NCLAT

Ashok Jiwarika V Axis	• CIRP has been initiated against '**Alok Industries Ltd.' (Holding Company**). • Subsequently, another CIRP has been initiated pursuant to application filed by another financial creditor against '**Alok Infrastructure Ltd.' (Subsidiary of Alok Industries Ltd.).** • Alok Infrastructure Ltd [subsidiary] submits that the CIRP against it should not continue till the CIRP is decided under Section 31 in the case of 'Alok Industries Ltd.' (Holding Company). • such submission cannot be accepted as a separate CIRP has been initiated against another Corporate Debtor which is separate from the CIRP initiated against 'Alok Infrastructure Ltd.', of which the Appellant is the Director • If resolution plan has been filed in the case of 'Alok Industries Ltd.' [Holding Company] and RP of the said case has placed the approved resolution plan in respect of 'Alok Industries Ltd.' before the Adjudicating Authority, the concerned Adjudicating Authority is required to decide it preferably within three weeks • 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
Canara V Deccan	• Counsel appearing on behalf of the Appellant submits that the AA cannot exclude any court from the purview of Moratorium for the purpose of recovery of amount or execution of any judgement or decree, including the proceeding, if any, pending before the Hon'ble High Courts and Hon'ble Supreme Court of India against a 'corporate debtor • NCLAT--From clause (a) of sub-Section (1) of Section 14, it is clear that institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order by any court of law, tribunal, arbitration panel or other authority come within the purview of 'moratorium. The said provision specifically do not exclude any Court, including the Hon'ble High Courts or Hon'ble Supreme Court of India • There is no provision to file any money suit or suit for recovery before the Hon'ble Supreme Court except under Article 131 of the Constitution of India where dispute between Government of India and one or more States or between the Government of India and any State or States on one side and one or two or more States is filed. • Some High Courts have original jurisdiction to entertain the suits, which may include money suit or suit for recovery of money. The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. ***However, so far as suit***, if filed before any High Court under

	original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium, under Section 14 of the I&B Code • In view of the aforesaid position of law, the impugned order passed by Tribunal, as mentioned at clause (c) (i) of the last paragraph relating to 'moratorium', stands clarified to the extent above.
Consolidated Engi V Golden	• 10% of total debt for the purpose of representation in ''Committee of Creditors' is to be calculated on the basis of the claim as collated and noticed by the 'resolution professional'. It cannot be based on amount claimed by all the 'Operational Creditors', till it is verified and compared
Edelweiss V Synergies	• The questions arise for consideration in these appeals are: o Whether the assignment(s) made by 'Synergies Castings Limited' on 24th November, 2016 in favour of 'Millennium Finance Limited' is legal? o Whether the order dated 2nd August, 2017 passed by the Adjudicating Authority approving the 'Resolution Plan' submitted by 'Synergies Castings Limited' is legal? • In the present case, if we hold that the assignments made by 'Synergies Castings Limited' on 24th November, 2016 in favour of 'Millennium Finance Limited' are legal, the second question will be automatically answered in favour of the Appellant • Reliance was placed on the decision of the Hon'ble Supreme Court in ***'ICICI Bank Lt. V. APS Star Industries Ltd., (2010) 10 SCC 1'***, wherein it has been held that an assignment of a debt will not be contrary to public policy on the grounds that the assignee has purchased the debt for a considerably discounted price or because that price is only payable after a period of credit. (Para 49). • Learned counsel for the Respondent further submitted that in terms of section 47 of the 'Indian Registration Act, 1908', registration relates back to the date of execution of the agreements itself. In the present case, the Assignment Agreements were duly registered with the Joint Sub Registrar, Sabbavaram on 25th April, 2017 and the payment of stamp duty to the tune of Rs. 1,30,300/- for each of the Assignment Agreements made. Further, a sum of Rs. 1,50,000/- was also paid towards fine for delay in presenting the documents in each case. In terms of Section 47 of the 'Indian Registration Act, 1908', once a document is registered, the operation of the said relates to the date of execution of the document as held by the Hon'ble Supreme Court in the matter of ***"Gurbax Singh V. Kartar Singh & ors., SLP (Civil) No. 1969 of 2002"*** and ***"Principal Secretary Gov. of Karnataka and Anr. V. Ragini Narayan and Anr., Civil Appeal No. 8895 of 2012*** **<u>Discussions on fact and law:</u>** • Section 230 of the Companies Act, 2013 relates to 'power to compromise or make arrangements with creditors and members' whereas Section 232 relates to 'merger and amalgamation of companies'. The question of filing an application before the National Company Law Tribunal under Sections 230-232, does not arise at the stage of filing of the 'Resolution Plan' as it is not known as to which of the 'Resolution Plan' will be approved. Once a plan is approved, one may argue that in terms of the provisions of the Companies Act, a formal order of amalgamation is required. No such argument can be advanced

