vs. Shri Rishi Prakash Vats & Ors.

[CA (AT) (Ins) No. 324/2019]

The issue for consideration before NCLAT was whether the AA has jurisdiction to quash the disciplinary proceedings initiated by the IBBI. It held: "…once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for the Disciplinary Authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority/ (National Company Law Tribunal), the Adjudicating Authority cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the Adjudicating Authority/ National Company Law Tribunal

NUI Pulp and Paper Industries Pvt. Ltd. Vs. M/s. Roxcel Trading GMBH
[CA (AT) (Ins) No. 664/2019]

The issue for consideration was whether before admission of an application filed under section 7 or 9, the AA can restrain the CD and its directors from alienating, encumbering or creating any third-party interest on the assets of the CD. The NCLAT noted that the AA can make any such order as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Tribunal. It held: "…it is clear that once an application under Sections 7 or 9 is filed by the Adjudicating Authority, it is not necessary for the Adjudicating Authority to await hearing of the parties for passing order of 'Moratorium' under Section 14 of the 'I&B Code'. To ensure that one or other party may not abuse the process of the Tribunal or for meeting the ends of justice, it is always open to the Tribunal to pass appropriate interim order."

Axis Bank Ltd. Vs. Anuj Jain, RP for Jaypee Infratech Ltd.
[CA(AT)(Ins)No. 243/ 2018 and others]

The AA had allowed the application under sections 66, 43 and 45 of the Code and ordered that the mortgaged properties be vested with the CD. On appeal, the NCLAT noted that the mortgage(s) were made in favour of the Banks and Financial Institutions by the CD in the ordinary course of business. In absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA

Punjab National Bank Vs. Mr. Kirah Shah, IRP of ORG Informatics Ltd.
[CA (AT) (Ins) No. 749/2019]

In the impugned order, the AA noted that no ground is given in the application showing the cause of replacement of the IRP. It expected that immediately after first meeting of the COC, it is supposed to prefer an application under section 22 which was not done in the case. The NCLAT held: "…we are of the view that the 'Committee of Creditors' is not required to record any reason or ground for replacing of the 'Resolution Professional', which may otherwise call for proceedings against such 'Resolution Professional'. ……. The 'Committee of Creditors' having decided to remove the 'Resolution Professional with 88% voting share, it was not open to the Adjudicating Authority to interfere with such decision, till it is shown that the decision of the 'Committee of Creditors is perverse or without jurisdiction

Sukhbeer Singh Vs. Dinesh Chandra Agarwal (Resolution Professional), Maple Realcon Pvt.
[CA (AT) (Ins) No. 259/2019]

The proposal of promoters was not placed by RP before CoC on the ground that under section 12A, they, not being applicants, cannot file such application. While rejecting such objection the NCLAT held that it is the promoter who can settle the matter with creditors and submit such proposal to RP and that he is bound to place it before the CoC which is supposed to consider such application in the light of section 12A of the Code

Ilam Chand Kamboj Vs. M/s ANG Industries Ltd.
[CA (AT) (Ins) No. 253/2019 and I.A. No. 995/2019]

The RP filed an appeal against impugned order of the AA wherein it directed: "We are persuaded that, it would be appropriate to refer the matter to the IBBI, the body for regulating the functioning of the Resolution Professionals, to examine the actions of the Resolution Professional and taking suitable action." The NCLAT observed that normally, the AA is not supposed to pass any adverse observations, even prima facie, against the RP, without giving an opportunity to him as to why in view of certain Act, the matter be not referred to IBBI. It held: "…the 'IBBI' cannot treat observations as made by the Adjudicating Authority, as referred to above, as final decision against the Appellant, as the observation made, without granting any opportunity to the Appellant. Therefore, the 'IBBI' will hear the proceedings and decide on merit after hearing the 'Resolution Professional' and taking into consideration reply as may be submitted by the Appellant, uninfluenced by the observations made by the Adjudicating Authority as referred to above."

Committee of Creditors of Amtek Auto Ltd. through Corp Bank Vs. Dinkar T. Venkatasubramanian & Ors.
[CA (AT) (Ins) No. 219/2019]

The NCLAT observed that the Code is silent as to whether the AA has any jurisdiction to pass any order referring a matter to the Central Government or IBBI for action under section 74(3) of the Code or under any of the provisions for punishment. It held: "…we are of the opinion that before referring any matter to the Insolvency and Bankruptcy Board of India or the Central Government, the Adjudicating Authority/ Tribunal is required to provide reasonable opportunity of hearing to the parties concerned/alleged offenders of provisions of Chapter VII of Part II and if satisfied may request the Central Government to investigate the matter by an Inspector or Inspectors and then to decide on such opinion whether to refer and lodge any case before the Special Judge for trial under Section 236 of the 'I&B Code' for alleged offence under Section 74(3) or any other provision under Chapter VII of Part II of the 'I&B Code' and for punishment under Section 447 of the Companies Act, 2013.

