

IBC INSIGHTS

A MONTHLY NEWSLETTER FOR INSOLVENCY MATTERS



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Drawing the Pioneer Line with the Mansi Brar Hammer

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Editor's Note



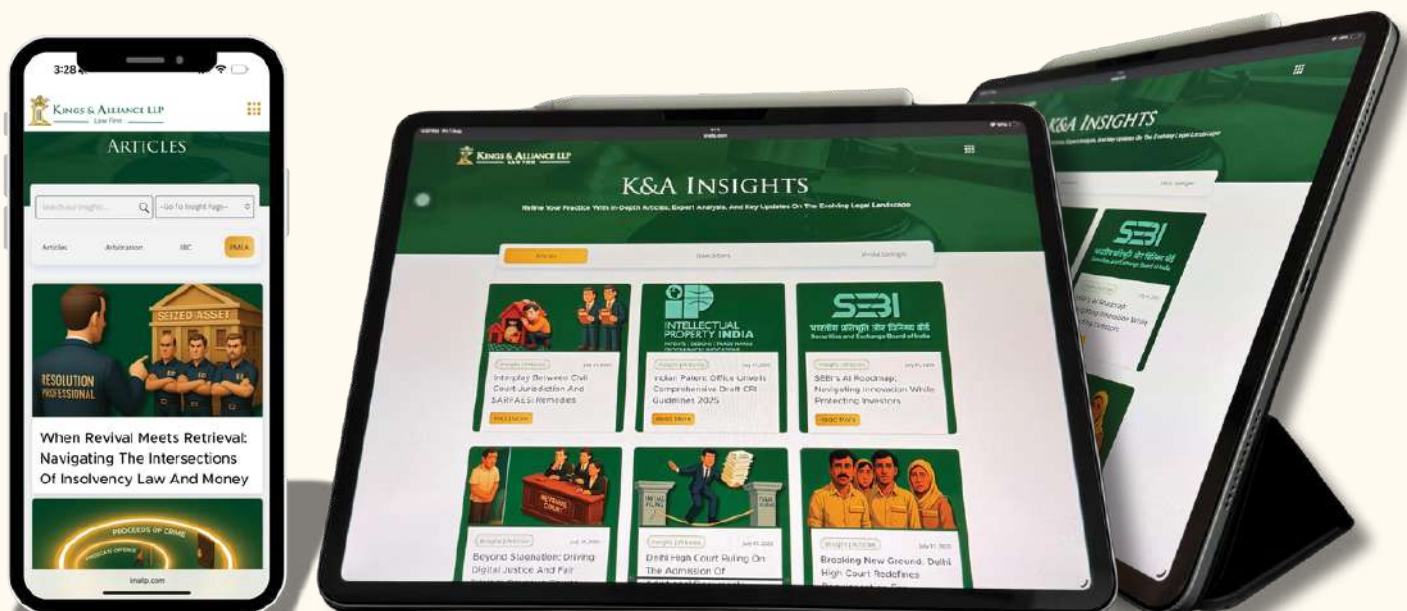
Shelter, not speculation, our cover story unpacks the **Supreme Court's Mansi Brar** judgment, clarifying how the IBC distinguishes a genuine homebuyer seeking a home from an investor using insolvency as an exit route. We break down what this means for project-wise CIRP and for “assured return” arrangements going forward.

Our in-depth analysis section covers the latest judgments on **personal guarantees, the reach of the IBC's non-obstante clause**, the interplay between **fraudulent trading and wrongful trading**, and when the moratorium does and does not restrict termination of contracts.

To cap it off, this edition highlights crucial developments on CoC commercial discretion, lender compliance, statutory timelines, and the IBC's overriding effect in post-resolution enforcement.

Let's dive in.

