Supreme Court

Alchemist V Hotel	• Mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect u/s 14 [1] [a] expressly interdicts institution or continuation of pending suits or proceedings against corporate debtors. • Effect of 14/1/a is that the arbitration that has been instituted after the aforesaid moratorium is non est in law.
Arcellor V SK Gupta	• Control is defined in two parts • First part refers to de jure control which includes the right to appoint a majority of the directors of a company. • Second part refers to de facto control. So long as a person or persons acting in concert , directly or indirectly, can positively influence , in any manner, management or policy decisions, they could be said to be " in control" • It is thus clear that in the expression " management or control " the two words take colour from each other, in which case the principle of noscitur a sociis must be held to apply. • Section 43-45-50-66-even if paid, not eligible to submit a plan. • SICA 1985 • Recovery of Debts due to Banks and FI Act 1993 • SARFASIE 2002 • However, it must not be forgotten that a RP is only to " examine " and " confirm" that each resolution plan conforms to what is provided by Section 30/2. • Under Section 25/2/i the RP shall undertake to present all resolution plans at the meetings of the Committee of Creditors. • This is followed by Section 30/3 which states that the RP shall present to the CoC for its approval, such resolution plans which confirm the conditions referred to in sub-section 2. This provision has to be read in conjunction with Section 25/2[i] and with the second proviso to Section 30/4 which provides that where a RA is found to be ineligible under Section 29A[c], the RA shall be allowed by the CoC such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to Section 29A/c. • A conspectus of all these provisions would show that the RP is required to examine that the resolution plan submitted by various applicants is complete in all respects before submitting it to the CoC. • The RP is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the CoC who may or may not approve it. • The fact that the RP is also to confirm that a resolution plan does not contravene any of the provisions of law for the time being in force, including Section 29A of the Code, only means that his prima facie opinion is to be given to the CoC that a law has or has not been contravened. • Section 30/2/e does not empower the RP to " decide " whether the resolution plan does or does not contravene the provisions of law. • Regulation 36A of CIRP regulations specifically provide that……. • Thus the importance of the RP is to ensure that a resolution plan is complete in all respects, and to conduct a due diligence in order to report to the CoC whether or not it is in order.

	• Even though it is not necessary for the RP to give reasons while submitting a resolution plan to the CoC , it would be in the fitness of things, if he appends the due diligence report carried out by him with respect to each of the resolution plans under consideration, and to state briefly as to why it does or does not conform to the law. • It is the CoC which will approve or disapprove a resolution plan, given the statutory parameters of Section 30. • Regulation 39 of CIRP shows that the disapproval of the CoC on the ground that the resolution plan violates the provisions of any law, including the ground that a resolution plan is ineligible u/s 29A is not final. • The AA acting quasi judicially, can determine whether the resolution plan is violative of the provisions of any law including Section 29A of the Code, after hearing arguments from the RA as well as the CoC after which an appeal can be preferred from the decision of the AA to the Appellate Authority under Section 61. • If on the other hand, a resolution plan has been approved by the CoC and has passed muster before the AA, this determination can be challenged before the Appellate Authority under Section 61 and may further be challenged before the SC under Section 62, if there is a question of law arising out of such order, within the time specified in Section 62. • When Section 33 speaks of the AA, in sub-section [1], it is referring to both the AA as well as the Appellate Authority. • SC—Lachmeshwar Prasad V Keshwar-=--an appeal is a continuation of the original proceedings. • Actus curiae neminem gravabit—the act of the Court shall harm no man • We cannot forget that the consequence of the chopper falling is corporate death. • The only reasonable construction of the Code is the balance to be maintained between timely completion of the corporate insolvency resolution process and the CD otherwise being put into liquidation. •
BK V Parag	• Issue—Limitation Act • Section 433 of 2013 would apply to tribunal even when it decides applications u/s 7 and 9 of the Code • Both Section 433 of 2013 as well as Section 238A of the Code, apply the provisions of the Limitation Act" as far as may be ". • Obviously therefore, when periods of limitation have been laid down in the Code, these periods will apply notwithstanding anything to the contrary contained in the Limitation Act. • From this it does not follow that the baby must be thrown out with the bathwater. • It is thus clear that since the Limitation Act is applicable to applications filed u/s 7 and 9 of the Code from the inception of the Code, Article 137 of the Limitation Act gets attracted. " The right to sue " therefore, accrues when a default occurs. • If the default has occurred over 3 years prior to the date of filing of the application, the application would be barred under Article 137 of the Limitation Act save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application.