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…

Excel Metal Processors Limited Vs. Benteler Trading International GMBH & Anr.
[CA (AT) (Ins) No.782/2019]

The question was whether the AA has jurisdiction to entertain an application under section 9 of the Code, where, as per the terms of an agreement between the parties, any suit or case was maintainable only in the court at Germany. The NCLAT held that CIRP is not a 'suit', a 'litigation' or a 'money claim' for any litigation and no one is selling or buying the CD. It is not a recovery or liquidation. It is a resolution process so that the CD does not default on dues. It held that the Appellant cannot derive advantage of the terms of the agreement reached between the parties

L&T Infrastructure Finance Company Ltd. Vs. Gwalior Byepass Project Ltd. & Ors.
[CA (AT) (Ins) No. 676 & 677/2019]

The issue was whether one FC can challenge the insolvency proceeding initiated by another FC on the ground that it has a superior claim. The NCLAT observed that the appellant as an FC of the CD has no right to intervene to oppose admission of the application under section 7 preferred by another FC. After admission of the application, if the appellant claims that it is one of the FCs, it can file claim before the RP, but it cannot challenge the order of admission on the ground that it has first charge on the asset of the CD or has superior claim over the claim of the other FCs.

Mr. M. Srinivas Vs. Ramanathan Bhuvaneshwari & Ors.
[CA (AT) (Ins) No. 498/2019]

The RP brought to the notice of the AA that the promoters of the CD and its company defrauded many creditors .The AA issued certain directions, including a direction to the Central Government to refer the matter to the SFIO for further investigation into the affairs of the CD, in exercise of its powers under section 213 of the Companies Act, 2013. The question for consideration was whether the AA has jurisdiction under section 213 of the Companies Act, 2013. The NCLAT held that the AA, which is the NCLT, has dual and interwoven role and power to pass order under section 213 of the Companies Act, 2013 read with Rule 11 of the National Company Law Tribunal Rules, 2016. It observed that if the AA is satisfied that there are circumstances suggesting that the business of a company is being conducted with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner oppressive to any of its members, and that the affairs of the company ought to be investigated, after giving a reasonable opportunity of being heard to the parties concerned, it may refer the matter to the Central government for investigation into the affairs of the company

Andhra Bank Vs. Sterling Biotech Ltd. (Through the Liquidator) & Ors.
[CA (AT) (Ins) No. 612/2019 and others]

The AA rejected an application under section 12A of the Code, which was filed at the instance of the promoter and approved with more than 90% voting share of the CoC on the ground that the promoter was not eligible to file the resolution plan under section 29A. The issue before the NCLAT was whether section 29A of the Code, which makes a person ineligible to submit a resolution plan, is applicable to the applicant, if it intends to withdraw the petition under section 7 or 9, if the CoC approves it with 90% voting share in terms of section 12A. The NCLAT held that the application under section 12A having been approved by the CoC with more than 90% of the voting share, it was not open to the AA to reject the same and that too on a ground of ineligibility under section 29A, which is not applicable.

Securities and Exchange Board of India Vs. Assam Company India Ltd. & Ors.
[CA (AT) (Ins) No. 629/2018]

SEBI passed an interim order against the CD under sections 11, 11(4), 11A and 11B of the Securities and Exchange Board of India Act, 1992, inter alia, directing: "…the shares held by the promoters and directors in ACIL shall not be allowed to be transferred..". However, the AA approved the resolution plan for the CD providing for delisting of its equity shares. SEBI contended before the NCLAT that delisting of securities in the resolution plan is clearly an attempt to wriggle out of the jurisdiction of and proceedings instituted by it and the resolution plan involving delisting of equity shares ought not to be proceeded without hearing SEBI. The NCLAT held: "The interim order passed by SEBI (Appellant) does not amount to any existing law, to attract Clause (e) of Section 30(2) of the I&B Code, therefore, the Appellant cannot take plea that the approved Resolution Plan is in contravention of any law for the time being in force." It, however, clarified: "…the order passed by the Adjudicating Authority or this Appellate Tribunal will not come in the way of the SEBI or any competent authority to take steps against erstwhile Promoters, Directors or Officers or others, if any or all of them had violated any of the provisions under SEBI Act or rule framed thereunder or any other law as may be taken against such person of listed company."