	at the time of approval of the 'Resolution Plan' which merely proposes merger • The 'I&B Code' is a code by itself and Section 238 provides over riding 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'. Therefore, the arguments of the Appellant that merger and amalgamation of the companies cannot be proposed in the 'Resolution Plan' or such proposal is violative of clause (e) of sub-section (2) of Section 30 is fit to be rejected. •
Essar V SK Gupta	•
EXIM V Astofield	• The 'Deed of Pledge of Securities' dated 28th March, 2013 was entered into between the 'Corporate Debtor' and the 'Financial Creditors' wherein the provision relating to voting rights was mentioned under clause 5.2. • From the aforesaid 'Deed of Pledge' while we find that in case of default, the voting rights of the shareholders shall cease to exist upon the occurrence of an event of default, it will not deprive the shareholder to continue to be a shareholder and their shares do not stand transferred to the 'Financial Creditor' • shareholder, in terms of the 'Deed of Pledge' dated 28th March, 2013 may lose their right to vote but they continue to be shareholder even thereafter. • In terms of clause (c) of sub-section (3) of Section 10 of the I&B Code the special resolution passed by shareholders of the 'corporate debtor' or resolution passed by at least three fourth of the total number of partners of the corporate debtor approving to file the application, is to be enclosed • Even if it is presumed that the shareholder ceased to exercise their right to vote with regard to the companies aforesaid, their right under clause (c) of sub-section (3) of Section 7 does not stand superseded by the aforesaid provision • we hold that the shareholder has a right to decide whether approving or disapproving the decision be proceeded with the corporate insolvency resolution process under Section 10 of the I&B Code. • Such right does not stand curtailed by Deed of Pledge dated 28th March, 2013.
EXIM V CHL	• Adjudicating Authority dismissed the application on the finding that the Respondent's liability as a surety was not co-extensive with that of the 'principal borrower' by reason of Clause 4 of the 'Deed of Guarantee'. • The Adjudicating Authority held that Clause 4 of the 'Deed of Guarantee' is an agreement contrary to the general law of surety's liability being co-extensive with that of the 'principal borrower' as provided in Section 128 of the 'Indian Contract Act, 1872' • Reliance has been placed on the decision of the Hon'ble Supreme Court in ***"Industrial Investment Bank of India vs. Bishwanath Jhunjhunwala [2009 (9) SCC 478]"***, wherein the Hon'ble Supreme Court considered clauses similar to Clauses 4 and 6 of the 'General Conditions' extracted above and held that the guarantee was co-extensive.

	• Importantly, as on that date, the proceedings at Dushanbe were pending. The Loan Agreement was suspended and, as such, there could not be any 'default' by the 'principal borrower'. Further, prior to issuing this notice, only a Letter dated 4th January, 2017 was issued whereby outstanding interest including penal interest of USD 869,277.84 as on 3rd January, 2017 was sought from the 'principal borrower', within 7 days of the said demand, which demand also got suspended along with the loan agreement in view of the order dated 6th January, 2017. • Agreement stood suspended on 6th January, 2017 • Despite the fact that there was no debt due and payable by the principal borrower, on 1st June, 2017, the Appellant sent guarantee invocation letter to the Respondent purportedly demanding an amount of USD 35,164,530.14 • The aforesaid chronology and the proceedings before the Economic Court, Dushanbe show that the Appellant has been restrained from taking any coercive proceedings in terms of the loan contracts and from supplements and appendices. These admittedly include the Corporate Guarantee furnished by the Respondent • Further, the 'principal borrower' moved another application dated 2nd October, 2017, on which an Order was passed on 3rd October, 2017, by the Dushanbe Court stating that the suspension order is applicable on loan agreements, mortgage agreements and any other arrangement obligations arising from such agreements, which impliedly includes the Corporate Guarantee executed towards the principal loan • This order was again reiterated on 17th November, 2017 by the Dushanbe Court. Pursuant to this, the Economic Court at Dushanbe passed its final judgment on 1st May, 2018. The said Judgment was challenged before the Supreme Economic Court of Dushanbe by the Appellant which upheld the Judgment and dismissed the appeal vide its judgment dated 14th August, 2018. • The 'principal borrower' has already made representations to the Appellant for reconciliation of account but the Appellant has not come forward to reconcile till date. Only upon this reconciliation, the Appellant is entitled to demand the recalculated interest component from the 'principal borrower', if any or adjust any surplus amount which have been received by the Appellant • If in the event, the 'principal borrower' fails to pay the interest component, if any, as per the fresh demand made on reconciliation, only then the Appellant will be entitled to invoke the 'corporate guarantee' of the Respondent in terms of specific and contingent contract between the Appellant and the Respondent. • Significantly, the 'Corporate Guarantees' given by the Respondent can be invoked only "In the event of a default on the part of the borrower". The said 'Corporate Guarantee' cannot be invoked as on date, since there is no fresh demand made by the Appellant to the 'principal borrower' for the recalculated interest and consequently there is no debt that is due and/or payable hence there is no default by the 'principal borrower' with respect to interest.
Era V Predeco	• Operational Creditor had failed to issue demand notice as required under Section 8 of the I&B Code 2016. The creditor had in past served demand