Chitra V UoI	• No resolution plan approved within 270 days. Period ended 12.05.2018
	• Amendment 06.06.2018
	• 13.07.2018 circular was issued regarding AR
	• Application was moved under article 32
	• JIL/JAL—29A
	• Power under article 142 resorted to for the limited purpose of recommending resolution process afresh from the stage of appointment of IRP and resultantly renew the period. Reasons for this action as below
	  ○ 270 days expired before amendment
	  ○ Home buyers did not have a right to be part of CoC
	• 180 days will start from the date of this court's order.
	• If necessary, additional 90 days
	• Refund not to be allowed as sought by 8%.
	• Rights of 92% are equally important.
	• CoC shall be constituted afresh and
	• IRP to invite fresh EoI—in addition to three short listed.
	• Suggestion to appoint a committee to oversee working of CIRP rejected

Forech V Edelweiss	• Arises from an operational creditor's appeal to continue with a winding up petition that has been filed by the said creditor way back in 2014 • Meanwhile, Respondent No.1, being a financial creditor of the self same corporate debtor, moved the NCLT in an insolvency petition filed under section 7 of the Code sometime in May/June 2017. • This petition was admitted on 07.08.2017. • Against the aforesaid order, an appeal was filed by the appellant herein which was dismissed by the Appellate Tribunal in which Section 11 of the Code was referred to, and it was held by the Appellate Tribunal that since there was no winding up order by the High Court, the financial creditor's petition would be maintainable as a result of which the appellant's appeal has been dismissed. • Section 255 of the Code ○ Companies act 2013 shall be amended in the manner specified in the 11th schedule. • 11th schedule made various amendments to 2013 on 15.11.2016 with effect from 01.12.2016—Section 434 of 2013 was substituted. • On 17.08.2018, Section 434 of 2013 was again substituted whereby proviso was added by which even in winding petitions where notice has been served and which are pending in the High Courts, any person could apply for transfer of such petitions to the NCLT under the Code which would then have to be transferred by the High Court to the AA and treated as an insolvency petition under the code. • Jaipur metals referred. • Jotun judgement was upheld by Division Bench of BHC—which we concur. • Section 11[d]—This section is of limited application and only bars a corporate debtor from initiating a petition under Section 10 of the Code in respect of whom a liquidation order has been made. • From a reading of this section, it does not follow that until a liquidation order has been made against the CD, an insolvency petition may be filed under section 7 or section 9 as the case may be, as has been held by the Appellate Tribunal.

	• Hence any reference to Section 11 in the context of the problem before us is wholly irrelevant. However, we decline to interfere with the ultimate order passed by the appellate tribunal because it is clear that the financial creditor's application which has been admitted by the tribunal is clearly an independent proceeding which must be decided in accordance with the provisions of the code. • •
Innoventive V ICICI	• Issues –appeal by directors and suspension of debt under Mah Act • Speed is the essence. • Control of a company is not a divine right. • Or else the chopper comes down and the liquidation process begins. • It is clear that the later non-obstante clause of the Parliament enacement will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. • Once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company.
Jaipur Metal Employees v Directors	• Alchemist the assigned of the debt—filed under S 7 which was admitted • Petitions were filed by labour unions and HC granted stay on NCLT order • High court refused to transfer the winding up proceedings to NCLT, stating it had been passed without jurisdiction. • Section 255 of the Code—referred to – amendment of 2013 • On 15.11.2016 with effect from 01.12.2016—Section 434 was substituted • On 17.08.2018***it was against substituted • We are of the view that the NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, namely the Alchemist Asset. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before NCLT were without jurisdiction. On this score, the High Court judgment has to be set aside.
K Kishan V Vijay Nirman	• Issue—whether code provisions can be invoked in respect of an operational debt where an arbitral award has been passed against operational debtor which has not been yet finally adjudicated ? • Notice by respondent to KCPL 06.02.2017 • KCPL on 16.02.2017 pointed out the amount in fact is subject matter of an arbitration proceeding and as per KCPL's accounts, the Respondent was liable to pay larger amount to them. • Rejection of counter claim is also the subject matter of challenge in a petition under Section 34 of the Act. • SC—It is difficult to say that there is no dispute • Mobilox referred to in detail. • Example of OC given—2 lacs due from a company—arbitral reference made and won—the opposite party is within its rights to state that it is challenging the award passed against it and the mere factum of challenge would be sufficient to state that it disputes the award. • code cannot be used in terrorem to extract this sum of money of RS.2 lacs even though it may not be finally payable as adjudication proceedings in respect thereto are still pending.