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COVER STORY

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From Financial Creditor to Speculator: Drawing the Pioneer Line with the Mansi Brar Hammer



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The Fine Print That Binds: Analyzing the 'Continuing' and 'Irrevocable' Guarantee in Modern Insolvency Law



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- Small Industries Development Bank of India v. Krishnakant Bagree (Personal Guarantor of M/s Bagree Alloys Ltd)
- M/s Meck Pharmaceuticals and Chemicals Pvt. Ltd. v. M/s Accurate Infrabuild Pvt. Ltd.
- National Asset Reconstruction Company Limited v. Era Infrastructure (India) Ltd.
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COVER STORY

From Financial Creditor to Speculator: Drawing the Pioneer Line with the Mansi Brar Hammer



The Court upheld the constitutional validity of including all allottees as financial creditors. Central to the definition of a financial debt under Section 5(8) of the IBC is the requirement of a disbursement "against the consideration for the time value of money."



Imagine a family—a couple who have painstakingly saved their entire life, sacrificing luxuries and enduring years of budgeting, to pool their resources for the single largest investment of their lives: their home. Now imagine the real estate developer, to whom they entrusted their life savings, is dragged into insolvency. This is the precarious situation faced by countless homebuyers across India. The introduction of the IBC and the subsequent inclusion of real estate allottees as "financial creditors" were legislative milestones aimed at protecting these genuine home seekers, granting them a seat on the CoC and a voice in the resolution process.

Yet, did this progressive step, intended to safeguard genuine home seekers, inadvertently open a gateway for misuse? This dynamic tension forms the core of the judicial discourse. The legislative milestone soon faced an unintended consequence: the rise of the "speculative investor." These are not families seeking shelter, but individuals and entities treating the IBC as a recovery mechanism, filing Section 7 petitions to merely secure a return on investment rather than the revival of the corporate debtor and project completion. This dual challenge—protecting genuine homebuyers while preventing the misuse of the IBC by speculators—was initially addressed by the Supreme Court in the landmark case of Pioneer Urban case ". The recent judgment in Mansi Bra case has not only reinforced the critical principle established in Pioneer Urban, distinguishing a speculative investor from a genuine homebuyer, but has also issued key directives aimed at overhauling the real estate...



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PIVOTAL ISSUES

The Fine Print That Binds: Analyzing the 'Continuing' and 'Irrevocable' Guarantee in Modern Insolvency Law

“Resignation from a Corporate Debtor's board does not automatically revoke a personal guarantee; an explicit and legally compliant revocation is required.”



The legal principles governing insolvency today are subject to constant revision, particularly regarding the liability of personal guarantors to corporate debtors under the IBC. A crucial point of legal contention revolves around the scope and revocation of continuing guarantees when a guarantor resigns and a corporate debt is subsequently renewed or enhanced. The NCLAT, Principal Bench, New Delhi, addressed this complex issue in the case of Subhash Aggarwal vs. State Bank of India & Anr.

The issue before the NCLAT was whether the Adjudicating Authority (NCLT) was correct in allowing the application under Section 95 of the IBC filed by the SBI to initiate insolvency resolution against the appellant, a personal guarantor, despite his claims of resignation, forgery, and material alteration of the original guarantee deed. The Tribunal, comprising Justice Ashok Bhusan and Mr. Barun Mitra, Member (Technical), ultimately held that the original Guarantee Deed was a continuing and irrevocable guarantee, and the guarantor remained liable at least to the extent of the debt sanctioned before his resignation. The Appellant, joined the Corporate Debtor as an Executive Director in 2008 and signed a personal guarantee for a particular sum in favour of SBI on 25.08.2009. The credit facilities were subsequently renewed and enhanced multiple times. The Appellant resigned from the Directorship on 13.02.2012. Following the resignation, the bank renewed and enhanced the credit facilities, signing Supplementary Agreements of Loan and Deeds of Guarantee, with signatures allegedly affixed on behalf of the Appellant, which he claimed were forged...