	notice under Section 271 of Companies Act, 2013 and was relying on the said demand notice. • The Appellant Tribunal observed that serving of notice under Section 271 of Companies Act, 2013 cannot be considered as sufficient notice as required to be served under Section 8(1) of I&B Code 2016 in the prescribed format • *Admittedly no notice was issued by Operational Creditor stipulated under Rule 5 in Form 3 has not been served. Therefore, in absence of any expiry period of tenure of 10 days there was no question of preferring an application under Section 9 of I&B Code 2016*". • The Hon'ble NCLAT further held that "*the Adjudicating Authority has failed to notice the afore said facts and the mandatory provisions of law as discussed above.* • *Though the application was not complete and there was no other way to cure the defect, the impugned order cannot be upheld*
Ferro V Rural	• FC--Section 7 application preferred by Corporate Guarantor • The appeal at the instance of 'Ferro Alloys Corporation Ltd.' (Corporate Debtor—Corporate Guarantor) through its (suspended) Board of Directors is not maintainable in view of the decision of the Hon'ble Supreme Court in "*Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 (Civil Appeals Nos. 8337-38 of 2017)*" • however, as the other appeal has been preferred by shareholders • Therefore, it is clear that if the Adjudicating Authority is satisfied that there is a 'debt' and 'default' and otherwise if the application is in order is bound to admit the application. It is a 'corporate debtor' who can only point out that it does not owe any debt either in law or in fact, which is not the case of the 'corporate debtor'. 'Corporate debtor' can also take a plea that the application has been filed by a person who is not a 'financial creditor' but such issue having not raised, the consortium of banks have no role to play at the time of admission of application under Section 7 of the I&B Code. The role of banks comes if they file claim after the admission of an application and when they are accepted as a 'financial creditors' and made members of the 'Committee of Creditors' in terms of Sections 27 and 28 of the I&B Code. Such claims are looked into by the 'Resolution Professional' only after admission of the application under Section 7 or 9 or 10 and the order of moratorium was passed by the Adjudicating Authority • Therefore, the appeal at the instance of 'Bank of India' on its behalf and member banks of the consortium being on merit is fit to be rejected. • It is submitted that the 'financial creditor' approached the Adjudicating Authority resultant of failure before various other judicial forums where the amount has already been disputed by the 'corporate debtor' in pursuance to the revocation of the 'corporate guarantee' and 'financial creditor' has failed to provide the 'corporate debtor' relevant documents which were referred in their notice. • However, the aforesaid grounds cannot be considered at the time of an application under Section 7, in view of the decision of the Hon'ble Supreme Court in ***'Innoventive Industries Ltd****. (supra)'* in paragraphs 28 and 29 etc. as referred to above as per which it is to be seen that there is a 'debt' or 'default' committed by the 'corporate debtor'. **Mere dispute of quantum of amount cannot be a ground and that too can be taken at**

	the stage of admission. If the 'debt' is more than one lakh and there is a 'default', the application to be admitted. The Adjudicating Authority not being a court of law or Tribunal and 'corporate insolvency resolution process' being not a litigation as held by this Appellate Tribunal in ***"Binani Industries*** • we hold that the Adjudicating Authority has no jurisdiction to decide any disputed question or claim based on evidence and at the stage of admission is only required to satisfy itself about existence of debt or not and if it is more than Rupees One Lakh and party has defaulted, and otherwise the application is complete, the Adjudicating Authority is required to admit the application. • The only question arises for determination in this appeal is whether the application under Section 7 of the I&B Code is maintainable against the 'corporate guarantor' **without initiation** of 'corporate insolvency resolution process' against the 'principal borrower' ('principal debtor' • On being default in making the payment of the debt amount by the 'principal borrower', the 'financial creditor' invoked the corporate guarantee of the 'Ferro Allows Corporation Limited' and called upon the 'Ferro Alloys Corporation Limited' ('corporate guarantor') to pay forthwith the amount due and payable by the 'M/s. FACOR Power Limited' (principal borrower') amounting to Rs.564,63,50,544/- as on 30th September, 2015 along with future interest within a period of 21 days. M/s. Ferro Alloys Corporation ('corporate guarantor') issued a reply dated 26th November, 2015 but failed and neglected to pay the above sum • The 'financial creditor' pleaded that the 'corporate guarantee' furnished by 'Ferro Alloys Corporation Limited' is an unconditional, continuing and irrevocable guarantee. As per the terms of the guarantee, the obligation of guarantor is separate, independent and is that of primary obligor and not merely as surety, on a full indemnity basis to indemnify the 'financial creditor'. The 'corporate guarantee' provided by the 'Ferro Alloys Corporation Limited' is joint and several and co-extensive with that of the principal debtor and can be invoked even without exhausting the remedies against the principal debtor. Similar plea was taken before the Adjudicating Authority. The Adjudicating Authority taking into consideration the fact that there is a 'debt' and 'default' and the application under Section 7 being complete admitted the application by the impugned order dated 6th July, 2017 • We have heard the learned counsel for the parties and perused the record. The position of law is manifested in the I&B Code including the definitions which require harmonious and purposeful reading and reasoning • **Insolvency Resolution Process under Section 7 of the I&B Code can be initiated against the guarantor who is a 'corporate person' and who by operation of law *ipso facto* becomes a 'corporate debtor' by satisfying the ingredients of the terms as defined under Section 3(8).** • As per Section 3(8), the term '**corporate debtor'** can be a debtor who may be any person. The term '**person'**, defined under Section 3(23), is as under: • Thus, a 'corporate debtor' must be a 'corporate person', [Section 3(7)] who owes a 'debt' [Section 3(11)], to any person [Section 3(23)]. The

