

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS



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Beyond The Veil Of Ambiguity, Our cover story this month explores the intricate question of a guarantor's liability and how it can extend beyond a stated financial cap, a nuanced issue clarified by recent judicial pronouncements. This legal evolution underscores the principle that a guarantor's obligation is separate from the principal borrower's, particularly when a non-obstante clause is in play.

This edition also brings you up to speed on other pivotal developments across the insolvency landscape. We highlight the NCLAT's ruling on *The Double-Edged Promise: When a Guarantor's Capped Liability Extends Beyond the Limit* and also examine a landmark decision affirming the NCLT's power to uphold justice, as detailed in our analysis *Beyond Finality: How Indian Tribunals Uphold Justice by Recalling Fraudulent Insolvency Plans*. Our analysis further explores how a settlement agreement does not alter the fundamental nature of an operational debt, a topic we deconstruct in *Beyond the Ink: Deconstructing the Jurisprudence on Settlement Agreements and Operational Debt*. We also cover significant judgments on the *Beyond the Dotted Line: An Examination of the Evidentiary Shift in India's Insolvency Regime*, affirming that a formal written contract is not a precondition for proving debt. Additionally, we feature key rulings that clarify how a related party financial creditor cannot bypass the legislative bar to form a Committee of Creditors, as explored in *Navigating CIRP Without a CoC: The IBC's Structural Gap When the Sole Financial Creditor Is a Related Party*.

Finally, we look at recent regulatory updates and events that signal the future of bankruptcy in India. We feature the SEBI's (Third Amendment) Regulations, 2025, which aim to enhance investor protection and accountability. We've also included a list of key upcoming training and events to keep you ahead of the curve, including the IBBI Ninth Annual Day Celebration and the INSOL International Mumbai Seminar 2025.

Let's dive in.

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COVER STORY

The Double-Edged Promise: When a Guarantor's Capped Liability Extends Beyond the Limit



a non-obstante clause capping the liability of the principal borrower's debt does not, by its nature, negate the separate obligation to pay interest for the guarantor's own delay.



What determines the true extent of a guarantor's liability? Is it a simple matter of a stated financial cap, or can the obligation extend further to include costs like default interest and penalties? The legal principles governing this question are not as straightforward as they might appear, and recent judicial pronouncements have offered crucial clarity. At the heart of the matter lies the fundamental principle of contract law: the harmonious construction of a document.

This issue came to the forefront of legal discourse in a recent NCLAT in ICICI Bank Ltd. Versus Seeta Neeraj Shah , which held that the liability of a guarantor is not restricted to a capped amount, as their liability to discharge repayment obligations and the principal borrower's liability operate in separate spheres. This decisive stance initiated a broader debate on whether a non-obstante clause, a key element in many guarantee contracts, truly overrides all other provisions. The legal landscape presents what seem to be two competing views on a guarantor's liability. On one side, there's the argument for a strict, literal interpretation of the contract. Proponents of this view, drawing on Supreme Court judgments like Syndicate Bank vs. Channaveerappa Beleri (2006) and State of Maharashtra vs. Dr. M.N. Kaul (1967), argues that a guarantor's liability is determined purely by the terms of the contract. This position holds that if a contract explicitly sets a cap, that cap is an absolute ceiling on all liabilities. From this perspective, a clause on default interest is either superseded by the cap or must be read as part of the total capped amount. This viewpoint is often bolstered by...



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PIVOTAL ISSUES

Beyond the Ink: Deconstructing the Jurisprudence on Settlement Agreements and Operational Debt



Default installment of Settlement Agreement does not come within the definition of 'operational debt'.

In the intricate domain of commercial law, the IBC stands as a pivotal legislative framework designed to address the challenges of corporate default and insolvency. A critical facet of this framework is the empowerment of an operational creditor—an entity to whom a debt is owed for the provision of goods or services—to initiate the CIRP against a defaulting corporate debtor. For instance, a vendor that has supplied raw materials to a manufacturing company on credit terms, only to face persistent non-payment, finds in the IBC a formal and powerful recourse to recover its dues and ensure business continuity. But what happens when this very acknowledgment of debt, meant to provide clarity and a path to resolution, is used by a cunning corporate debtor as a shield to evade the rigorous proceedings of the CIRP?