Union of India & Anr. Vs. Videocon Industries Ltd. & Ors.
[CA (AT) (Ins) No. 408/2019]

Ministry of Petroleum and Natural Gas issued a notice demanding payment towards the unpaid Government share of Profit Petroleum. The AA directed the Government not to press demand notice as long as moratorium is applicable to the CD. The NCLAT held: "…the Adjudicating nd Authority rightly stayed demand notice dated 22 October, 2018 during the pendency of the resolution process as long as the 'Moratorium' is applicable on the 'Corporate Debtor'. The Adjudicating Authority rightly held that the Ministry of Petroleum can lodge its claim for any legally enforceable right of recovery through 'Resolution Professional', thereby not rendered it remediless

Sagar Sharma & Another Vs. Phoenix ARC Private Limited
[CA (AT) (Ins) No. 177/ 2019]

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 th 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."

Mr. Hemang Phopalia Vs. The Greater Bombay Co-operative Bank Limited & Anr.
[CA (AT) (Ins) No. 765/2019]

The issue is whether an application under section 7 or 9 for initiation of CIRP is maintainable against a CD, if its name has been struck-off from the Register of the Companies. The NCLAT held: "… the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248."

M/s ICICI Bank Ltd. Vs. Mr. Gopalsamy Ganesh Babu, IP M/s. Subburaj Spinning Mills Ltd.
[CA (AT) (Ins) No. 655/2019]

Since the appellant filed its claim on 21 December 2018 after the resolution th plan was approved by the CoC on 17 December 2018, the RP could not th include it. The AA approved the resolution plan on 12 March 2019. However, the appellant had moved the Subordinate Court in respect of the same claim in 2008 and the matter remained pending because of moratorium. The NCLAT held that since the moratorium has expired, the appellant may pursue the suit pending before the Subordinate Court in the light of section 60(6) of the Code.

Jet Airways (India) Ltd. (Offshore Regional Hub/ Office), Holland Vs. State Bank of India
[CA (AT) (Ins) No. 707/2019]

The NCLAT, vide order dated 4 September 2019, held that the IRP is required to collate the claim of all offshore creditors, and take control and custody of the assets of the CD situated outside India (in Holland) or other places. However, for giving it effect, the RP is required to reach an arrangement or agreement with the Administrator appointed pursuant to the proceeding initiated in Holland.

The NCLAT, vide order dated 26 September 2019, directed use of certain elements of cross border insolvency in the form of 'Cross Border Insolvency Protocol' agreed to between the Administrator of Jet Airways (India) Limited (Offshore Regional Hub) and the Resolution

Professional of Jet Airways (India) Limited. The Protocol recognises that the company being an Indian company with its centre of main interest in India, the Indian Proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings. It maintains the independent jurisdiction, sovereignty, and authority of NCLT, NCLAT and Dutch Bankruptcy Court. The NCLAT observed that the 'Cross Border Insolvency Protocol' shall be treated as its direction. It further directed that the Dutch Trustee shall be invited to participate in the meetings of the CoC as an observer but shall not have a right to vote in such meetings.

Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd.
[CA (AT) (Ins) No. 377/2019 and others]

The NCLAT set aside the impugned order dated 7 March 2019 which failed to appreciate the relevant fact that in the facts and circumstances, a group insolvency is to be initiated and in the absence of simultaneous CIRP against five CDs, the project would not be the complete. It directed that the AA will admit the applications under section 7 filed against by five CDs and appoint a common Resolution Professional and the project will be completed in one go by initiating a consolidated Resolution Plan.

National Company Law Tribunal

Royal Splendour Developers (P) Ltd. [MA/70/2019 in CP/628/IB/ CB/2017]

The RP filed an application for approval of resolution plan, which the CoC had not approved with requisite majority by CoC. The AA noted that the home buyers have been stuck and they are not in a position of getting the half-built houses completed through the resolution plan. It observed: "…the Bank of India which has 24.97%, though present in the CoC meeting at the time of voting, for the reasons best known to them, the Banker did not vote for or against the resolution placed before CoC. ..Not taking any decision in respect to the resolution come before the CoC is nothing but dereliction of the duties of the Banker (Bank of India) which has not allowed this Bench to take any decision over this plan. If at all they have any better proposal than the proposal come from the resolution applicant, they would have placed it before the CoC or before this Bench, that has also not happened." It lamented: "I regret to mention that this Resolution Professional has not taken proper steps to initiate actions against the Promoter-Directors as contemplated under the Code…". It hoped that at least Bank of India as well as the RP would take immediate steps to assist the Bench in deciding the resolution plan.