	'debt' as used in Section 3(8) has to be a 'debt' defined under Section 3(11) as quoted above. It must be the 'liability' or 'obligation' in respect of a 'claim' [Section 3(6)] which is due from any person [Section 3(23)] – which means even a corporate entity and shall include 'financial debt' and 'operational debt' as defined under section 5(8) and 5(21) as quoted hereunder • The term '**default'** is defined under Section 3(12) **which encompasses default, both by principal borrower and principal guarantor, which reads as under** • *default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and **is not repaid by the debtor or the corporate debtor**, as the case may be;* • A guarantee becomes a debt or as soon as the guarantee is invoked against it whereinafter a guarantor ('corporate guarantor') becomes a 'corporate debtor' in terms of the I&B Code • In '***Bank of Bihar Ltd. vs. Dr. Damodar Prasad & Anr. – (1969) 1 SCR 620'***, the Apex Court held • In ***'Ram Bahadur Thakur vs. Sabu Jain Limited – [1981 (51) Comp Cas 301]'***, the Hon'ble High Court of Delhi relying on the decision of Hon'ble Supreme Court in ***'Kesoram Mills Case – [(1966) 59 ITR 767]'***, held that under the 'deed of guarantee' the liability of the company to pay debt arose when the borrower defaulted in making payments and the creditor sent a demand/notice invoking the guarantee. • Admittedly, the guarantee was invoked by 'Rural Electrification Corporation Limited' against 'Ferro Alloys Corporation Ltd.' and demand was raised on 27th October, 2015 calling upon 'Ferro Alloys Corporation Ltd.' to pay the amount due within 21 days. **Since then**, Ferro Alloys Corporation Ltd. (Corporate Guarantor) became a 'corporate debtor' of 'Rural Electrification Corporation Limited' (Financial Creditor). • **In its Annual Report for the year ending 2016-17, 'Ferro Alloys Corporation Ltd.' has shown a sum of Rs. 517.90 crores payable to the 'financial creditor'.** • **Therefore, it is clear that 'Ferro Alloys Corporation Ltd.' admitted the 'debt' and in absence of payment, we hold that there is a 'default'.** • The provision of the I&B Code do not bar a 'financial creditor' from initiating 'corporate insolvency resolution process' against the 'guarantor', who comes within the meaning of 'corporate debtor' • In ***"Bank of Bihar v. Damodar Prasad and Anr.– (1969) 1 SCR 620"*** the Hon'ble Supreme Court referred to a judgment of Hon'ble Bombay High Court in ***"Lachhman Joharimal v. Bapu Khandu and Tukaram Khandoji– (1869) 6 Bom HCR 241"***, in which the Division Bench of the Hon'ble Bombay High Court held as under: • *The court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."* • **The Hon'ble Supreme Court while approving the said judgment, observed that, *"the very object of the guarantee is defeated if the creditor is asked to postpone his remedies against the surety**. In the present case the creditor is a banking company. A guarantee is a*

	collateral security usually taken by a banker. The security will become useless if his rights against the surety can be so easily cut down." • In ***"State Bank of India v. Indexport Registered and Ors.– (1992) 3 SCC 159"***, the Hon'ble Supreme Court held that the decree holder bank can execute the decree first against the guarantor without proceeding against the 'Principal Borrower' • In view of the aforesaid decision of the **Hon'ble Supreme Court, we hold** that it is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantors'. Without initiating any 'Corporate Insolvency Resolution Process' against the 'Principal Borrower', it is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'. The first question is thus answered against the Appellant. • There is nothing on record to suggest that simultaneously two proceedings of 'corporate insolvency resolution process' has been initiated one against principal borrower and another against 'Ferro Alloys Corporation Limited' (Corporate Debtor) in respect of the same claim amount and default
Gammon V Neelkanth	• The case of the Appellant is that by an agreement dated 17th June, 2005, **they entered into partnership to be known as 'M/s. Gammon Neelkanth Realty Corporation**' between the 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' and two other entities namely— 'M/s. Neelkanth Realtors Pvt. Ltd.', a company under the Companies Act, and 'Gammon Housing and Estates Developers Ltd.', a group company of the Appellant. • **Subsequently, a contract was entered between the partnership firm and 'Gammon Neelkanth Realty Corporation' and the Appellant herein for completing construction of seven residential buildings** • While this work was in progress, the 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' filed Suit No. 830/2010 on 17th March, 2010 before the Hon'ble High Court of Bombay against various persons including the Appellant as Defendant No-10 seeking relief against the Appellant in respect to 22 flats wrongly transferred by 'Treetop' (the company belonging to the Appellant). • As noticed, the Adjudicating Authority on going through the record held that the **Respondent is a partnership firm by associated companies of the Appellant of which the Respondent is one of the partner.** Therefore, it was held that the application under Section 9 of the 'I&B Code' against the Respondent, **one of the partner of the partnership firm is not maintainable.** • Learned counsel appearing on behalf of the Appellant relied on **definition of firm under Section 79 (16) of the 'I&B Code' and submitted that the firm means a body of individuals carrying on business in partnership whether or not registered under Section 59 of the Indian Partnership Act, 1932, therefore, according to him, a definition make it abundantly clear that only when a firm is comprised of individuals, that is to say natural persons only, the provisions of Part III of the 'I&B Code' will get attracted**

