

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

Supreme Court Judgement:

Holder of a recovery certificate issued under the Recovery of Debts and Bankruptcy Act, 1993 is a 'financial creditor' under the Insolvency and Bankruptcy Code, 2016

Kotak Mahindra Bank Ltd. vs. A. Balakrishnan and Anr.,

The Supreme Court held that any person holding a recovery certificate issued by the Debt Recovery Tribunals is well within the scope of a 'financial creditor' under the IB Code and therefore such a person can file an application for initiating insolvency resolution process of the corporate debtor.

NCLAT Judgements:

Performance Bank Guarantee can be invoked or encashed even after moratorium has been imposed

Engineering Projects (India) Ltd. vs. Resolution Professional of D. Thakker Construction Pvt. Ltd.,

The NCLAT held that amount given by a bank under a performance bank guarantee does not belong to the corporate debtor and therefore is not an asset of the corporate debtor. Therefore, the provisions of the moratorium will not apply to such assets and the performance bank guarantee can be invoked even during the moratorium period under the Code.

Insolvency cannot be initiated on the basis of unpaid leave travel concession and leave encashment dues

Kishore K. Lonkar vs. Hindustan Antibiotics Ltd.,

The NCLAT held that 'welfare claims' such as gratuity, earned leave encashment, unpaid leave travel concession, etc., that arise after cessation of employment are not 'operational debt' under the Code.

Joint Sale of assets of the corporate debtor under liquidation and the guarantor under SARFAESI Act is permitted

Ayan Mallick vs. Pratim Bayal, Liquidator & Ors.,

The NCLAT held that a joint auction of the assets of the corporate debtor under liquidation and that of the guarantor under the SARFAESI Act is permitted as this will lead to maximization of the assets of the corporate debtor.