	• Object of the code—at least in so far as operational creditors are concerned , is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist. • We repeat with emphasis that the insofar as operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed and we have no doubt in stating that the filing of a Section 34 petition against an arbitral award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an award, continues even after the award, at least till the final adjudicatory process under section 34 & 37 has taken place. • We may hasten to add that there may be cases where a section 34 petition challenging an award may clearly and unequivocally be barred by limitation, in that it can be demonstrated to the court that the period of 90 days plus the discretionary period of 30 days has clearly expired after which either no petition under section 34 has been filed or a belated petition under section 34 has been filed. It is only in such clear cases that the insolvency process may then be put in operation. • We may hasten to add that there may also be other cases where as a section 34 petition may have been instituted in the wrong court, as a result of which the petitioner may claim the application of section 14 of the limitation act to get over the bar of limitation laid down in section 34/3 of the arbitration act. In such cases also, it is obvious that the insolvency process cannot be put into operation without an adjudication on the applicability of section 14 of the limitation act. • Until cross claims are also adjudicated upon, operational debt cannot be said to be an undisputed debt. • Even if it be clear that there be a record of an operational debt, it is important that the said debt be not disputed. If disputed within the parameters laid down in Mobilox an insolvency petition cannot be proceeded with further.
K Sashidhar V IOB	• RP is not required to express opinion on maters within the domain of FCs to approve or reject resolution plan. • AA has no jurisdiction to evaluate commercial decision of CoC much less to enquire into the justness of rejection of plan by dissenting FCs. • Upon receipt of " rejected plan " the AA is not expected to do anything more but is obligated to initiate liquidation process under Section 33/1.
Macquarie V Shilipi	• Whether in relation to an operational debt, the provision contained in Section 9/3/c [certificate] of the code is mandatory and secondly whether a demand notice of an unpaid operational debt can be issued by a lawyer on behalf of the operational creditor ? • Order issue no.1 • It is well settled that procedure is the handmaid of justice and a procedural provision cannot be stretched and considered as mandatory when it causes serious general inconvenience. • Order issue no.2 • Section 8 of the code speaks of an operational creditor delivering a demand notice [mark the word delivering]. It is clear that had the legislature wished to restrict such demand notice being sent by the operational creditor himself, the expression used would perhaps have been " issued " and not " delivered". Delivery, therefore, would postulate

	that such notice could be made by an authorized agent. In fact forms 3 and 5 extracted hereinabove, it is clear that this is the understanding of the draftsman of the AA rules because the signature of the person " authorized to act " on behalf of the operational creditor must be appended to both the demand notice as well as the application under S 9 of the Code. • Position becomes further clear that both the forms require such authorized agent to state his position with or in relation to the operational creditors. • Position with the operational creditor would perhaps be a position in the company or firm of the operational creditor but the expression " in relation to" is significant. It is very wide expression as has been held in SC—Renusagar V General and State of Karnataka V Azad –which specifically includes a position which is outside or indirectly related to the operational creditor. • It is clear therefore, that both the expression " authorized to act " and " position in relation to the operational creditor" go to show that an authorized agent or a lawyer acting on behalf of his client is included within the aforesaid expression. • Quite apart from the above, Section 30 of the Advocates Act 1961 • The non-obstante clause contained in Section 238 of the Code will not override the Advocates Act as there is no inconsistency between Section 9 read with the AA Rules and the Advocates Act. • Conjoint reading of Section 30 of the Advocates Act and Section 8 and 9 of the Code together with the AA Rules and Forms thereunder, would yield the result that a notice sent on behalf of the an operational creditor by a lawyer would be in order. • The expression an operational creditor may on the occurrence of a default deliver a demand notice ---under Section 8 of the Code must be read as including an operational creditor's authorized agent and lawyer as has been fleshed out in Forms 3 and 5 appended to the AA Rules.
Mobilox V Kirusa	• Issue—Existence of Dispute—Section 8/9 • Even otherwise, the word " and " occurring in Section 8/2/a must be read as " or " keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as " or ". • If read as " and " disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. • This would lead to a great hardship, in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist , there is no time to approach either an arbitral tribunal or court. • Further given the fact that long limitation periods are allowed, where disputes may arise and do not reach an arbitral tribunal or a court upto three years, such persons would be outside the purview of Section 8/2 leading bankruptcy proceedings commencing against them. • Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended. • It is enough that a dispute exists between the parties.