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PIVOTAL ISSUES

The Invincible Shield: Moratorium's Supremacy Over State Regulations on Security Deposit



The preservation of a corporate debtor's assets stands as the unshakeable bedrock of the entire insolvency regime. Without this fundamental principle, the very 'time of calm' the smooth, coordinated resolution process would immediately collapse into a chaotic scramble. The protective shield ensures value maximization, delivering crucial, equitable benefit to every competing stakeholder within the legal fray. This principle was recently reinforced in the case of Kotak Mahindra Bank Limited Vs Hybro Foods Private Limited, heard by the NCLT, Court-V, Mumbai Bench.

The key legal issue before the Coram, comprising Sh. Mohan Prasad Tiwari, Member (J), and Sh. Charanjeet Singh Gulati, Member (T), was whether an electricity distribution company could adjust a corporate debtor's security deposit against outstanding energy bills during the period of moratorium imposed under the IBC. The Tribunal primarily held that such an adjustment is a violation of the moratorium, affirming the overriding effect of the IBC over conflicting provisions of state-level electricity regulations. The Corporate Debtor was admitted into the CIRP on March 3, 2023, and later into liquidation on March 27, 2025. Prior to the CIRP, the Corporate Debtor had deposited certain sums as security deposit with the electricity department. This deposit was subsequently adjusted by the respondent against an outstanding energy bill on September 6, 2023, a date falling squarely within the CIRP moratorium period. The Applicant, RP contended that the security deposit was an asset of the Corporate Debtor. Its adjustment during the subsistence of the moratorium under...



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Unmasking Corporate Fraud: NCLAT Clarifies the Independent Scope of Section 66 under the IBC



Fraudulent conduct under Section 66(1) requires no 'due diligence' test to be proven



The contemporary legal focus has dramatically shifted, targeting the brazen impunity of those who would exploit a corporate debtor's final hours. In the vulnerable era of corporate insolvency, the law's sharpest instrument is now universally directed towards establishing an unyielding regime of accountability. The paramount objective is clear: to erect an absolute bulwark of deterrence against the fraudulent conduct of corporate insiders seeking to strip assets from the carcass of the Corporate Debtor. The NCLAT in *Swapan Kumar Saha v. Ashok Kumar Agarwal* has addressed this issue, the interpretation and application of Section 66 of the IBC, specifically the relationship between its sub-sections (1) and (2) relating to fraudulent and wrongful trading, respectively.

The NCLAT, Principal Bench, New Delhi, adjudicated this matter, with the judgement rendered by Arun Baroka, Member (Technical). The core issue before the court was whether the requirements for fraudulent trading under Section 66(1) of the Code must be mandatorily read with the 'due diligence' test for wrongful trading under Section 66(2), or if the sub-sections operate independently of each other. The court ultimately held that Section 66(1) and Section 66(2) of the IBC are independent, self-contained provisions and do not need to be read conjunctively. It affirmed that an application for fraudulent trading under Section 66(1) can be maintained on its own. The dispute arose from an application filed by the erstwhile RP/Liquidator against the Appellant, the Suspended Director of Corporate Debtor. The RP alleged that in 2013-14, the Appellant acquired some equity shares of a...



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PIVOTAL ISSUES

The IBC Moratorium's Limit: Section 14 is Not a Shield Against Contract Termination for Pre-Existing Breach



Section 14 is not a blanket shield against all contractual terminations.



When a corporation collapses, the fate of contracts hangs in the balance, igniting a fierce legal battle for supremacy in commercial jurisprudence. At the precipice of ruin, the foundational sanctity of contractual obligations becomes the ultimate test, demanding a delicate and perilous equilibrium between rescuing the debtor and honoring the rights of the creditor. The courtroom becomes an arena where debtor revival clashes head-on with creditor rights, a high-stakes drama where the very essence of commercial law is measured by the inviolability of a promise. The law focused in this scenario is primarily the IBC, specifically concerning the breadth of the moratorium under Section 14.

