

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS



COVER STORY

The Law of Separate Islands

Why the NCLAT Forbids Seizing One Company's Deposit for Another's Debt

04



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From shadows to daylight, our cover story this month draws a firm boundary around corporate liability, showcasing the NCLAT's ruling on the "Law of Separate Islands." This significant judgment unequivocally forbids a bank from seizing an insolvent company's fixed deposit to satisfy the debt of a separate group entity, reinforcing the fundamental principle of separate legal personality even within a corporate group during insolvency. This principle was further supported in our in-depth analysis on the finality of Resolution Plans, where the Delhi High Court ruled that claims excluded from an approved plan are extinguished and non-arbitrable. Another key discussion highlights the rigorous standards for proving fraud under the IBC, underscoring that 'dishonesty' must be established and cannot merely be inferred, while the Supreme Court affirmed its 'Intent Test' to separate genuine homebuyers from speculative investors.

The rest of the issue provides vital updates shaping the IBC landscape. Case law developments confirm that a lender's regulatory non-compliance doesn't void a financial debt, and crucially, the NCLT retains jurisdiction to order heirs/POA holders to execute sale deeds to perfect asset titles post-resolution. On procedural matters, the NCLT stressed that the IBC's timelines are statutory imperatives, meaning the tribunal lacks power to condone delays beyond the judicially extended period for filing liquidation appeals. Finally, the Allahabad High Court enforced the IBC's overriding effect (Section 238), stating electricity dues of the Corporate Debtor cannot be recovered from a new auction purchaser. These rulings collectively cement the IBC's framework as a special law prioritizing revival, finality, and corporate distinctiveness.

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COVER STORY 04

The Law of Separate Islands: Why the NCLAT Forbids Seizing One Company's Deposit for Another's Debt



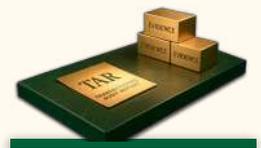
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Delay Beyond Extended Limitation Not Condonable: Upholding Finality of Timelines in IBC Liquidation Appeals



CASE LAWS 09

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IBBI Amends Liquidation Regulations to Streamline Asset Sale and Enhance Transparency



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COVER STORY

The Law of Separate Islands: Why the NCLAT Forbids Seizing One Company's Deposit for Another's Debt

The bank's right to retain the FDR only applies if the debt is due from the Corporate Debtor who opened the FDR.



Is a corporate veil thin enough to allow a bank to seize assets belonging to one company to cover the debts of another, simply because they share the same parent group? This question, central to the integrity of corporate separateness and the rights of creditors during insolvency, was recently addressed by the NCLAT, Delhi in *Industrial and Commercial Bank of China Limited Versus Anish Niranjana Nanavaty & Ors.* The tribunal delivered a significant ruling, asserting unequivocally that a bank cannot retain a fixed deposit belonging to an insolvent company to recover dues from a separate, though related, group entity.

The case involved RCIL, which had placed a Rs. 27.60 crore fixed deposit with ICBC. When RCIL entered the Corporate Insolvency Resolution Process (CIRP), the bank refused to release the funds, claiming a right of lien to offset foreign currency loans granted to another group company, RITL. This created the core legal contention: Could ICBC legally exercise a lien over RCIL's assets for a debt owed solely by RITL, based on a broad interpretation of the lien letter and Section 171 of the ICA? The NCLAT, upholding the NCLT Mumbai Bench's order, determined that the bank's action was "unjustified" and legally unsustainable. This article will delve into the underlying legal principles, particularly concerning the distinct legal personality of companies, the scope of a bank's general lien, and the implications for corporate insolvency proceedings, that formed the basis of this crucial judgment. Focusing on can a bank treat a group of related companies as a single entity, allowing it to seize the assets of one company to settle the debts of another, simply because they share the same...

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PIVOTAL ISSUES

Arbitration vs. Insolvency: When a Corporate Debtor's Revival Seals the Fate of All Unsettled Claims



Whether a claim is actively rejected by the RP or simply not included, it is extinguished once the plan gets the NCLT's seal.



The intersection of insolvency law and arbitration often presents a complex legal quandary: can a claim that emerged or crystallized after the commencement of insolvency proceedings, and was ultimately excluded from the approved Resolution Plan, still be pursued through arbitration? This precise question formed the core of a recent, significant ruling by the Delhi High Court.

