



# ASC

## INSOLVENCY TIMES



## Editorial



### **New NCLT rules to set up admission benches soon**

As per the latest reports, the much-awaited new rules governing the functioning of the National Company Law Tribunal (NCLT) would be notified soon, paving the way for the setting up of Admission Benches, which are designed to put the Corporate Insolvency Resolution Process (CIRP) on the fast track. The Admission Benches would have the responsibility of admitting/rejecting the application for initiating a CIRP within 14 days of receiving it. They will also prioritise the cases for hearing by the Tribunal.

As per the Insolvency and Bankruptcy Code, in all cases where an application to initiate a CIRP is filed, the Adjudicating Authority (AA), or NCLT, should admit it within 14 days of receiving the application. The AA has the authority to decline an application from a financial creditor, an operational creditor, or a corporate applicant if it is deemed incomplete. However, prior to rejection on these grounds, the applicant must be afforded a seven-day period (from the receipt of notice from the AA) to address any deficiencies in the application.

When the IBC regime was introduced in 2016, the NCLT was entrusted to act as the AA for the matters under the Code as well. As reported, while the general procedural rules were easily adopted for the purposes of adjudicating the matters under the Code, the NCLT rules framed in accordance with the provisions of company law do need a revamp to specifically fit the procedural requirements of the Code as well. Considering the pendency of cases before the existing Benches of the Tribunal, any revamp on the procedure and on speedy disposal mechanism by the Adjudicating Authorities would be a welcome change.

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!

**Anju Agarwal**

Partner

ASC Insolvency Services LLP

Business related discussion contact Deepak Maini (IP, Advocate) at +91 97111 91523



## **BCCI Files Insolvency Plea against Byju's for Recovering Rs 158 Crore Payment**

The Board of Control for Cricket in India (BCCI) has filed a plea before the Bengaluru Bench of the National Company Law Tribunal (NCLT) against Think & Learn Pvt Ltd (Byju's) to recover its dues worth Rs 158 crore. The petition is filed under Section 9 of the Insolvency & Bankruptcy Code (IBC). BCCI informed the bench that it sent a notice to Byju's in January 2023 for payment of Rs 158 crore, excluding tax deducted at source (TDS). The NCLT bench, while issuing a notice, directed Byju's to reply within the next two weeks. The next hearing in the case was scheduled on 22nd December 2023. The amount BCCI is seeking from Byju's is related to a contract to sponsor the jerseys for the Indian cricket team which ended in March 2022. All payments up to this period had been made by Byju's but BCCI had asked the company to continue till it found a new sponsor. Byju's extended its jersey sponsorship agreement with the board until November 2023 for an estimated US\$35 million and the company is in discussion with BCCI to settle the matter. Byju's has been in financial trouble for the past several months mainly due to high-value acquisition and lack of funding.

## **NCLT approves resolution plan for Reliance Communications Infrastructure**

The National Company Law Tribunal (NCLT) has approved the resolution plan for Reliance Communications Infrastructure Limited (RCIL), a subsidiary of bankrupt Reliance Communications Limited. A resolution plan submitted by a resolution applicant, Reliance Projects and Property Management Services Limited, in respect of RCIL, was approved by the committee of creditors of RCIL pursuant to its meeting dated August 5, 2021, following which an application had been filed by the resolution professional of RCIL on August 31, 2021 with the NCLT Mumbai, inter alia, seeking approval of the resolution plan of RCIL under Section 31 of the Code. Reliance Communications is under corporate insolvency resolution process pursuant to the provisions of the Insolvency and Bankruptcy Code, 2016.

## **NCLAT dismisses JKC's plea challenging sale of Jet Airways aircraft**

The National Company Law Appellate Tribunal (NCLAT) on Friday dismissed an appeal of Jet Airways bidder Jalan Kalrock Consortium (JKC) challenging the sale of aircraft belonging to the grounded airline. The tribunal had reserved its order on an appeal filed by JKC against the National Company Law Tribunal (NCLT) order asking the airline's monitoring committee to conclude the sale of the Jet aircraft. All-India Jet Airways Officers and Staff Association had filed an appeal against NCLT's order which was also dismissed by the NCLAT. JKC had argued that the NCLT's order for the sale of the aircraft was beyond its jurisdiction. It said the sale was put on hold in November 2022 because of a disagreement in the Monitoring Committee (MC), which has JKC and the lenders. JKC said the lenders were stopping it from taking over the airline fully. Meanwhile, Malta-based Ace Aviation, which is the prospective buyer of the aircraft in question, said with each passing moment the aircraft's value depreciates and submitted that the NCLT had directed the sale proceeds of Rs 400 crore to be deposited in an escrow account. It also said the Monitoring Committee may decide how to distribute the sale proceeds among themselves. The company had claimed to have already deposited Rs 50 crore out of Rs 400 crore and was planning to deposit the rest of the amount too. The Additional Solicitor General (ASG), appearing for the lenders, had said they were losing public money to keep the airline afloat due to maintenance costs. The NCLAT held that the sale of aircraft does not affect the rights of any of the stakeholders as the sale proceeds will be deposited in an escrow account. These proceeds will then be distributed as per the resolution plan.