In the matter of Pradeep Upadhyay (Liquidator, M/s Dugal Associates Private Limited) v. Bhadohi Industrial Development Authority (BIDA), the NCLAT Principal Bench, New Delhi, in its judgment delivered by Arun Baroka, Member (Technical), primarily held that the termination of a contract initiated due to pre-existing, persistent breaches unrelated to the insolvency of the Corporate Debtor is not barred by the Section 14 moratorium. The core issue before the court was whether the termination and blacklisting of the Corporate Debtor by the Respondent after the commencement of the CIRP violated the moratorium provisions of the IBC. The Corporate Debtor was engaged by the Respondent for a civil construction project under an agreement dated October 7, 2016, with a stipulated completion date of October 14, 2017. Despite multiple extensions and reminders by Respondent due to the Corporate Debtor's failure to complete the work, the project remained unfinished. The CIRP...



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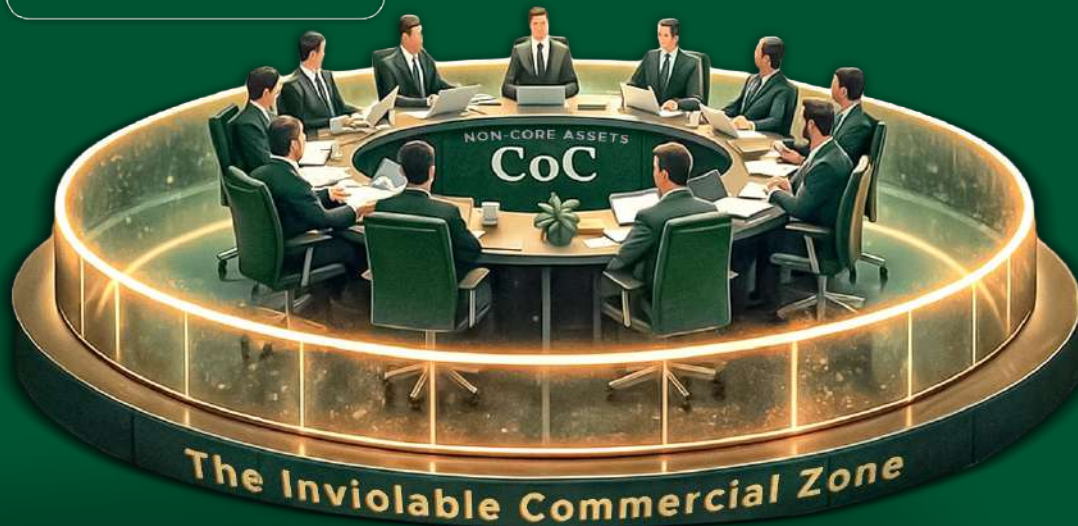
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PIVOTAL ISSUES

The Inviolable Commercial Zone: NCLAT Defines the Sacred Territory of CoC's Commercial Wisdom in Non-Core Asset Sale



The Adjudicating Authority cannot interfere with the CoC's reasoned decision to sell non-core assets for value maximization



In the high-stakes theater of evolving insolvency law, the line between commercial prudence and judicial oversight remains fiercely contested. The very survival of a stressed corporate entity under the IBC is vested in preserving the corporate debtor as a going concern and maximizing the value of its assets. One of such issues is the permissible extent of the AA's intervention regarding a CoC approved sale of the Corporate Debtor's encumbered, non-core assets to the SRAs of its sister concern companies, as opposed to inviting fresh bids from PRAs.

This pivotal legal focus, particularly concerning the disposal of non-core assets in the insolvency resolution, was meticulously examined by the NCLAT, Principal Bench, New Delhi in the composite judgment of Pankaj Mahajan v. Edelweiss Asset Reconstruction Asset Company & Ors and connected appeals. The Appellate Tribunal, comprising Arun Baroka, Member (Technical), primarily held that the commercial wisdom of the CoC in deciding to sell non-core, encumbered assets under Regulation 29 of the CIRP Regulations, even outside a standard auction, should not be lightly interfered with by the AA, provided it aims for value maximization and adheres to due process. The factual matrix involves three sister companies, all undergoing separate CIRPs. The Corporate Debtor, one of the sister companies, owned specific non-core land parcels in a particular area, which were encumbered with certain CoC members. These parcels, critically situated in and around the operational sites of the two other sister concerns, were deemed best utilized by the SRAs...