	• In case, two or more persons (whether artificial or legal) and who are not individuals, are carrying on a business in partnership, then application for insolvency resolution against such partnership cannot be entertained by the Adjudicating Authority due to lack of jurisdiction. In that view of the matter, the application under Section 9 was **filed against one of the partner which is a legal entity (corporate body) and not an individual.** • It is not in dispute that the amount due to the Appellant is from 'M/s. Gammon Neelkanth Realty Corporation'. **The bill was raised against the said partnership firm namely— 'M/s. Gammon Neelkanth Realty Corporation'.** 'M/s. Neelkanth Realtors Pvt. Ltd.', 'Gammon Housing and Estates Developers Ltd.' and 'Neelkanth Mansions and Infrastructure Pvt. Ltd.' are the partners, **therefore, even if one of the partners or more than one partner is the 'Corporate Debtor'** as the amount is due from the partnership firm, the application under Section 9 of the 'I&B Code' against one of the partners of such partnership firm will not be maintainable • In view of the aforesaid position of law, we hold that the Adjudicating Authority has rightly held that the application under Section 9 was not maintainable against one of the members of the partnership firm
JK Jute V Surendra	•
Prasad Gympex V Star	• The appellant '***M/s. Prasad Gempex'*** filed a claim as 'Financial Creditor'. The 'Resolution Professional' rejected the claim. *'M/s. Prasad Gempex'* thereafter claimed to be an 'Operational Creditor' **on suggestion of the 'Resolution Professional'** but the same has also been rejected • According to the respondents the 'Resolution Professional' had rejected 'Expression of Interest' and it was not placed before the 'Committee of Creditors'. • It is not in dispute that the so called 'resolution plan' met the criteria • **In this appeal the appellant has assailed all the rejection of its claim as 'financial creditor', rejection of its claim as 'operational creditors' and rejection of its claim as 'Resolution Applicant'** • **Similar issue** fell for consideration before this Appellate Tribunal in '*M/s. Dynepro Private Limited' vs. Mr. V. Nagarajan – Company Appeal (AT) (Insolvency) No. 229 of 2018* etc.' • The Appellate Tribunal by its judgment dated 30th January, 2019 held that '**Resolution Professional has no jurisdiction** to decide the claim of one or other creditor, including 'Financial Creditor', 'Operational Creditor', 'Secured Creditor' or 'unsecured Creditor' • Referring to sub-section (6) of Section 60 of the 'I&B Code', this Appellate Tribunal further observed that **after completion of the period of moratorium, a suit or application can be filed against the 'Corporate Debtor'**. Relevant portion of Section 60 is quoted below:- • *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—* • *any application or proceeding by or against the corporate debtor or corporate person;* • *any claim made by or against the corporate debtor or corporate person, including claims by or against any of its subsidiaries situated in India; and*

	• *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.* • From the aforesaid provision, it is clear notwithstanding the order passed under Section 31 of the I&B Code (any existing law), it is open to a person to file a suit or an application against the 'corporate debtor' after completion of the period of moratorium. • The power of 'Resolution Professional' also fell for consideration before the Hon'ble Supreme Court in ***'Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India Ors. – Writ Petition (Civil) No. 99 of 2018***'. • In the said judgment dated 25th January, 2019, the Hon'ble Supreme Court held that 'Resolution Professional' has no adjudicatory power. The 'Resolution Professional' has to vet and verify the claims made and ultimately determine the amount of each claim. As opposed to this, the 'Liquidator' in the Liquidation proceedings under the I&B Code has to consolidate and verify the claims and either admit or reject such claims under Sections 38 to 40 of the Code. • We allow the appellant - '*M/s. Prasad Gempex'* to file claim in terms of sub-section (6) of Section 60 before the appropriate court of law or may file appropriate application against the 'corporate debtor' namely *'M/s. Star Agro Marine Exports Pvt. Ltd.'*, **if the 'resolution plan' is approved and do not take proper care of the applicant**. In case the 'resolution plan' is not approved and order of 'liquidation' is passed in respect of *'M/s. Star Agro Marine Exports Pvt. Ltd.'*, **in such case, it will be open to the appellant *'M/s. Prasad Gempex'* to file claim before the 'Liquidator'** in accordance with the provisions as referred to above and the 'Liquidator' will decide the claim under Section 40 of the I&B Code.
R Bhuta V MHADA	• Appellant RP against order dated 2nd April, 2018 passed by the Adjudicating Authority whereby and where under the application preferred by the Appellant for applying 'Moratorium' in terms of Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 ('I&B Code' for short) on the land of 'Maharashtra Housing and Rrea Development Authority' has been rejected. • On perusal of record, we find that pursuant to the 'Joint Development Agreement' the land of the 'Maharashtra Housing and Area Development Authority' was handed over to the 'Corporate Debtor' and 'except for development work' the 'Corporate Debtor' has not accrued any right over the land in question. • The land belongs to the 'Maharashtra Housing and Area Development Authority' which has not formally transferred it in favour of the 'Corporate Debtor'. Hence, it cannot be treated to be the asset of the 'Corporate Debtor' for application of provisions of Section 14(1) (d) of the 'I&B Code'. • This apart, as we find that 270 days' period has already lapsed on 9th April, 2018 and the period of 'Moratorium' in any case come to an end, the question raised has become academic.
SKS V VV Nagarajan	• On 11th May, 2018, when we issued notice, raised the question of jurisdiction of the Adjudicating Authority to direct one or other third party by an interim order without impleading and hearing the third party. • We stayed the operation of the impugned order dated 24th April, 2018 but allowed the 'Corporate Insolvency Resolution Process' to continue.