## **Supreme Court agrees to hear bankruptcy plea against Zee founder**

The Supreme Court agreed to hear IDBI Trusteeship Services' plea against a National Company Law Appellate Tribunal (NCLAT) order rejecting its insolvency plea against Essel Group firms Cyquator Media Services and Direct Media Distribution Ventures. The court issued a notice to the two firms and asked them to respond in four weeks. Cyquator Media Services is a promoter group company of Zee Entertainment Enterprises Ltd (ZEEL). The NCLAT in September had dismissed IDBI Trusteeship Service's appeal, saying the default took place in June 2020, so Section 10A of the Insolvency and Bankruptcy Code, 2016 (IBC) was applicable. The section bars filing of insolvency under Sections 7, 9, and 10 for defaults from 25 March 2020 up to 25 March 2021. A few days earlier, the appellate tribunal had dismissed IDBI Trusteeship's plea against Direct Media Ventures too. The case relates to a 2015 debenture trust deed between IDBI Trusteeship and the Essel group, where Cyquator and Direct Media stood as corporate guarantors. IDBI Trusteeship is the debenture trustee of 425 debentures worth Rs 425 crore issued by Essel Infraprojects Limited (EIL). The debt amount of Rs 425 crore was disbursed in two tranches, that is Rs 200 crore in May 2015 and Rs 225 crore the next month. IDBI Trusteeship Services invoked the corporate guarantee clause and sent a notice to Cyquator in June 2020 to make the payments. IDBI Trusteeship in 2022 then filed an insolvency petition against Cyquator, saying it had defaulted on Rs 591 crore. The National Company Law Tribunal (NCLT) in June 2023 dismissed IDBI's insolvency plea.

IDBI Trusteeship Services Limited (ITSL) has also filed an appeal at the National Company Law Appellate Tribunal (NCLAT) against Essel Group chairperson Subhash Chandra, challenging the order of the National Company Law Tribunal Mumbai which gave a go-ahead to the Zee Entertainment Enterprises Limited (ZEEL) and Sony merger.

The appeal challenges the National Company Law Tribunal (NCLT) Mumbai order rejecting IDBI Trusteeship's objection to the merger. The hearing was deferred as the case was transferred to the bench of Chairperson Ashok Bhushan of NCLAT.

IDBI Trusteeship told the NCLT that it is the debenture trustee of 425 debentures issued by Essel Infraprojects Limited (EIL) in favour of certain schemes managed by Franklin Templeton Asset Management (India) Pvt. Ltd. It said that Chandra had executed a personal guarantee on 25 June 2019 in favour of IDBI Trusteeship (for the benefit of Franklin Templeton) guaranteeing the repayment obligations towards the debentures. The trusteeship claimed 535 crore from Chandra, saying he failed to comply with his obligations under the personal guarantee, and thus he is a creditor. Zee claimed that IDBI Trusteeship is admittedly not a creditor of Zee and has no contractual or legal privity with Zee. Therefore, it has no locus to object to the present scheme. The bench clearly observed that as none of the above petitioners are the direct creditors of Zee nor have any privity of contract with Zee, whose scheme of merger is pending for approval before this bench.

## **NCLT Mumbai approves sale of Reliance Communications real estate assets**

Insolvency tribunal, NCLT Mumbai has approved the sale of some of the real estate assets of telecom company Reliance Communications. The filing attached an order of the National Company Law Tribunal, Mumbai bench in the matter of application filed by the resolution professional of Reliance Communications (RCom), seeking approval from the NCLT for undertaking the sale of certain unencumbered assets of the company. The Tribunal clarifies that the Applicant/RP can sell assets of the Corporate Debtor under Regulation 29 of the CIRP Regulations after submission of the resolution plan for approval by this Tribunal. The order specifies that "This Tribunal accords its approval to the Applicant to conduct the sale of the Assets of the Corporate Debtor in terms of Regulation 29 of the CIRP Regulations, which sale proceeds shall be treated as unencumbered assets of the Corporate Debtor and be distributed during the implementation of the approved resolution plan or in liquidation, as the case may be,".