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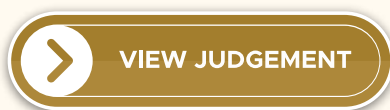


SIGNIFICANT CASE LAWS

Unsuccessful Resolution Applicant Lacks Locus Standi to Challenge Approved Plan: NCLAT Upholds CoC's Commercial Wisdom

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the matter of Ganga Construction (Consortium) v. Anil Kumar Mittal & Ors., held that the appeal filed by an Unsuccessful Resolution Applicant (URA) challenging the approved Resolution Plan was not maintainable. The NCLAT reasoned that the Appellant, despite initially submitting a plan, had failed to participate in the mandatory Challenge Mechanism and did not submit a final Resolution Plan as required, thus losing its locus standi to question the Corporate Insolvency Resolution Process (CIRP) or the eligibility of the Successful Resolution Applicant (SRA) under Section 29A of the Insolvency and Bankruptcy Code (IBC). Furthermore, the Tribunal noted that the Adjudicating Authority (NCLT) has limited jurisdiction to interfere with the commercial wisdom of the Committee of Creditors (CoC), and since the Resolution Plan was approved by 100% of the CoC's voting share and was not shown to be non-compliant with Section 30(2) of the IBC, the process was valid.

The judgment relied significantly on the established precedent set by the Supreme Court in K. Sashidhar v. Indian Overseas Bank & Ors., which articulates the limited scope of judicial review over the CoC's commercial decisions in the approval of a Resolution Plan. The NCLAT reaffirmed that once the CoC approves a Resolution Plan with the requisite majority, the Adjudicating Authority (NCLT) must only satisfy itself that the plan meets the requirements specified under Section 30(2) of the IBC, and no more. By applying this reasoning, the NCLAT concluded that since the entire CIRP process, including the negotiation and plan approval, had been previously examined and upheld by the Tribunal in a related appeal by another Resolution Applicant, and the SRA's plan was approved by 100% of the CoC, there was no ground for interference with the commercial wisdom exercised by the CoC.



SIGNIFICANT CASE LAWS

NCLT Indore Clarifies: Acknowledgment of Debt Must Occur Before Expiry of Limitation to Invoke Section 18 of the Limitation Act

The National Company Law Tribunal (NCLT), Indore Bench, Court No. 1, in the matter of Small Industries Development Bank of India v. Krishnakant Bagree (Personal Guarantor of M/s Bagree Alloys Ltd), held that the application filed under Section 95 of the Insolvency and Bankruptcy Code (IBC) to initiate the Personal Insolvency Resolution Process against the Personal Guarantor was barred by limitation and was consequently dismissed. The Tribunal's analysis was based on the fact that the debt of the Personal Guarantor, which was payable on demand following the invocation of the guarantee on August 25, 2015, had a three-year limitation period governed by Article 137 of the Limitation Act, 1963. Since the application was filed on August 21, 2023, well beyond the three-year period, the debt was deemed to be "hopelessly time-barred." The Tribunal also rejected the Applicant's reliance on a subsequent One-Time Settlement (OTS) offer, noting that an acknowledgment must be made before the expiration of the original limitation period to trigger a fresh period under Section 18 of the Limitation Act.

The judgment relied on several key precedents to establish its reasoning regarding limitation. Primarily, the Tribunal cited the Supreme Court's ruling in B.K. Educational Services Pvt. Ltd. v. Parag Gupta & Associates, which confirmed that the limitation period for filing an insolvency application under the Code is three years, governed by Article 137 of the Limitation Act, and begins from the date of default. Furthermore, regarding the commencement of limitation for a guarantee, the NCLT referred to the Supreme Court case of Syndicate Bank v. Channaverappa Beleri, which held that where a guarantee is payable on demand, the limitation period begins when the demand is made and the guarantor commits a breach by not complying. Finally, concerning the acknowledgment of debt, the Tribunal applied the principle established in Jignesh Shah & Anr. v. Union of India and reaffirmed in Dena Bank v. C. Shivakumar Reddy, emphasizing that for an acknowledgment, such as an OTS offer, to extend the limitation period under Section 18 of the Limitation Act, it must be made within the already subsisting period of limitation.