In a decisive observation in *JSW Ispat Special Products Limited Versus Bharat Petroresources Limited*, the Bench of Justice Jyoti Singh unequivocally held that any claims—even those arising post-insolvency commencement—that are not incorporated into the approved Resolution Plan are deemed extinguished and, critically, non-arbitrable. This judgment reinforces the supremacy and finality of a Resolution Plan under the IBC.

The specific dispute arose when the Corporate Debtor, having successfully undergone the CIRP and secured NCLT approval for its Resolution Plan, challenged an arbitral award. The Respondent sought arbitration for estimated expenditure claims arising ICD, a significant portion of which was not included in the approved plan. The Petitioner's Counsel mounted a two-pronged attack: first, arguing that the award was void because the Presiding Arbitrator had failed to disclose his previous judicial involvement in the same matter as NCLAT Chairperson, violating the ACA's mandatory disclosure rules. Second, on merits, it was argued that once the Resolution Plan was approved, all non-included claims stood...



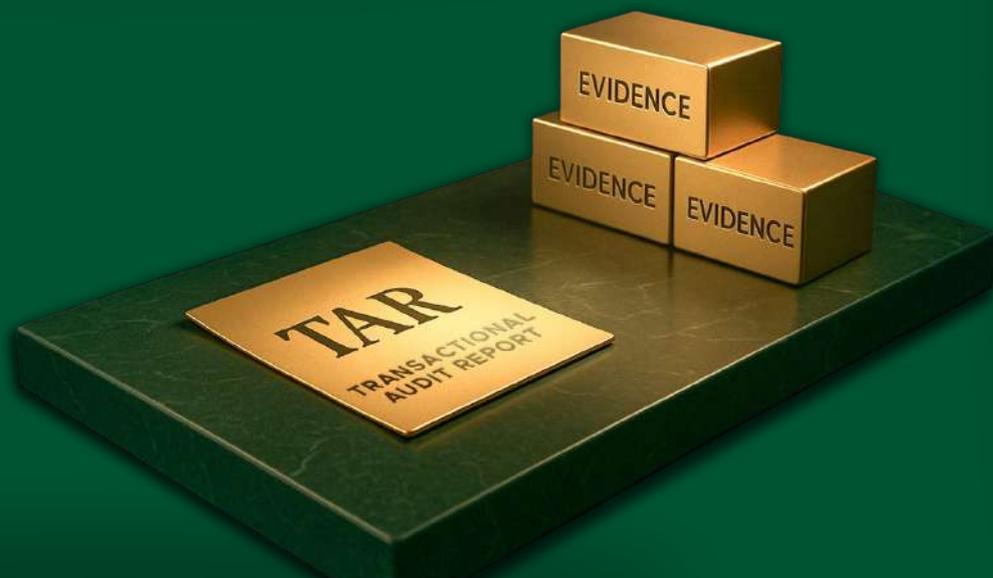
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PIVOTAL ISSUES

The Flimsy Proof of Fraud: Why a Transactional Audit Report is Not the IBC's Final Word



Dishonesty' is an essential ingredient of 'Fraudulent Trading,' which 'is to be established and it cannot be inferred in any manner.



In the dynamic landscape of insolvency law, a question frequently looms large: When does a business risk devolve into an act of fraud? This critical distinction lies at the heart of Section 66 of IBC, which targets fraudulent and wrongful trading by those in charge of the CD. This provision serves as a powerful deterrent against directors and partners who misuse their position, compelling them to contribute to the CD's assets. But what are the precise legal tripwires?

Section 66 is bifurcated, addressing two distinct scenarios. Sub-section (1) deals with Fraudulent Trading, which is fundamentally about intent. It empowers the AA to pass contribution orders against persons who carried on the CD's business "with intent to defraud creditors" or "for any fraudulent purpose." What, then, is the standard for proving such a fraudulent intent? Sub-section (2), often referred to as Wrongful Trading, focuses on a failure to act responsibly when insolvency is inevitable. It provides that a director or partner can be held liable to contribute to the CD's assets if they knew or ought to have known (before the Insolvency Commencement Date) that there was no reasonable prospect of avoiding the commencement of CIRP, AND did not exercise due diligence in minimizing the potential loss to the creditors. Does the non-exercise of due diligence alone suffice, or must it be coupled with the prior knowledge of inevitable insolvency? Given the severity of a finding of fraud, the NCLAT has consistently stressed that invoking Section 66 demands a very high standard of proof. Is mere loss or a poorly executed transaction sufficient to...

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PIVOTAL ISSUES

The 'Intent Test': Upholding the Right to Housing by Distinguishing Genuine Homebuyers from Speculative Investors



The IBC is a tool for revival and protection, not a recovery mechanism for speculative investments.