Alchemist Asset Construction Co. Ltd. Vs. Moser Baer India Limited
[CA-769(PB)/2019 in C.P. No. IB-378(PB)/2017]

An application was filed by the Liquidator under regulation 33(2)(d) of the IBBI (Liquidation Process) Regulations, 2016 for taking prior permission to sell the assets of the CD by means of a private sale. The issue before the AA was whether all the requirements of clauses (a) to (d) of regulation 33(2) are required to be fulfilled to sell the assets. It held: "To our mind the proper interpretation on clauses (a) & (b) would be that a liquidator is entitled to sell the assets without requirement of prior permission after reaching the conclusion that the assets are perishable and it is likely to deteriorate significantly in value if not sold immediately.

Otherwise the purpose of regulation would be defeated if the time is required to be spent in filing an application and taken permission because the assets which are perishable may not remain available for sale and perish or it may deteriorate significantly in value if not sold immediately." However, the assets to be sold at a price higher than the reserve price of a failed auction have to be sold with the prior permission of the AA

Bank of India Vs. Basic India Ltd. [(IB)-397(PB)/2018]

The RP filed an application seeking direction to the Ex-Director/Promoter not to leave the country without permission of the AA and to impound their passports. The AA directed certain persons not to leave the country without prior permission of the tribunal. It granted liberty to the RP to move appropriate application to the passport authorities under section 10 or section 10A of the Passport Act, 1967 for impounding the passports.

In the matter of M/s. Sai Regency Power Corporation Private Limited
[MA/872/2019 in IBA/92/2019]

The RP filed an application stating that some CoC members, after approval of resolution for interim finance, by 75% voting share, are reluctant to release the comfort letter to the lead bank which is willing to disburse the interim finance. The AA observed that all members of the CoC are bound by the resolution approved by it with requisite majority. It directed the members of the CoC, including M/s Edelweiss Asset Reconstruction Company Limited and Axis Bank, to release the comfort letter within 24 hours, after noting that the CD is a going concern with 100 employees and it would come to a grinding halt if interim finance is not released

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

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

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.

State Bank of India Vs. Sungrowth Shares & Stocks Limited [CP(IB)No. 796/KB/2018

The AA considered the issue as to whether application under section 7 of the Code can be considered against a corporate guarantor of the CD whose resolution plan has already been approved. It held that the principal debtor is discharged under the Code due to operation of law, i.e., approval of resolution plan, but not on the instance of a creditor and that the guarantor is not discharged of its liability merely because the creditor consented to a resolution plan of the principal debtor (CD). Accordingly, it admitted the application to initiate CIRP against corporate guarantor to principal debtor.

Col. Sanjeev Dalal Vs. International Recreation & Amusement Limited
[CA-1084(PB)/2018 in C.P. No. IB-297(PB)/2018] (Order of May 13.05.2019)

The AA, in its order dated 2 August 2019, held that the claim of the FCs can be accepted by the RP even when the resolution is pending for its consideration, as the delay in filing of claims is not intentional and many applicants were unaware of CIRP and filing of claims

For the purpose of assigning voting share of allottees in various classes, the RP applied a common rate of interest of 8% irrespective of the rate of interest claimed by the allottees, relying on regulation 16A(7) of the CIRP Regulations. After perusing the provisions in the Code, the AA, in its order th dated 13 May 2019, concluded that the IBBI is empowered to frame regulations to provide the manner of voting and determining the voting share in respect of financial debts under section 21(7) of the Code.

Shri Krishna Agri Projects Private Limited Vs. Feedatives Pharma Private Limited
[CA(IB) No. 194/KB/2019, 964 & 848/KB/2019 in CP (IB) No. 187/KB/2018]

While approving the resolution plan, which was earlier approved by the CoC with 100% voting share, the AA observed: “The CoC has expressed its gratitude to the resolution professional for his hard work and congratulated him for his efforts to complete the CIRP within the extended period of 270 days. We also do not find any adverse remarks against the resolution professional but would like to endorse the view expressed by the CoC as this is a unique case wherein a Farm dealing with Poultry has been successfully run by him enabling him to get a resolution applicant to take over the assets above the fair market value and the financial creditors have voted the resolution plan with 100%

In the matter of M/s. White & Brown Alloy Castings Private Limited
[C.P. (IB) No. 947/KB/2018]