	• However, it is accepted that the impugned order was passed by way of an interim order without deciding the question of maintainability of application under Sections 43 and 45 of the 'I&B Code'. • As we find that the impugned order dated 24th April, 2018 was passed by the Adjudicating Authority without deciding question as to whether the application under Sections 43 and 45 of the 'I&B Code' is maintainable or not and as impugned order is not a speaking/reasoned order, we set aside the impugned order and remit the matter to the Adjudicating Authority to decide the application on merit if not yet decided. The Appeal is allowed with aforesaid observations and directions. No cost.
SC Sekharan V Amit Gupta	• Under challenge is---order(s) of liquidation under Section 33(1) Code • The Hon'ble Supreme Court in ***'Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors. – Writ Petition (Civil) No. 99 of 2018***' by its judgment dated 25th January, 2019, observed as follows • *11. ……What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark.* • ***ArcelorMittal –Regulation 32 as below was quoted d*** • *Regulation 32 of the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, states that the liquidator may also sell the corporate debtor as a going concern."* • In view of the provision of Section 230 and the decision of the Hon'ble Supreme Court in '*Meghal Homes Pvt. Ltd.' and 'Swiss Ribbons Pvt. Ltd.'*, we direct the 'Liquidator' to proceed in accordance with law. He will verify claims of all the creditors; take into custody and control of all the assets, property, effects and actionable claims of the 'corporate debtor', **carry on the business of the 'corporate debtor' for its beneficial liquidation** etc. as prescribed under Section 35 of the I&B Code. The Liquidator will access information under Section 33 and will consolidate the claim under Section 38 and after verification of claim in terms of Section 39 will either admit or reject the claim, as required under Section 40. **Before taking steps to sell the assets of the 'corporate debtor(s)' (companies herein), the Liquidator will take steps in terms of Section 230 of the Companies Act, 2013**. The Adjudicating Authority, if so required, will pass appropriate order. Only on failure of revival, the Adjudicating Authority and the Liquidator will first proceed with the sale of company's assets wholly and thereafter, if not possible to sell the company in part and in accordance with law.
Tata Steel V Liberty	• The main plea taken by the Appellant is that the AA cannot provide the numerous opportunities at the belated stage • The 'Committee of Creditors' in its meeting held on 27th July, 2018 to give equal opportunity to all the three 'Resolution Applicants' namely— 'Tata Steel Limited', 'Liberty House' and 'JSW Steel Limited' allowed them to submit 'improved financial offers' by 31st July, 2018. • Tata Steel Limited' instead of filing an 'improved financial offer', filed an I.A. No. 1096 of 2018 before this Appellate Tribunal for restraining the 'Resolution Professional' and the 'Committee of Creditors' from considering the 'improved financial offers'