The law focuses on the right to housing in the modern era, reaffirming its status as a fundamental right. The intersection of housing rights enshrined under Article 21 of the Constitution and insolvency law has created a legal conundrum with seismic implications. This was the primary holding of the Supreme Court of India in *Mansi Brar Fernandes versus Shubha Sharma and Anr.* with resolving the issue of whether an allottee of a residential unit qualifies as a 'financial creditor' under the IBC or is merely a 'speculative investor' using the Code as a debt recovery tool.

The Bench, comprising Justice J.B. Pardiwala and Justice R. Mahadevan, held that a genuine homebuyer, intending to take physical possession, is a financial creditor, while a speculative investor, driven solely by profit through mechanisms like assured returns or compulsory buy-back clauses, is not and has alternate remedies. It further urged the Union Government to establish a revival fund for stressed real estate projects and asserted that the State cannot remain a 'silent spectator' but must fulfill its constitutional duty to safeguard homebuyers. The petitioner entered into a MoU with the Corporate Debtor, Gayatri Infra Planner Private Limited. The MoU included a buy-back clause at the Corporate Debtor's discretion for decided sum, or possession if the option was not exercised. Neither possession nor payment was made, and post-dated cheques were dishonored, leading the petitioner to file a Section 7 IBC petition, which the NCLT admitted but the NCLAT subsequently reversed, labeling her a "speculative investor." The Appellant argued that they are bona fide homebuyers and financial creditors under Section 5(8)(f) of the IBC, as...



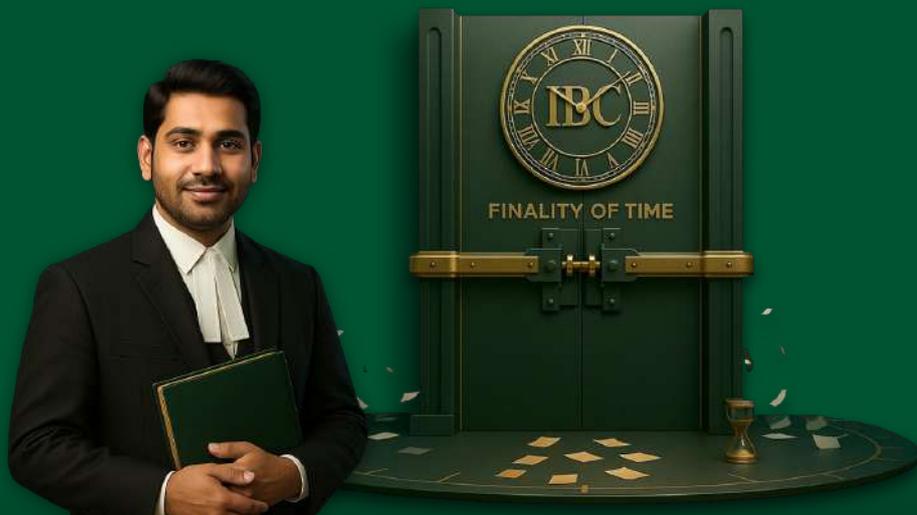
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PIVOTAL ISSUES

Delay Beyond Extended Limitation Not Condonable:
Upholding Finality of Timelines in IBC Liquidation
Appeals



When the legislature sets a hard deadline, courts are not at liberty to redraw the line. The IBC's strict timelines are not procedural preferences — they are statutory imperatives

The insolvency legal landscape regarding the sacrosanct nature of timelines under the IBC has always been a topic of altercation. One of the fundamental jurisdictional questions is whether the NCLT can wield its discretionary power to condone delays in filing an appeal against a liquidator's decision. Such a question becomes even more pertinent in light of the unprecedented extensions granted during the pandemic. This legal question was considered during a recent order in *Electric Distribution Division-I v. Mrs. Anju Agarwal* before the NCLT, Allahabad Bench, Prayagraj.

The Bench comprising Sh. Ashish Verma (Member Technical) and Sh. Praveen Gupta (Member Judicial), held that NCLT lacks the inherent jurisdiction to condone a delay beyond the statutory or judicially extended limitation period, reinforcing the principle that 'speed is the essence' of the IBC framework. It further ruled that the appeal under Section 42 of the IBC was barred by limitation as it was filed beyond the maximum extended period granted and the grounds of administrative delay were insufficient. The factual matrix involves the Applicant, whose belated claim during the corporate debtor's liquidation was rejected by the Liquidator. The Applicant filed the appeal before the NCLT, which was approximately 45 days after the expiry of the extended limitation period granted by the Hon'ble Supreme Court due to the COVID-19 pandemic. The subsequent application sought condonation of this delay. The Applicant contended that the delay was bona fide, unintentional, and caused by administrative hurdles, inter-departmental correspondence, and notarial errors, with...