	• It is settled law that the expression " and " may be read as " or " in order to further the object of the statue and / or to avoid an anomalous situation. • Samee Khan V Bindu Khan—SC • Gujrat Urja V Essar -- SC • Maharishi Mahesh V MP SC • It is important to notice that Section 255 read with 11th Schedule of the Code has amended Section 271 of the Companies Act 2013 so that a company being unable to pay its debts is no longer a ground for winding up a company. • Old law contained in " Madhusudan " has, therefore, disappeared with the disappearance of this ground in Section 271 of 2013. • Existence of a dispute – Australian High Court Spencer Constructions V GM • Existence of a dispute—UK Chancery Division—Hayes V Hayes • All that the AA has to see at this stage—is whether—there is a plausible contention which requires further investigation and that the " dispute " is not a patently feeble legal argument or an assertion of fact unsupported by evidence. • It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. • However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. • The court does not at this stage examine the merits of the dispute except indicated above. • So long as dispute truly exists in fact and is not spurious, hypothetical or illusory, the AA has to reject the application.
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Sunrise V Ravi Mahajan	• Danish company • Macquarie V Shilipi---operational creditor • Sunrise V Ravi Mahajan—Financial Creditor • We have since a taken the view that, in the case of operational creditors, the petition filed by a foreign company need not observe such requirements of a statue which are impossible of compliance, namely, of getting a certificate from Indian financial institution evidencing default in repayment of a debt. • We also think that the petition filed by an advocate would be maintainable, as has been held in Macquarie Bank. • We are of the view that the said judgment would apply in the case of financial creditors as well.
Surendra V Juggilal	• SC—PT Rajan V TPM Sahir— o the time period would have to be directory. o a provision in a statute which is procedural in nature although employs the word " shall " may not be held to be mandatory if thereby no prejudice is caused. • 14 days period granted to the AA would be from the date when such an application is presented before the AA i.e. from the date on which it is listed for admission / order.— • Time prior to that is required by Registry to verify etc.

	• In fact, till the objections are removed it is not to be treated as application validly filed in as much as only after the application is complete in every respect, it is required to be entertained.
	• First stage—filing of the application—Registry role in verification etc.
	• Second stage –after presentation—either to admit or reject.
	  ○ If application is rejected, matter is given a quietus at that level itself
	• Third stage—if admitted---
	• Principle stated herein above—are equally applicable
	  ○ Section 7/5----9---10/4
	• Caveat—if the objections are not removed within 7 days, the applicant while refilling the application after removing the objections, file an application in writing showing sufficient case as to why the applicant could not remove the objections within 7 days. Then it would be for the AA to decide as to whether sufficient cause is shown in not removing the defects beyond the period of 7 days.
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Swaraj V Kotak	• Whether a secured creditor can file a winding up petition on the basis of a recovery certificate issued by the DRT. • cases like the present ones have to be decided by balancing the interest of creditors to whom money is owing with a debtor company which will now go in the red since a winding up petition is admitted against it. • It is not open for persons like the applicant to resist a winding up petition which is otherwise maintainable without there being any bona fide defence to the same. • We may hasten to add that respondent cannot be said to be blowing hot and cold in pursuing a remedy under the Recovery of Debts Act and a winding up proceeding under the Companies Act 1956 simultaneously. • When secured creditors like the respondent are driven from pillar to post to recover what is legitimately due to them, in attempting to avail of more than one remedy at the same time, they do not " blow hot and cold " but they blow hot and hotter ".
Swiss V UoI	• Constitutional validity of various provisions. • Eradi committee report dated 31.07.2000 relating to Insolvency & winding • On 03.01.2018 Companies Amendment Act 2017 was brought into force by which Section 412 of the Companies At 2013 was amended as follows. ○ Selection of Members of Tribunals and Appellate Tribunal. • CJI of India or his nominee [2] senior judge of SC or CJ of HC [c] secretary in the Ministry of Corporate Affair [d] Secretary in the Ministry of Law • Chairperson will have casting vote. • Above changes were brought into force by a notification dated 09.02.2018 • Set off -- may be considered at the stage of filling of proof of claims during the resolution process by RP, his decision being subject to challenge before the AA u/s 60. • Counter claim—by their very definition ae independent rights which are not taken away by the Code but are preserved for the stage of admission of claims during the resolution plan. Also there is nothing in the Code which interdicts the CD from pursuing such counter claims in other judicial fora. Form C dealing with submission of claims financial creditors in the CIRP Regulations states thus.