[VIEW JUDGEMENT](#)



SIGNIFICANT CASE LAWS

NCLAT Affirms Scope of 'Financial Debt': Advance for Profit-Sharing in Real Estate Excluded

The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, in the matter of M/s Meck Pharmaceuticals and Chemicals Pvt. Ltd. v. M/s Accurate Infrabuild Pvt. Ltd., held that the appeal filed by the Financial Creditor was maintainable on the question of limitation, but ultimately had to determine if the disbursed amount qualified as "financial debt" under Section 5(8) of the Insolvency and Bankruptcy Code (IBC). The NCLAT analyzed the transaction, noting that while the disbursement of money was undisputed, the requirement of "consideration for the time value of money" was not sufficiently proven. Although the Appellant claimed an oral agreement for 18% interest and 15% profit share, the evidence of TDS deductions on interest for only two initial years was deemed insufficient to conclusively establish an interest-bearing loan or a clear "commercial effect of a borrowing" for the entire duration of the facility, which is the essential element required for a debt to qualify as a financial debt under the IBC.

The Tribunal relied on the landmark judgment of the Hon'ble Supreme Court in Anuj Jain, Interim Resolution Professional for Jaypee Infratech Limited vs. Axis Bank Ltd. & Ors., which lucidly explained the core concept of "financial debt" under Section 5(8) of the IBC. The NCLAT emphasized the Supreme Court's ruling that the essential element of financial debt is a disbursement against the consideration for the time value of money, and this requirement must be found in the genesis of the debt. Additionally, the Tribunal noted the clarification in Orator Marketing (P) Ltd. v. Samtex Desinz (P) Ltd., which stated that an interest-free loan is not expressly excluded, provided the commercial effect of borrowing is decipherable. The NCLAT also referenced Innoventive Industries Ltd. v. ICICI Bank to frame its review of whether a "default" had occurred, requiring a legally "due" and unpaid debt.



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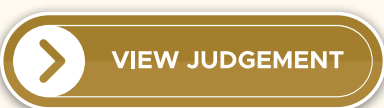


SIGNIFICANT CASE LAWS

Principal Borrower's Acknowledgment Binds Corporate Guarantor: NCLT, New Delhi

The National Company Law Tribunal (NCLT), New Delhi Bench, Court-IV, in the matter of National Asset Reconstruction Company Limited v. Era Infrastructure (India) Ltd., held that the Financial Creditor (FC) was entitled to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, who stood as a Corporate Guarantor, for a default in repaying a financial debt of over ₹385 crores. The Tribunal's analysis was centered on the fact that the debt and default were clearly established, particularly by the invocation of the Corporate Guarantee on April 3, 2019, which the FC cited as the date of default. Critically, the NCLT upheld the FC's contention that the application was within the period of limitation because the principal borrower's subsequent acknowledgment of the debt in its balance sheets and a letter dated September 23, 2021, effectively extended the limitation period under Section 18 of the Limitation Act, 1963, thereby binding the co-extensive liability of the Corporate Guarantor.

The Tribunal relied heavily on the precedent case law established by the Supreme Court in Laxmi Pat Surana v. Union Bank of India, which was cited to address the extension of the limitation period for a guarantor's liability. The reasoning adopted was that the liability of the guarantor is coextensive with that of the principal borrower, as per Section 128 of the Indian Contract Act. Therefore, an acknowledgment of debt made by the principal borrower, provided it is made within the subsisting period of limitation, constitutes a valid acknowledgment under Section 18 of the Limitation Act and effectively binds the guarantor, triggering a fresh period of limitation against them as well. The NCLT also noted the Supreme Court's ruling in BRS Ventures Investments Ltd. v. SREI Infrastructure Finance Ltd. which affirmed that CIRP proceedings against the principal borrower and the guarantor can proceed simultaneously.