The assets identified for sale include Chennai Haddow Office of RCom, comprising land and building; land parcel in Ambattur in Chennai spread over an area of about 3.44 acres; 871.1 square metres of land parcel in Pune; Bhubaneswar-based office space, investment in shares of Champion Properties and investment in shares of Reliance Realty.



## RECENT JUDGMENTS

### Sushma Paranjpe v. Rohan Developers Private Limited

***Mere issuance of a letter calling for loan repayment during the Section 10A period would not bar CIRP proceedings: NCLAT Principal Bench***

The NCLAT held that where the default was committed prior to the Section 10A period, mere issuance of a letter calling for loan repayment during the Section 10A period would not bar CIRP proceedings.

### Ansal Housing Limited v. Samyak Projects Private Limited

***A sum provided by one joint venture partner to another would not constitute a financial debt for maintainability of a Section 7 application: NCLAT Delhi***

The NCLAT ruled against treating such amount, provided by one joint venture partner to another, as a financial debt, where the amount was disbursed by the developer of a real estate project to land-owner under an inter-corporate deposit agreement which was envisaged to be adjusted against future profit.

### Milan Aggarwal v. Saudi Basic Industries Corporation

***An application filed by the operational creditor would be maintainable despite the amount receivable from the corporate debtor having been discharged by the insurance company: NCLAT Principal Bench***

The NCLAT held that an application filed by the operational creditor would be maintainable despite the amount receivable from the corporate debtor having been discharged by the insurance company. It went on to observe that such payment made to the operational creditor by the insurance company does not discharge the payment obligation of the corporate debtor towards the operational creditor, where the operational creditor is under an obligation to subrogate the amount realized from the corporate debtor to the insurer.

## **Vijay Kumar Singhania v. Bank of Baroda**

***Record of Default recorded with the Information Utility is not the only document to establish debt and where such debt can be proved by other supporting documents, a Section 7 application cannot be rejected on account of failure to supply information of the debt from Information Utility: NCLAT Principal Bench***

The NCLAT observed that record of default recorded with the Information Utility is not the only document to establish debt and where such debt can be proved by other supporting documents, a Section 7 application cannot be rejected on account of failure to supply information of the debt from Information Utility. While making this observation, the NCLAT rejected the submission that compliance with the regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017, which required filing of information of default with the Information Utility before filing an application to initiate CIRP, was mandatory. The NCLAT also went on to observe that a Section 7 application cannot be denied admission on ground of the debt being disputed by the corporate debtor or filing of a counterclaim or money suit by the corporate debtor against the financial creditor. Further, it was observed that non-disclosure of such a counterclaim or money suit filed against financial creditor did not have any impact on a Section 7 application. Finally, the NCLAT observed that a One Time Settlement (OTS) proposal does not cease to be an acknowledgement of liability merely because the said proposal was given on “without prejudice” basis.

## **Rakesh Ranjan v. Fanendra Harakchand Munot & Anr.**

***Regulation 36 B (4A) of the CIRP Regulations, 2016, prohibits obtaining only non-refundable bank guarantees.: NCLAT Principal Bench***

The NCLAT rejected a challenge against the submission of such a refundable bank guarantee as being in contravention of Regulation 36 B (4A) of the CIRP Regulations, 2016, by observing that such regulation only prohibits obtaining non-refundable bank guarantees.

Based on the aforesaid understanding, in both the cases, the NCLAT went on to observe that a prospective resolution applicant who has failed to submit the refundable bank guarantee in terms of the RFRP is prohibited from challenging the non-consideration of a plan submitted by them.

## **Vikas Jeph v. Anoop Bhatia**

***Withdrawal from the bank account of the corporate debtor by the suspended board, post initiation of CIRP, would be in contravention of the moratorium: NCLAT Delhi***

The NCLAT held that post the admission of CIRP, withdrawal of money from the bank account of the corporate debtor by the suspended board would be in contravention of the moratorium provisions, even where such amount was alleged to be withdrawn to discharge statutory liabilities.

## **Amit Kumar Pandey v. Pardeep Kumar Sethi**

***Claim of workers employed through sub-contractor filed through sub-contractor as Operational Debt cannot be treated as workmen of Corporate Debtor: NCLAT New Delhi***

The NCLAT observed that where the workers of a sub-contractor had filed their claim as vendor, they cannot be allowed to transpose such claim to be a claim of workmen at a belated stage. The NCLAT further observed that a resolution plan cannot be faulted for differentiating between payment to workmen as well as to the operational creditors.