In a landmark decision that provides a definitive answer to this question, the NCLT, Mumbai Bench, Court-III, in the case of *M.K. Metals v. M/s Kundan Industries Ltd.*, held that a settlement agreement entered into between the parties does not alter the fundamental nature of the debt. The Tribunal clarified that such an agreement, which merely serves to acknowledge the debt and structure a repayment schedule, does not extinguish the operational creditor's right to initiate CIRP under Section 9 of the IBC, provided the underlying debt is substantiated with sufficient evidence. This article will delve into a detailed analysis of the nuances of such acknowledgments and their effect on the nature of debt, examining various seemingly distinctive judgments to provide a comprehensive...



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Beyond Finality: How Indian Tribunals Uphold Justice by Recalling Fraudulent Insolvency Plans



fraud vitiates everything

In the hallowed halls of corporate boardrooms and bustling legal chambers, the finality of an approved resolution plan under the IBC is often considered the end of a long and arduous battle. A sigh of relief echoes as a distressed company finds a new lease on life, and creditors, though perhaps not fully satisfied, accept the outcome as binding. But what happens when, months after the confetti has settled, a disgruntled party unearths a smoking gun—a fraudulent transaction or a collusive arrangement that undermines the very foundation of the insolvency proceedings? Does the gavel's final bang truly seal the fate of all parties, or can the judicial system intervene to correct a gross miscarriage of justice? This is the critical question that has been at the heart of recent legal discourse in *Exper Realty Professionals Private Limited Vs Logix Infrastructure Private Limited*, a question that pits the need for procedural finality against the fundamental principle that fraud vitiates everything.

The power of the NCLT and the NCLAT To recall an approved resolution plan is a crucial aspect of India's insolvency framework. It's a power rooted in the principles of natural justice and the prevention of fraud, ensuring that the IBC, 2016, is not a tool for malicious intent. This authority, while seemingly contrary to the IBC's emphasis on speed and finality, is a necessary safeguard against abuse. The journey to establishing this principle has been a significant one, marked by judicial interpretation and a clear distinction between "review" and "recall." The IBC does not explicitly grant the tribunals the power to "review" their own orders. This led to a period of uncertainty, with some NCLTs holding that once a resolution...



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Navigating CIRP Without a CoC: The IBC's Structural Gap When the Sole Financial Creditor Is a Related Party

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When the law's safeguards create a dead-end, it reveals not just the limits of legislation, but the urgent need for reform to balance fairness with practical resolution.



The jurisprudence of insolvency law, where financial creditor rights, formation of CoC and the CIRP goes even, until a related party enters the scenario. When the only financial creditor of a corporate debtor is a related party, certain legal and procedural implications may arise. One such legal knot lies at the intersection of formation of CoC and the statutory bar imposed by section 21(2) of IBC on a related party. This is the precise legal quandary in *Stros-Sedlcanske Strojirny, a.s. v. Poonam Basak (IRP)* filed before the Principal Bench of NCLAT , New Delhi Bench.

The Hon'ble Bench, comprising of Mr. N. Seshasayee (Judicial Member) Mr. Arun Baroka (Technical Member) Indevvar Pandey (Technical Member) critically examined this legal issue with comprehensive reasoning and analysis. They held that a related party financial creditor, even if sole, cannot bypass the legislative bar under Section 21(2) of IBC, which restricts a related party from being part of the CoC. It emphasized that the CoC is indispensable to CIRP, and without its formation, the process cannot move forward. Therefore, when resolution becomes structurally impossible, the only available course is liquidation. The factual matrix was simple: a financial creditor, a claim against the corporate debtor, commencement of CIRP, however the twist arose when the sole financial creditor turned out to be a related party as well. The appellant held a 50% stake in the corporate debtor and had also extended financial credit to it. Upon default, the appellant initiated CIRP. Although, the IRP found that the appellant was both the sole financial creditor and a related party, raising...