	• On 1st August, 2018, learned counsel for the 'Tata Steel Limited' submitted that the 'revised financial offers' **cannot be allowed to be submitted even for maximization of the assets** of the 'Corporate Debtor' • 'Tata Steel Limited' submitted that 'Resolution Plan' submitted by 'Tata Steel Limited' being highest bid was approved as H-1, but such submission was disputed by learned counsel appearing for the 'Committee of Creditors'. **According to 'Committee of Creditors', only a *prima facie* view** was expressed **but no decision** was taken by the 'Committee of Creditors', **in fact, no voting took place.** • 'Resolution Applicants' have no right to revise their bids endlessly and the 'Committee of Creditors' are not authorized to entertain fresh or revised bids **without exhausting available bids**. • Admittedly, the Adjudicating Authority has not taken any decision on any of the 'Resolution Plan'. **Therefore, we hold that there is no cause of action for the Appellant- 'Tata Steel' to prefer the appeal**. By impugned order dated 23rd April, 2018, the Adjudicating Authority has only allowed the 'Committee of Creditors' to consider the 'Resolution Plan' submitted by 'Liberty House', **but that does not mean that the 'Resolution Plan' submitted by 'Liberty House' has been approved** • In ***Arcelormittal India Private Limited v. Satish Kumar Gupta & Ors.***– ***(Civil Appeal Nos. 9402-9405 of 2018 etc.)"*** the Hon'ble Supreme Court observed that the 'Resolution Applicant' has **no vested right or fundamental right to have its 'Resolution Plan' considered or approved**. • It is true that the 'Committee of Creditors' will have to ensure a time bound process, to better preserve the economic value of the asset. Simultaneously, it is duty of the 'Committee of Creditors' to ensure that the 'Resolution Plan' is viable, feasible and should maximize the assets of the 'Corporate Debtor' • In ***"Binani Industries Limited Vs. Bank of Baroda & Anr. – Company Appeal (AT) (Insolvency) No. 82 of 2018 etc."***, this Appellate Tribunal by its judgment dated 14th November, 2018 held that the 'Corporate Insolvency Resolution **Process' is not a litigation, nor it is money suit**. The persons are not required to submit bid. The 'Committee of Creditors' has a statutory mandate to ensure value maximization within the timeframe prescribed by the 'I&B Code'. • In the said case of ***"Binani Industries Limited"*** (Supra), this Appellate Tribunal further held that **improved financial** offer(s) submitted by a 'Resolution Applicant' **is a continuation of its 'Resolution Plan' already** submitted, as quoted below: • From the aforesaid decision in ***"Binani Industries Limited"*** (Supra), it is clear that **<u>prior to the 'Committee of Creditors' voting upon 'Resolution Plan', it is open to the 'Committee of Creditors' to call for and consider the 'improved financial offer(s)' in accordance with the statutory mandate to ensure value maximization.</u>** • From the 'Process Document, it is clear that the 'Committee of Creditors' have absolute discretion but without being under any obligation to do so, update, amend or supplement the information, assessment or assumptions and right to change, update, amend, supplement, modify, add to, delay or otherwise annul or cease the 'Resolution Process' at any point in time. **Thus, the 'Resolution Plan' can be modified as per dates or other terms and conditions set out in the 'Process Document'**

	• As per Clause 1.3.6, the **'Committee of Creditors' have right to negotiate better terms with the 'Compliant Resolution Applicant(s**)'. In terms of Clause 1.14.13, the 'Resolution Professional' in consultation with the '**Committee of Creditors' can extend the timelines** at its sole discretion if expedient for obtaining the best 'Resolution Plan' for the Company. Therefore, granting more opportunity to all the eligible 'Resolution Applicants' to revise its 'financial offers', even by giving more opportunity, is **permissible in the Law**. However, all such process should **complete within the time frame**. • In this background, while we hold that this appeal preferred by 'Tata Steel Limited' is premature, uncalled for, in absence of any final decision taken by the Adjudicating Authority under Section 31, this appeal is also not maintainable • On plain reading of 30 [sub-section (4), it is clear that the members of the '**Committee of Creditors' only after considering its feasibility and viability**, and such other requirements as may be specified by the Board is entitled to approve or reject the 'Resolution Plan'. • A member of the 'Committee of Creditors' who is **not present in the meeting either directly or through Video Conferencing and thereby not considered its feasibility and viability and such other requirements as may be specified by the Board, their voting shares,** therefore, cannot be counted for the purpose of counting the voting shares of the members of the 'Committee of Creditors • Therefore, we hold that only the members of the 'Committee of Creditors' who attend the meeting directly or through Video Conferencing, can exercise its voting powers after considering the other requirements as may be specified by the Board. **Those members of the 'Committee of Creditors' who are absent, their voting shares cannot be counted.** • If some members of the 'Committee of Creditors' having 2.88% voting shares remained absent, it cannot be held that they have considered the feasibility and viability and other requirements as specified by the Board, **therefore, their shares should not have been counted** for the purpose of counting the voting shares of the Committee of Creditors • In fact, 97.12% voting shares of members being present in the meeting of the 'Committee of Creditors' and all of them have casted vote in favour of 'JSW Steel', we hold that the 'Resolution Plan' submitted by 'JSW Steel' has been approved with 100% voting shares • **In case, the Adjudicating Authority is of the opinion that the discrimination has been made between the 'Financial Creditors' and the 'Operational Creditors',** it may give opportunity to the 'JSW Steel' to improve its plan and thereby, by substituting the approved 'Resolution Plan' with such improvement
Vishnu Agarwal V Piramal	• Agarwal—the shareholder, has preferred these appeals against the two different orders of **initiation of** 'CIRP **against the two** 'Corporate Guarantors' • guaranteed by 'Sunrise Naturopathy and Resorts Pvt. Ltd.'- ("**Corporate Guarantor No.1**" for short) and 'Sunsystem Institute of Information Technology Pvt. Ltd.'- ("**Corporate Guarantor No.2**" for short). • It was also submitted that for same set of claim amount and debt, two CIRP cannot be initiated against two different 'Corporate Guarantors'