## **Pankaj Khandelwal v. A. Gangwal Real Estate L.L.P**

***The ledger contains a detailed record of all financial transactions based on which the balance sheet is prepared: NCLAT New Delhi***

The NCLAT explained the concept of ledger by observing that it contains a detailed record of all financial transactions based on which the balance sheet is prepared. It further observed that while a ledger is an important financial record, the same may not be looked into in cases where disputes are raised about the existence or settlement of a financial debt, based on the balance sheet.

## **Ms. Amita Saurabh Bihani and Ors. v. E&G Global Estates Ltd. and Ors.**

***Avoidance applications can continue even after completion of CIRP and approval of the resolution plan does not need to be put on hold – NCLAT New Delhi***

The NCLAT has observed that only a resolution professional is entitled to file and pursue an avoidance application, neither a creditor nor an unsuccessful resolution applicant has any locus for the same.

It was further observed that the pendency of avoidance application does not bar the approval of a plan under consideration.



## Real Estate Regulatory Authority v. D.B. Corp Limited (Company Appeal)

***RERA has locus to challenge CIRP initiation Order in Real Estate Insolvency in appeal under Sec. 61 of IBC before NCLAT: NCLAT Delhi***

The NCLAT observed that where the moratorium period directly prevents the implementation of an order issued by real estate regulatory authority (“RERA”), such authority would be an “aggrieved person” in terms of Section 61 of the Code for maintaining the challenge against an admission order. In this context, the NCLAT further observed that the question of locus of an aggrieved person to file an appeal is different from question of its potential success.

In this case, the NCLAT further had occasion to examine if a Section 9 application can be initiated based on non-fulfilment under a barter agreement, which does not involve any obligation to make payment. After considering the definition of operational debt, the NCLAT observed that as the definition includes a right to payment, such payment can only refer to payment of money, and not to anything equivalent in nature of barter. Accordingly, it concluded that a Section 9 application is not maintainable on account of breach of a barter arrangement.

## For enquiries related to:

- Insolvency Process,
- Bankruptcy Process,
- Filing petition with NCLT/DRT,
- Appointment of Insolvency Professionals,
- Assets Management of the Company,
- Hearing of Cases or any other enquiries



### REGISTERED OFFICE

73, National Park, Lajpat Nagar IV,  
New Delhi - 110024 (India)  
P: ++91-11-41729056-57, 41601289

### CORPORATE OFFICE

C-100, Sector-2,  
Noida- 201301  
Uttar Pradesh (India)  
Phone No: +91-120-4729400

### BRANCHES IN INDIA

#### Gurugram:

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurugram - 122002, Haryana  
Phone No: +91-124-4245110/116

#### Mumbai:

Office No. 315-316, A wing, Sagar Tech Plaza, Andheri  
Kurla Road, Sakinaka, Andheri (E), Mumbai - 400072,  
India.  
Phone No: 022-67413369/70/71

#### Pune:

Office No. 511, City Space, Vimannagar, Nagar Road, Pune  
MH - 411014  
Phone No: +91-9022131399

#### Bengaluru:

0420, Second Floor,  
20th Main, 6th Block,  
Koramangala,  
Bangalore - 560095, Karnataka  
Phone No: 080-42139271

#### Chennai:

Plot No. 2,S, 12/2A, Industrial Area,  
Perungudi, Chennai, Tamil Nadu 600096, India

#### Hyderabad:

Level 2, Oval Building, Plot no.18, iLabs  
Hyderabad Technology Park, Inorbit Mall Rd Hyder-  
abad-500081 Telengana

### BRANCH ABROAD

#### Singapore:

One Raffles Place  
Tower 1, 27-03  
Singapore - 048616  
www.ascgroup.sg  
info@ascgroup.sg

#### Canada:

302-18 Edgecliff Golfway, North York, Toronto, Ontar-  
io-M3C 3A3  
Mobile No:+1437-774-4488  
www.ascventures.ca  
info@ascventures.ca

#### Japan:

Shinjuku Monolith 28F  
2-3-1, Nishi Shinjuku, Shinjuku, Tokyo  
japandesk@ascgroup.in



**Business related discussion contact Deepak Maini (IP, Advocate) at +91 97111 91523**

Please write us at: [anju@insolvencyservices.in](mailto:anju@insolvencyservices.in), [mahima@insolvencyservices.in](mailto:mahima@insolvencyservices.in)

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