The RP filed an application under sections 66 and 67 of the Code against the Promoter and Director of the CD. The AA observed: "The audacity of the Respondent firstly to withdraw the amount from the account of the CD and branding the same as having been utilized for the benefit of the Company is another violation of the orders of this Tribunal which needs to be reprimanded and taken note of." It issued various directions, including a direction to IBBI to initiate prosecution if any under section 69 of the Code

BiostadtIndia Ltd.Vs.SonachiIndustries Ltd.[C.P.(IB)1479/(MB)/2017 and MAs]

The AA observed that by submission of the claim to the Liquidator, there remains no need for taking consent of the FC regarding willingness to relinquish the security or not. It noted that the Liquidator after receiving the claim has further sent an email asking the FC to confirm whether it is relinquishing security or not, and the FC failed to send the reply within the stipulated time. It held: "By submitting its claim to the liquidator, and not informing him that he is not relinquishing his security interest, the secured creditor has lost its right to opt for not relinquishing its security interest. In the circumstances, there remains no reason to give further liberty to the secured creditor to exercise its option regarding his willingness to relinquish his security or not."

Super Print Services Vs. M/s. Xalta Food and Beverages Pvt. Ltd. [(IB)-702/ND/2018]

The AA noted that some members of the COC have not contributed towards the CIRP costs. It observed that it would be necessary and expedient to issue show cause why their claim should not be rejected if they do not contribute towards the share of the CIRP costs proportionate to their claim.

State Bank of India Vs. Jet Airways (India) Ltd. [MA 2955/2019 in C.P.(IB)-2205/(MB)/2019]

The application had been filed by the RP seeking direction 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 nonavailability 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."

Other Authorities

M/s. PMT Machines Vs. The Deputy Director, Directorate of Enforcement, Delhi [FPA-PMLA-2792/DLI/2019]

The Enforcement Directorate attached the assets of M/s. PMT Machines, which was confirmed by the Adjudicating Authority under the Prevention of Money Laundering Act, 2002 (PMLA) vide its order dated 20 November, 2018. The Appellate Tribunal under the PMLA noted that the mortgaged properties were acquired much prior to the date of alleged offence. The date of charge of properties are also much prior to the date of alleged offence committed. It also noted that the mortgaged property of the Appellant Bank cannot be attached or confiscated unless link and nexus directly or indirectly established and there is no illegality or unlawfulness in the title of the Appellant Bank and there is no charge of money laundering against the Appellant.The Appellate Tribunal observed: “It is imperative to bear in mind that the intention and objective of the legislature while legislating the Prevention of Money Laundering Act, 2002 (“PMLA”) was to deprive the offender (of money-laundering), the enjoyment of “illegally acquired” fruits of crime by taking away his right over property acquired through such means, and to obviate the threat of money laundering to the financial system of the country. The IBC on the other hand, has been enacted with the objective of consolidating and amending the laws "relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stake holders including alteration in the order of priority of payment of government dues." While quashing the attachment order, it held that the Enforcement Directorate is not precluded to attach other private properties and all other assets of the alleged accused

IBBI

In the matter of Registration of RV (Order dated 6 July 2019)

Rule 4 read with Annexure IV of the Companies (Registered Valuers and Valuation) Rules, 2017 require that an individual must possess a degree in Civil Engineering, among others, registration as a Registered Valuer (RV) in the asset class 'Land and Building' (L&B). The applicant, who has a Bachelor of Engineering (Agriculture), claimed that the Bachelor of Engineering in Agriculture and the Bachelor of Engineering in Civil Engineering have similar subjects and, therefore, are equivalent of each other. Hence, he is entitled to registration as RV. The data used in this section relating to corporate processes are provisional. These are getting revised as further information is received from IPs or the information in respect of a process changes. For example, a process may ultimately yield an order for liquidation even after approval of resolution plan or may ultimately yield resolution plan even after an order for liquidation. th However, Mr. Mallik submitted that he had given his consent on 7 February 2017 to serve as an IRP, while he had a valid registration, which was to expire th on 30 June 2017. However, he was appointed as IRP by the AA vide its order th dated 14 November 2017. The Board noted that despite making it clear that he did not have a valid registration as an IP, he was made to serve as the IRP. In such circumstances, the Board found it difficult to hold him liable for contravention of section 206 of the Code. Corporate Processes th Mr. Tapas Mallik erstwhile Insolvency Professional (Order dated 17 July 2019)

The Board took a prima facie view that Mr. Mallik, who did not have a valid registration as an IP at the relevant time, rendered services as an IP, in contravention of section 206 of the Code. In view of the unambiguous language in the Rules that explicitly specify the discipline required for the asset class L&B, the Board took a view that the applicant does not have the required qualification for registration as an RV and therefore, rejected the application

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