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Beyond the Dotted Line: An Examination of the Evidentiary Shift in India's Insolvency Regime



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shifting the focus from the nature of the transaction to the mere existence of a debt and default

In the complex landscape of corporate insolvency, a creditor often finds themselves at a crossroads, pondering the evidentiary thresholds required to prove a financial debt and initiate insolvency proceedings. The question of whether a formal, written contract is an absolute prerequisite has been a recurring point of contention. While conventional wisdom often posits that a meticulously drafted agreement is the cornerstone of such a claim, the NCLAT has recently offered a significant clarification that challenges this rigid interpretation. In a landmark decision, the NCLAT New Delhi bench, comprising Justice Rakesh Kumar Jain, Justice Mohd Faiz Alam Khan, and Mr. Naresh Salecha (Technical Member) in *Bijendra Prasad Mishra Versus M/s HS Mercantile Pvt. Ltd.*, unequivocally held that a written contract is not a precondition for proving the existence of a legally payable debt. The tribunal asserted that the presence of other documentary evidence, as listed under Regulation 8(2) of the CIRP Regulations, is sufficient to establish the debt and justify the admission of an insolvency application.

This ruling emanated from an appeal filed under Section 61 of the IBC, challenging an order from the NCLT Kolkata. The core issue before the NCLAT was whether the NCLT had erred by admitting an application under Section 7 of the IBC, despite the absence of a formal financial contract. The appellant, the corporate debtor, argued that the adjudicating authority had overstepped its mandate and failed to acknowledge the lack of a formal loan agreement or any other relevant documents. Conversely, the respondent, the financial...



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SIGNIFICANT CASE LAWS

NCLAT Clarifies: Non-Invocation Doesn't Defeat Corporate Guarantee Claim

The NCLAT in *Hemant Sharma, Resolution Professional Today Homes and Infrastructure Pvt. Ltd. v. Indian Renewable Energy Development Agency Ltd.* held that a claim based on a corporate guarantee can be verified and admitted by a Resolution Professional (RP) even if the guarantee hasn't been invoked before the insolvency commencement date. The NCLAT analyzed the role of the RP, clarifying that their function is to verify and collate claims, not to adjudicate them. The Tribunal concluded that the RP's rejection of a claim, on the ground that the guarantee had not been invoked, was an erroneous decision and an overreach of their duties. Consequently, the NCLAT set aside the adverse observations made by the Adjudicating Authority against the RP but upheld the direction for the RP to reconsider the claim in accordance with the law.

The judgment significantly relied on the Supreme Court's decision in *China Development Bank v. Doha Bank Q.P.S.C.* The NCLAT cited this precedent to establish that the definition of a "claim" under the Insolvency and Bankruptcy Code (IBC) is broad and includes a right to payment, regardless of whether it is fixed, matured, or unmatured. The Supreme Court had previously held that a claim will exist even if a right to payment cannot be enforced due to a moratorium. Therefore, the NCLAT reasoned that the non-invocation of a guarantee doesn't negate the existence of a valid claim, compelling the RP to admit and verify it during the Corporate Insolvency Resolution Process (CIRP).



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SIGNIFICANT CASE LAWS

No Fresh Limitation Without Timely Payment and Written Acknowledgment

The NCLAT in the case of Protech Impex Pvt. Ltd. & Anr. v. Uttar Pradesh Rajkiya Nirman Nigam Ltd. upheld the Adjudicating Authority's decision to dismiss a Section 9 application filed by an operational creditor. The NCLAT ruled that the application was barred by limitation, as the date of default was January 15, 2016, but the application was filed on February 20, 2020, well beyond the three-year limitation period. The Tribunal rejected the operational creditor's argument for an extension of the limitation period under Section 19 of the Limitation Act, 1963, based on a payment made by the corporate debtor on October 16, 2017. The court reasoned that for Section 19 to apply, two conditions must be met: the payment must be made within the prescribed limitation period, and there must be a written acknowledgment of the debt, neither of which was present in this case. Furthermore, the court noted that the applicant had failed to plead for the benefit of this section in their original application.

The NCLAT relied on the Supreme Court's judgment in Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board & Ors. to conclude the matter. In that case, the Supreme Court had established two essential conditions for Section 19 of the Limitation Act, 1963, to be applicable: the payment must be made within the prescribed limitation period, and it must be accompanied by a written acknowledgment by the payer. Applying this precedent, the NCLAT found that the payment made by the corporate debtor was for a security amount and did not constitute an acknowledgment of the debt claimed by the operational creditor. Therefore, the essential conditions for a fresh limitation period were not fulfilled, and the operational creditor could not be granted the benefit of Section 19.