	• Whether the CIRP can be initiated against a 'Corporate Guarantor', if the 'Principal Borrower' is not a 'Corporate Debtor' or 'Corporate Person'? and;
	• Whether the CIRP can be initiated against two 'Corporate Guarantors' simultaneously for the same set of debt and default?
	• AA admitted the application and initiated CIRP against 'Sunrise Naturopathy and Resorts Pvt. Ltd.'- **("Corporate Guarantor No.1").**
	• it is clear that same claim amount has been shown in both the Form-1, and reliance has been placed on same agreement. **Debt amount and the amount of default, date of default etc. are also same** which is in terms of the agreement dated 18th October, 2013. AA noticed the similarity in two separate impugned orders and used same language and reasoning though passed orders one on 24th May, 2018 **and the other on** 31st May, 2018.
	• The position of law is manifested in the 'I&B Code' including the definitions **which require harmonious and purposeful reading and reasoning.**
	• counter-indemnity obligation in respect of a guarantee comes within the meaning of 'financial debt' and, therefore, there is no dispute that 'M/s. Piramal Enterprises Ltd.' is a 'Financial Creditor' of both 'Sunrise Naturopathy and Resorts Pvt. Ltd.'- ("Corporate Guarantor No.1") and 'Sunsystem Institute of Information Technology Pvt. Ltd.'- ("Corporate Guarantor No.2").
	• *Likewise where the creditor has obtained a decree against the surety and the principal, **the surety has no right to restrain execution** against him until the creditor has exhausted his remedies against the principal. In **Lachhman Joharimal v. Bapu Khandu and Surety Tukaram Khandoji** the Judge of the Court of Small Causes, Ahmednagar, solicited the opinion of the Bombay High Court on the subject of the liability of sureties. **Couch, C.J., and Melvill, J. agreed with this opinion and observed***
	  ○ *"This court is of opinion that a creditor is not bound to exhaust his remedy against the principal debtor before suing the surety and that when a decree is obtained against a surety, it may be enforced in the same manner as a decree for any other debt."*
	• In ***'Ram Bahadur Thakur vs. Sabu Jain Limited – [1981 (51) Comp Cas 301]'***, the Hon'ble High Court of Delhi relying on the decision of Hon'ble Supreme Court in ***'Kesoram Mills Case – [(1966) 59 ITR 767]'***, held that under the 'deed of guarantee' the liability of the company to pay debt arose when the borrower defaulted in making payments and the creditor sent a demand/notice invoking the guarantee
	• In ***"State Bank of India v. Indexport Registered and Ors.– (1992) 3 SCC 159"***, the Hon'ble Supreme Court held that the decree holder bank can execute the decree first against the guarantor without proceeding against the 'Principal Borrower'. Guarantor's liability is co-extensive with that of the principal debtor under the 'Contract Act, 1872' (Section 128), :
	  ○ *13 In the present case before us the decree does not postpone the execution. The decree is simultaneous and it is jointly and severally against all the defendants including the guarantor. It is the right of the decree-holder to proceed with it in a way he likes. Section 128 of the Indian Contract Act itself provides that "the*

	liability of the surety is coextensive with that of the principal debtor, unless it is otherwise provided by the contract". • we hold that it is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantors'. Without initiating any 'Corporate Insolvency Resolution Process' against the 'Principal Borrower', it is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'. The first question is thus answered against the Appellant. • In the present case, the Adjudicating Authority has accepted that there is a debt payable in law by 'Sunsystem Institute of Information Technology Pvt. Ltd.'- ("Corporate Guarantor No.2") and admitted the application on 24th May, 2018. **The moment it is admitted**, it is open to the other 'Corporate Guarantor No.1' namely— 'Sunrise Naturopathy and Resorts Pvt. Ltd.' **to say that the debt in question is not due as it is not payable in law, having shown the same debt payable by the 'Corporate Guarantor No.2' in its Form-1**, and 'Corporate Insolvency Resolution Process' having already been initiated against the 'Corporate Guarantor No. 2'. • **Admittedly, for same set of debt, claim cannot be filed by same 'Financial Creditor' in two separate 'Corporate Insolvency Resolution Processes'**. If same claim cannot be claimed from 'Resolution Professionals' of separate 'Corporate Insolvency Resolution Processes', for same claim amount and default, **two applications under Section 7 cannot be admitted simultaneously.** • *There is no bar in the 'I&B Code' for filing simultaneously two applications under Section 7 against the 'Principal Borrower' as well as the 'Corporate Guarantor(s)' or against both the 'Guarantors'*. • However, once for same set of claim application under Section 7 filed by the 'Financial Creditor' **is admitted against one of the 'Corporate Debtor' ('Principal Borrower' or 'Corporate Guarantor(s)'),** second application by the same 'Financial Creditor' for same set of claim and default cannot be admitted against the other 'Corporate Debtor' (the 'Corporate Guarantor(s)' or the 'Principal Borrower'). Further, though there is a provision to file joint application under Section 7 by the 'Financial Creditors', **no application can be filed by the 'Financial Creditor' against two or more 'Corporate Debtors' on the ground of joint liability ('Principal Borrower' and one 'Corporate Guarantor', or 'Principal Borrower' or two 'Corporate Guarantors' or one 'Corporate Guarantor' and other 'Corporate Guarantor'), till it is shown that the 'Corporate Debtors' combinedly are joint venture company**