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SIGNIFICANT CASE LAWS

NBFC's Regulatory Non-Compliance Doesn't Strip Loan of Financial Debt Status: NCLAT, New Delhi

The National Company Law Appellate Tribunal, Principal Bench, New Delhi, in *Sinki Commodities Pvt. Ltd. v. ABC Floors Pvt. Ltd.*, held that the Adjudicating Authority (NCLT) incorrectly rejected the Section 7 application. The Tribunal reasoned that a financial debt existed because the transaction was an admitted commercial borrowing and the disbursement was for the time value of money, evidenced by the payment of 8% interest, as admitted by the Corporate Debtor in its own pleadings and supporting documents. The NCLAT rejected the NCLT's finding that the lack of a formal written agreement or non-compliance with RBI guidelines invalidated the debt, concluding that the real nature of the transaction clearly proved the existence and default of a financial debt under Section 5(8) of the IBC.

The Appellate Tribunal relied on its judgment in *Agarwal Polysacks Ltd. vs. K. K. Agro Foods & Storage Ltd.*, a precedent which established that a written financial contract is not a pre-condition for proving a financial debt. Furthermore, in addressing the mandatory nature of RBI guidelines for NBFCs, affirmed by the Supreme Court in *Nedumpilli Finance Company Limited vs. State of Kerala and Ors.*, the Tribunal reasoned that a breach of these external regulatory guidelines does not override the statutory definition of financial debt under the IBC. The Tribunal's analysis was that the determination of whether a financial debt exists must be based on whether the transaction satisfies the requirements of Section 5(8) of the Code, irrespective of the Financial Creditor's compliance with other regulatory directions.



SIGNIFICANT CASE LAWS

NCLAT: NCLT Can Order Heirs, POA Holders to Execute Sale Deeds for Corporate Debtor Asset Title Perfection

The National Company Law Appellate Tribunal, Principal Bench, New Delhi, in *Late Babu Lal Through Its Legal Heir Mr. Sunder Lal v. Jasrati Education Solutions Limited & Ors.*, held that the Adjudicating Authority had the power to direct the execution of a Sale Deed to perfect the title of the Successful Resolution Applicant (SRA) over an asset. The Tribunal's analysis affirmed the wide jurisdiction of the Adjudicating Authority under Section 60(5) of the IBC to pass any order necessary for the effective implementation of an approved resolution plan. Crucially, the NCLAT also ruled that the Power of Attorney (POA) related to the transaction did not become null and void upon the executant's death, thereby upholding the POA holder's authority to formalize the conveyance.

The judgment's core legal analysis for maintaining the POA's validity was derived from the principle that an agency does not terminate upon the death of the principal if it is coupled with an interest or created for the benefit of a third party, which was the underlying commercial reality of the transaction. The Tribunal relied on the rationale that once full consideration had been paid and possession of the asset transferred, the POA became irrevocable, and its validity subsisted. This reasoning ensured that a formal title could be conveyed even after the executant's demise, as the right to demand conveyance had already been established and the POA was essentially a mechanism to complete the legal formality of a sale that was commercially concluded.



SIGNIFICANT CASE LAWS

NCLT Mumbai: Interest Liability Persists Even If Principal Default Occurred During Section 10A Period

The National Company Law Tribunal (NCLT), Mumbai Bench-VI, in *Unity Small Finance Bank Limited v. Bafna Motors Private Limited* held that the Section 7 Application for initiating CIRP against the Corporate Debtor must be admitted. The Tribunal's analysis confirmed the existence of a financial debt and a default exceeding the statutory threshold of 1 Crore, as required under the IBC. Although the initial date of default was 31.03.2021 (within the Section 10A period of 25.03.2020 to 24.03.2021), the Tribunal reasoned that the default continued after the 10A period, which was sufficient to allow the application. Furthermore, the NCLT found that a letter dated 01.06.2022 constituted a valid acknowledgment of debt, extending the limitation period, and the application was therefore filed within the prescribed limitation.