SIGNIFICANT CASE LAWS

NCLT Holds Funds Disbursed Under Agreement Stipulating Guaranteed Returns Qualify as 'Financial Debt' in IBC

The National Company Law Tribunal (NCLT), Mumbai Bench, Court VI, in the matter of Sunil Tulsidas Gadekar & Anr. v. Vindhyawashini Marine Services Private Limited, held that the application filed under Section 7 of the IBC by the Financial Creditors was admissible, thereby initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. The Tribunal reasoned that the existence of a debt and default was conclusively established by the final and unchallenged Arbitral Award dated November 9, 2023, which directed the Corporate Debtor to pay the applicants a principal sum along with a simple interest of 45% p.a. The NCLT viewed the liability arising from this binding award as a "financial debt" providing a fresh cause of action for the applicants to file the Section 7 petition, thus overriding the Corporate Debtor's contention that the original transaction was merely a joint venture or an investment for profit-sharing, or that the application was merely an execution of a contract breach claim.

To address the Corporate Debtor's argument that the application was simply for the execution of an arbitral award and not based on a financial debt, the Tribunal placed reliance on the Hon'ble Supreme Court judgments in Kotak Mahindra Bank Limited v. A. Balakrishnan and Anr. and Dena Bank (Now Bank of Baroda) v. C. Sivakumar Reddy. The NCLT specifically quoted the Kotak Mahindra Bank decision, which affirmed the Dena Bank principle, holding that a liability arising in respect of a claim from a Recovery Certificate (which the Tribunal equated to an Arbitral Award that has attained finality) would constitute a "financial debt" within the meaning of Section 5(8) of the IBC, and its holder would consequently be a Financial Creditor entitled to initiate CIRP. Furthermore, regarding the nature of the original transaction, the Tribunal cited the NCLAT case of Adhunik Corporation Limited v. Shivam India Limited states that the IBC does not mandate explicit written terms for interest to establish a financial debt, so long as the funds were infused against the consideration for the "time value of money" or carried the commercial effect of a borrowing.

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REGULATORY UPDATE:

IBBI Mandates New Templates to Bar Tainted Beneficial Owners from IBC Rescues

IBBI

भारतीय दिवाला और शोधन अक्षमता बोर्ड
INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

The Insolvency and Bankruptcy Board of India (IBBI) has taken a decisive step toward fortifying the integrity of corporate insolvency proceedings. On November 6, 2025, the IBBI released a **Discussion Paper** proposing mandatory declaration templates for beneficial ownership and Section 32A eligibility, marking a shift from discretionary disclosures to a standardized, verifiable framework.

This move directly addresses concerns that the "clean slate" immunity offered to successful resolution applicants could be misused by individuals with questionable backgrounds hiding behind complex corporate structures. The proposals seek to amend Regulation 38 of the CIRP Regulations to compel every Prospective Resolution Applicant (PRA) to furnish two key documents: a detailed beneficial ownership statement (Annexure A) and a sworn affidavit on Section 32A eligibility (Annexure B). **Key Proposals for Enhanced Scrutiny** The initiative introduces a standardized, two-pronged disclosure mechanism aimed at ensuring transparency and compliance with the Code's core eligibility standards. 1. **Standardised Statement of Beneficial Ownership (Annexure A)** The draft template is modelled on the Reserve Bank of India's Master Direction – Know Your Customer (KYC) Direction, 2016. This ensures the insolvency framework aligns with established financial sector practices for identifying ultimate ownership. A "beneficial owner" is defined as any natural person who ultimately holds a controlling ownership interest (generally more than 10% in a...

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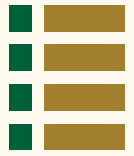


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