	• Legislative policy now is to move away from the concept of inability to pay debts to –determination of default. Hence section 433[e] of the Companies Act 1956 has been repealed by the Code.
	• Claim gives rise to a debt, only when it becomes due and
	• Default---occurs only when a debt becomes due and payable and is not paid by the debtor.
	• Section 12 A is not violative of Article 14.
	• Classification between FC and OC neither discriminatory nor arbitrary nor violative of Article 14
	• Section 21 and24—and Article 14—Ocs have no vote in CoC
	• IU—evidence provided by them—only prima facie evidence of default which is rebuttable by CD
	• Trigger point for IU—Siddiqui Working Group 1999
	• IU to accept information as provided in Form C
	• RP has no adjudicatory powers –has administrative powers.
	• Constitutional validity of Section 29A
	• ArcelorMittal—referred to
	  ○ A purposive interpretation of Section 29A, depending both on the text and the context in which the provision was enacted, must , therefore inform our interpretation of the same.
	• Chitra Sharma referred to
	• Innoventive referred to
	• ArcelorMittal
	  ○ A RA has no vested right for consideration or approval of its resolution plan—as no adjudication has yet taken place.
	• One year period in Section 29A[C] and NPAs
	• An asset including a leased asset becomes NPA when it ceases to generate income for the bank.
	• NPA—interest and / or instalment of principal remain overdue for a period of more than 90 days in respect of a term loan.
	  ○ The account remains out of order in respect of OD/CC
	  ○ Bill remains overdue for a period of more than 90 days. –BP/BD
	  ○ Instalment of principal or interest thereon remains overdue for two crop seasons for short duration crops.
	  ○ Instalment of principal or interest thereon remains overdue for one crop season for long duration crop.
	  ○ Amount of liquidity facility remains outstanding for more than 90 days in respect of a securitization transaction undertaken in terms of guidelines on securitization dated Feb 1, 2006
	  ○ In respect of derivative transactions, the overdue receivables representing positive mark to market value of a derivative contract, if these remain unpaid for a period of 90 days from the specified due date for payment.
	  ○ In case of interest payments, banks should classify an account as NPA only if the interest due and charged during any quarter is not serviced fully within 90 days from the end of the quarter.
	• Asset classification—March 31, 2005
	  ○ SS asset—which has remained NPA for a period less than or equal to 12 months.
	  ○ D asset-- if it has remained in the SS category for a period of 12 months.