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SIGNIFICANT CASE LAWS

NCLAT Affirms Share Application Money as 'Financial Debt' Based on Principle of Res Judicata

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the case of *Ajit Kumar Gupta v. Uniexcel Ltd. & Anr.*, upheld the admission of a Section 7 application, affirming that a claim for the refund of share application money constitutes a financial debt. The Tribunal's decision was based on a precise analysis of a previous litigation between the same parties, where it was conclusively determined that the money remitted for shares, which were never allotted, should be re-categorized as a financial debt. The court dismissed the appellant's argument that the money was not a financial debt, stating that this specific issue had already been resolved and was not open for re-agitation. The NCLAT also noted that the corporate debtor had failed to refund the amount despite multiple requests, which established a clear default.

The NCLAT's reasoning was firmly anchored in the principle of res judicata, as emphasized by the Supreme Court in *Neelima Srivastava v. State of Uttar Pradesh & Ors.* This precedent underscores that once a judgment has attained finality between the parties, it is not permissible to reopen the concluded issues. Since the earlier finding that the share application money was a financial debt had not been challenged further in the previous round of litigation, it became binding on both parties. The NCLAT, therefore, concluded that the appellant's attempt to question the nature of the debt was an abuse of the court's process and could not be entertained.

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SIGNIFICANT CASE LAWS

Acknowledged Part Payment Resets Limitation Period for Insolvency Pleadings

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the case of *Paresh K. Mehta Investment Pvt. Ltd. v. State Bank of India & Anr.*, upheld the admission of a Section 9 application filed by an operational creditor. The Tribunal held that the application was not time-barred because the corporate debtor had made two part payments on the outstanding invoices. These payments, made on May 15, 2017, and September 26, 2017, constituted a valid acknowledgment of debt, which extended the three-year limitation period. The NCLAT also rejected the corporate debtor's argument that it was not liable for interest, as the initial debt had already been paid, deeming the remaining interest amount as sufficient to constitute an operational debt for the purpose of initiating the insolvency process.

The NCLAT relied on the judgment of the Supreme Court in *Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board and Ors.*, which laid down two essential conditions for extending the period of limitation under Section 19 of the Limitation Act, 1963: the payment must be made within the prescribed period of limitation, and it must be acknowledged in writing by the payer. In this case, the court found that the corporate debtor's reply to the demand notice and its own pleadings in the appeal clearly admitted to making the part payments to the creditor bank, thereby fulfilling the requirement of a written acknowledgment. Consequently, the court held that a fresh period of limitation began from the date of the last payment, making the application well within the limitation period, especially considering the benefit of the Supreme Court's order on the Covid-19 lockdown period.



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SIGNIFICANT CASE LAWS

NCLT Amravati clarifies Interest Under MSME Act Cannot Be Ruled by Adjudicating Authority

The National Company Law Tribunal, Amaravati Bench, in the case of Green Morning Horticulture Pvt. Ltd. v. Lakshmi Infrastructure and Developers India Pvt. Ltd., dismissed a Section 9 application filed by the operational creditor. The tribunal's decision was based on several key findings: the operational creditor failed to provide certified proof of work quantities as required by the contract, a significant portion of the debt claimed was for unsubstantiated interest, and a partial payment from the corporate debtor after the demand notice was issued reduced the outstanding amount below the minimum threshold of ₹1 crore, making the application non-maintainable. The tribunal concluded that the application was not a genuine attempt to resolve insolvency but rather a tool for debt recovery, which is against the purpose of the Insolvency and Bankruptcy Code (IBC).

The court emphasized the precedent set by the National Company Law Appellate Tribunal (NCLAT) in the matter of SNJ Synthetics Ltd. v. PepsiCo India Holdings Pvt. Ltd. This judgment holds that the Adjudicating Authority under the IBC is not the proper forum for determining a corporate debtor's liability to pay interest under the MSME Act or Interest Act. By citing this precedent, the tribunal highlighted that an application cannot be admitted solely on the basis of a contested and unsubstantiated claim for interest. This reinforced the court's view that the primary objective of the IBC is insolvency resolution, not debt recovery, and that initiating CIRP for a disputed interest amount would be an abuse of the process.