The Tribunal relied on two judgments of the National Company Law Appellate Tribunal (NCLAT). First, in *Bikram Bhadur vs Union of India & Anr.*, the NCLAT's reasoning was adopted to establish the principle that a Section 7 application can be admitted even if a default was committed during the Section 10A period, provided the default continues or is committed thereafter and exceeds the threshold amount. Second, in *Vinod Kumar vs. Omkara Asset Reconstruction Pvt. Ltd. & Anr.*, the NCLAT held that the interest liability does not cease merely because the default of the principal amount occurred during the 10A period. This was relied upon to affirm that the ongoing interest liability constituted a continuing default section 10A period, making the application admissible, and reaffirming that the exact amount of the claim is a matter for the IRP to collate, not for the Adjudicating Authority at the time of admission.

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SIGNIFICANT CASE LAWS

Gujarat High Court: NCLT Retains IBC Jurisdiction Over Lease Disputes in Liquidation

The High Court of Gujarat at Ahmedabad, in *Fivebro Water Services Pvt Ltd & Anr. v. Bijay Murmuria & Ors.*, held that the Special Civil Application preferred under Articles 226 and 227 of the Constitution of India was not maintainable, dismissing the challenge to the order of the National Company Law Tribunal NCLT. The Court reasoned that the NCLT acted well within its exclusive jurisdiction under Section 60(5) of the IBC to adjudicate matters arising in relation to the property of the Corporate Debtor, especially where the validity of tenancy agreements was questioned as a potential fraudulent device intended to defeat the insolvency process. Although an order is challenged as being "wholly without jurisdiction" (an exception to the writ remedy bar), the High Court found that the NCLT was expressly vested with powers under the IBC to deal with all issues pertaining to the custody, control, and realization of the Corporate Debtor's assets, thus confirming the jurisdictional competence of the NCLT.

The High Court's reasoning was substantially guided by the Supreme Court's pronouncements on the availability of a writ remedy when an efficacious statutory appeal exists, specifically relying on the principles laid down in *Radha Krishan Industries v. State of Himachal Pradesh & Ors.* This case was relied upon to delineate the crystallized exceptions to the rule of alternative remedy, namely where the impugned order violates natural justice, infringes fundamental rights, is wholly without jurisdiction, or challenges the vires of a statute. By analyzing the statutory duties of the IRP, RP, and Liquidator under Sections 18, 25, and 35 of the IBC, the Court concluded that the NCLT was indeed legislatively intended to decide all incidental and ancillary issues regarding the assets of the Corporate Debtor, thereby affirming that the NCLT's order fell outside the "wholly without jurisdiction" exception.



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SIGNIFICANT CASE LAWS

IBC Override: No Electricity Dues Recovery Against Auction Purchaser Due to Section 238, Says Allahabad HC

The High Court of Judicature at Allahabad, in *M/S Dharti Agro Industries Pvt. Ltd. v. The Managing Director, Pashchimanchal Vidyut Vitran Nigam Ltd And Others* held that the electricity distribution company cannot refuse a new electricity connection to the successful auction purchaser of a corporate debtor's asset on the grounds of outstanding dues owed by the erstwhile owner. The Court quashed the order demanding payment of arrears, reasoning that the Insolvency and Bankruptcy Code (IBC), 2016 is a special and later enactment that, by virtue of its Section 238 overriding clause, takes precedence over the provisions of the Electricity Act, 2003 and the U.P. Electricity Supply Code, 2005. The outstanding electricity dues of the corporate debtor, including any amount that may constitute a 'charge' on the assets, must be recovered through the 'waterfall mechanism' prescribed under Section 53 of the IBC, classifying the electricity company as a secured or operational creditor.

The judgment heavily relied on the Supreme Court's ratio in *Paschimanchal Vidyut Vitran Nigam Ltd. vs. Raman Ispat Private Ltd.*, which directly addressed the conflict between the IBC and the Electricity Act, 2003. The Supreme Court in that case had clarified that the IBC's overriding provision in Section 238 means that the electricity company's claim against the corporate debtor must be decided by the Liquidator and paid according to the Section 53 waterfall mechanism. Furthermore, reliance was placed on the Supreme Court's ruling in *Tata Power Western Odisha Distribution Limited (TPWODL) & Anr. vs. Jagannath Sponge Private Limited*, which affirmed that the power company cannot insist on payment of arrears for grant of an electricity connection when the property is purchased through the liquidation process under the IBC.