	○ L asset ---where loss has been identified by the bank or internal or external auditors or the RBI inspection but the amount has not been written off wholly. • Important –SS asset would be NPA which has remained as such for a period of 12 months. This is a grace period , a person can bid along with other resolution applicants to manage the CD. 12+3 • Ineligibility attaches after this one year period is over as NPA now gets classified as a doubtful asset. • Jesus—If the blind lead the blind, both shall fall into the ditch. • Related party—constitutional challenge— • Exemption of MSME from Section 29A—engaged in Manufacture / Prod ○ ILC report of March 2018 found that MSME form the foundation of the economy and are key drivers of employment, production, economic growth, entrepreneurship and financial inclusion. ○ Section 7 of MSME Development Act 2006—classification criteria ○ Micro—investment in P-M does not exceed 25 lacs ○ Small----------….. is more than 25 lacs but less than 5 cr ○ Medium---------- is more than Rs 5 crore but less than 10 • Exemption of MSME from Section 29A—engaged in providing services ○ Micro-- investment in equipment does not exceed 10 lacs ○ Small ----------more than 10 lacs but less tam 2 crore ○ Medium----- ---------more than 2 crore but less than 5 crore • ILC report of 2018 exempted these industries from Section 29[c[[h] ○ Rationale—qua such industries other RA may not be forthcoming. ○ Because of which they will be inevitably pushed to liquidation. ○ Following upon Insolvency Law Committee's Report Section 240 A has been inserted in the Code with retrospective effect from 06.06.20148 • Section 53 does not violate Article 14— ○ Secured creditors being given priority in distribution water fall.
VK Jain V SCB	• Issue—provide all relevant documents including resolution plans to members of suspended board of directors of the CD • Statutory provisions so far as directors are concerned ○ Section 24/3/b—RP has to give notice of each and every meeting to of the CoC inter alia to members of the suspended board of directors. • AA under 31/1 if satisfied that the plan passes muster, shall then, by order approve such plan, which shall be binding on all stakeholders involved in the resolution plan including guarantors. • This statutory scheme under Section 31/1, makes it clear that though the erstwhile board of directors are not members of the CoC, yet they have a right to participate in each and every meeting held by the CoC and also have a right to discuss along with the CoC all resolution plans that are presented at such meetings under Section 25/2/i--- • Section 31/1—such members of the Board of directors who are often guarantors, are vitally interested in a resolution plan, as such resolution plan then binds them. Such plan may scale down certain debts and not others , leaving guarantors of the latter kind of debts exposed for the entire amount of debt. • Regulations also make it clear that these persons are vitally interested in resolution plans as they affect them. Thus under Regulation 36 of the CIRP

	Regulations, the IM that is given to each member of the CoC and to any potential resolution applicant, will contain details of guarantees that have been given in relation to the debts of the CD. Also under Regulation 37/d of the CIRP regulations, a resolution plan may provide for satisfaction or modification of any security interest. • Further under Regulation 37/1/f a resolution plan may provide for reduction in the amount payable to the creditors which again vitally affects the rights of the guarantor. • Last but not least, a resolution plan which has been approved or rejected by the AA , has to be sent to participants which would include members of the erstwhile Board of Directors—vide regulation 39/5. • Obviously, such copy can only be sent to participants because they are vitally interested in the outcome of such resolution plan, and may, as persons aggrieved, file an appeal from the AA's order to the Appellate Authority under section 61. • Quite apart from this, Section 60/5/c is also very wide, and a member of the erstwhile board of directors also has an independent right to approach the AA which must then hear such person before it is satisfied that such resolution plan can pass muster under Section 31 • It is also important to note that every participant is entitled to a notice of every meeting of the CoC. Such notice of meeting must contain an agenda of the meeting, together with the copies of all documents relevant for matters to be discussed and the issues to be voted upon at the meeting vide regulation 21/3/iii--- • Obviously resolution plans are " matters to be discussed " at such meetings and the erstwhile Board of Directors are " participants " who will discuss these issues. The expression " documents " is a wide expression which would certainly include resolution plans. • Regulation 38/1/a …….a resolution plan shall demonstrate that it addresses the cause of default. It is here that the erstwhile directors can represent to the CoC that the cause of default is not due to the erstwhile management , but due to the other factors which may be beyond their control which have led to non-payment of the debt. Therefore, a combined reading of the Code as well as regulations lead to the conclusion that members of the erstwhile board of directors , being vitally interested in resolution plans that may be discussed at meetings of the CoC must be given a copy of such plans as part of " documents " that have to be furnished along with the notice of such meetings. • If the fear is about breach of confidentiality, then non-disclosure agreement in which the RP can be indemnified in case of necessity. • Directors who are related parties----. They are not even allowed
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