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SIGNIFICANT CASE LAWS

IBC Proceedings Not Halted by Pending Legal Action or Bank Classifications, Rules NCLT Kochi

The National Company Law Tribunal (NCLT), Kochi Bench, in the case of Euro Tech Maritime Academy Private Limited v. Axis Bank Limited, admitted a Section 7 application, initiating the Corporate Insolvency Resolution Process against the corporate debtor. The tribunal's decision was based on the clear existence of a financial debt and an undisputed default. It rejected the corporate debtor's defense, which centered on the bank's alleged non-compliance with the MSME framework for loan restructuring. The tribunal found that the corporate debtor had not raised this issue at the appropriate time and that the bank had, in fact, formed a committee to address such accounts, thus showing no procedural impropriety.

The court emphasized the precedent from the Supreme Court in M. Suresh Kumar Reddy v. Canara Bank & Ors., which clarifies that once the Adjudicating Authority is satisfied that a default has occurred, it has very little discretion to refuse the admission of a Section 7 application. The court's reasoning was that the primary issue is the existence of a debt and a default, which were undisputed in this case. It concluded that the corporate debtor's claims regarding non-compliance with the MSME framework and the pendency of a writ petition in the High Court were not a valid defense against the admission of the insolvency petition, as they did not negate the debt or the default.



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SIGNIFICANT CASE LAWS

Insolvency Plea Valid Despite Wrong Demand Notice Form, if Invoices Are Undisputed

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the case of *KNK Ship Management v. Thrani Industries Ltd.*, reversed a prior order and admitted a Section 9 application filed by an operational creditor. The tribunal found that the lower court had made a technical error by dismissing the application on the grounds of a defective demand notice and a pre-existing dispute. The NCLAT held that the demand notice, which included all relevant invoices, was valid and fulfilled the requirements of the Code, regardless of whether it was issued in Form 3 or Form 4. The tribunal also determined that the alleged pre-existing dispute, based on two emails from 2018, was not genuine as the business relationship and payments continued for a significant period afterward, and the issue of vessel seizure by customs authorities was not the operational creditor's responsibility.

The NCLAT relied on the landmark Supreme Court judgment in *Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.* to analyse the existence of a pre-existing dispute. The court reasoned that for a dispute to be considered "pre-existing," it must have been raised before the issuance of the demand notice. In this case, the alleged issues were based on emails from 2018, but the operational creditor continued to receive payments and provide services well into 2019 and 2020. The tribunal concluded that the alleged dispute was not a bona fide or crystallized issue and was raised only as a counter-argument to the insolvency petition, thereby failing to meet the legal standard established in the *Mobilox* (supra).



REGULATORY UPDATE:

SEBI Enhances Investor Protection And Accountability Through LODR (Third Amendment) Regulations, 2025



भारतीय प्रतिभूति ओर विनिमय बोर्ड
Securities and Exchange Board of India

The Securities and Exchange Board of India ("SEBI") has notified the SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2025 on 8 September 2025, introducing significant changes to the compliance framework under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"). These amendments mark a continued effort by SEBI to enhance transparency, strengthen investor protection, and deepen accountability in the securities market, particularly in relation to corporate actions and the Social Stock Exchange framework.

Mandatory Dematerialisation for Corporate Actions The new Regulation 39(2A) introduces a crucial rule: any issuance of securities resulting from a Scheme of Arrangement, subdivision, split, or consolidation must be exclusively in dematerialised form. This amendment effectively closes a major loophole that previously allowed new securities from these corporate actions to be issued in physical form, which carried risks like fraud and loss. **Investor Protection:** For investors who haven't yet opened a demat account, the regulations mandate that the listed entity must open a dedicated demat account for them. This ensures that no investor is left behind while SEBI pushes its dematerialisation agenda. This measure is a key part of SEBI's broader strategy, which began in 2018, to digitise the Indian securities market. **Strengthened Disclosure Framework for Not-for-Profit ...**

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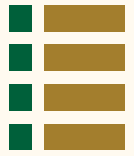
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