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SIGNIFICANT CASE LAWS

Moratorium Blocks Consumer Complaints Against Corporate Debtors: Bombay HC

The High Court of Judicature at Bombay, Nagpur Bench, in *Srei Equipment Finance Limited v. Rajesh Bajirao Khandewar and Others* held that the order passed by the District Consumer Dispute Redressal Commission during the moratorium period imposed under the Insolvency and Bankruptcy Code IBC was non-est in law as far as the Corporate Debtor Company was concerned. The Court reasoned that the institution of the consumer complaint and the subsequent order for the return of the JCB machine fell squarely within the prohibition of continuing proceedings and executing judgments under Section 14(1)(a) of the IBC. Furthermore, the approval of the resolution plan under Section 31(1) of the IBC meant all claims not part of the plan stood extinguished and were binding on all stakeholders, thus frustrating the object of the IBC if such proceedings were allowed to continue.

In its analysis, the Court did not rely on a specific prior judgment as a direct precedent for the core legal issue but rather on the statutory provisions of the IBC itself, emphasizing the stringent nature of Sections 14 and 31. The reasoning was based on the interpretation of Section 14, which prohibits the institution or continuation of suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court or tribunal. The Court specifically analyzed the Consumer Commission's direction to return the machine upon payment of dues, concluding that it was "as good as a monetary decree," which is a claim falling under the definition of 'property' defined in Section 3(27) of the IBC, thereby activating the statutory bar to proceedings.



SIGNIFICANT CASE LAWS

NCLAT: Advance Consideration for Goods/Services is Operational Debt Under Section 5(21) of IBC

The National Company Law Appellate Tribunal, Principal Bench, New Delhi, in *Rakesh Bhailalbhai Patel v. Vasundhara Seamless Stainless Tubes Private Limited*, held that the claim for the refund of advance payment made for the purchase of goods constitutes a valid 'operational debt' under Section 5(21) of the IBC, and upheld the order initiating the Corporate Insolvency Resolution Process CIRP against the Corporate Debtor. The Tribunal reasoned that the debt had a direct nexus with the provision of goods, and the Corporate Debtor's failure to deliver the goods created a legal obligation to refund the consideration, even without an explicit refund clause, based on principles found in the Indian Contract Act, 1872. Furthermore, the Corporate Debtor's audited balance sheets, which explicitly reflected the amount as an 'Advance from Others' without any qualifying notes, constituted a clear and continuous admission of debt, rebutting the Appellant's claim of a pre-existing dispute or that the debt was extinguished.

The Tribunal's analysis on the nature of the debt was significantly anchored by the Supreme Court's judgment in *Consolidated Construction Consortium Ltd. v. Hitro Energy Solutions Pvt. Ltd.*. The Appellate Tribunal relied on this precedent to establish that the definition of 'operational debt' under Section 5(21) of the IBC is broad enough to encompass an amount paid in advance by a purchaser for goods or services, where those goods or services are not ultimately supplied. This reasoning confirmed that the Operational Creditor's claim for a refund, which flowed from the Corporate Debtor's failure to perform its obligation under the Sale Agreement, squarely qualified as an operational debt, thereby making the Section 9 petition maintainable.



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REGULATORY UPDATE:

IBBI Amends Liquidation Regulations to Streamline Asset Sale and Enhance Transparency

IBBI

भारतीय दिवाला और शोधन अक्षमता बोर्ड

Insolvency and Bankruptcy Board of India

The Insolvency and Bankruptcy Board of India (IBBI) has issued the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2025 (the Amendment) on October 14, 2025. This significant regulatory change aims to simplify and streamline the liquidation process, particularly concerning the methods available for the sale of the Corporate Debtor's assets. The Amendment modifies the IBBI (Liquidation Process) Regulations, 2016 and will apply prospectively, specifically to those liquidation cases where the sale as a going concern has not yet commenced. The primary focus of these changes is to rationalize the options for asset realization and enhance procedural clarity for the liquidator.

Deletion of the Committee of Creditors (CoC) Review (Regulation 31A) The Amendment omits clause (f) of sub-regulation (1) of Regulation 31A. Regulation 31A pertains to the Consultation Committee assisting the liquidator. The deleted clause (f) likely dealt with the requirement for the liquidator to seek the concurrence or review of the Consultation Committee for certain significant decisions, particularly those concerning the sale of assets. This deletion simplifies the decision-making process for the liquidator during liquidation, potentially making the process faster and more efficient by removing a layer of mandatory committee review or documentation. Regulation 32, which specifies the manner of sale of assets, has been significantly truncated by omitting clauses (e) and (f). The Amendment also makes...

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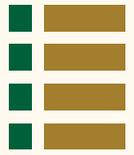
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