

I – Supreme Court cases

1

Date 23-Oct-18

In the Transmission Corporation of Andhra Pradesh Ltd v/s Equipment Conductors
matter of and Cables Ltd

Issue Application under Sec 9 in respect of disputed claims

Case in brief Claims of the Respondent were subject matter of arbitration and an award was passed rejecting the claims as time-barred
NCLAT order does not discuss merits of the case but contains a veiled threat directing the Appellant to pay the disputed amount failing which CIRP proceedings would be initiated
Reference was made to Mobilox Innovations Pvt Ltd v/s Kirusa Software Pvt Ltd wherein Hon'ble SC held that in case of existence of real dispute, IBC provisions cannot be invoked
Principle in above case was held to squarely apply to present case
In the normal course, matter should be remanded to NCLAT. However, as Hon'ble SC examined the merits of the case and found order of NCLT Hyderabad justified, it dismissed the insolvency case and miscellaneous applications before NCLAT

Judgment Appeal allowed and impugned order of NCLAT dated 4-Sep-18 set aside

2

Date 11-Oct-18

In the B K Educational Services Pvt Ltd v/s Parag Gupta and Associates
matter of

Issue Applicability of Limitation law

Case in brief NCLAT held that Limitation law does not apply. Even if it were assumed to be attracted, the applications would be within time as 3 years has not elapsed from commencement of IBC on 1-Dec-16
As per the Insolvency Law Committee Report of Mar-18, "it was unanimously agreed that intent of IBC could not have been to give a new lease of life to debts which are time-barred." It also observed "given that the intent was not to package IBC as a fresh opportunity for creditors who did not exercise their

remedy under existing laws within the prescribed limitation period, the Committee thought it fit to insert a specific section applying limitation to IBC. The relevant entry under Limitation law may be on a case to case basis. It may not apply to corporate applicants as these are initiated for their own debts and not as creditor's remedy"

Sec 238A would not serve its object unless it is construed as being retrospective, as otherwise, applications seeking to resurrect time-barred claims would have to be allowed, not being governed by the law of limitation

In view of our finding that Limitation Act has been applied from inception of IBC, it is unnecessary for us to go into the arguments based on the doctrine of laches

Judgment Appeals remanded to NCLAT to decide on them afresh in light of this judgment

3

Date 4-Oct-18

In the matter of Areclormittal India Pvt Ltd v/s Satish Kumar Gupta

Issue Ineligibility under Section 29A of resolution applicants

Case in brief SC held that a purposeful and contextual interpretation of Sec 29A is imperative to find real individuals acting jointly or in concert for submission of a resolution plan

Also, whether a person is or is not acting in concert with another depends on the facts of each case

SC has used "curiouser and curiouser" from Lewis Carroll's Alice in Wonderland to describe the wonderland of Rewant Ruia (Refer Rewant Ruia shareholding structure and Numetal Chronology)

As Numetal was newly incorporated, it relied heavily on credentials of its constituent shareholders for financial and technical matters necessitating lifting of corporate veil to meet parameters of request for proposal

Though at the time of submitting second resolution plan i.e. on 2-Apr-18 Rewant Ruia had apparently disappeared from the scene, earnest money deposit of Rs. 500 crores deposited by AEL at the time of first resolution plan continued. Further changes in Numetal's corporate structure had been made to avoid being declared ineligible under Section 29A(c). SC held that both the first and second resolution plans submitted by Numetal would be hit by Sec 29A(c)

On ineligibility of VTB due to sanctions imposed by authorities of United States and European Union, SC held that these were politically motivated as there is no misconduct on the part of VTB, and do not attract Sec 29A(i)

VTB's offer before US Commodity Futures Trading Commission to (i) cease and desist from violating certain regulations, (ii) pay a monetary penalty of US\$ 5 million and (iii) consent not to enter into privately negotiated futures options through any US-based futures exchange for 2 years is not a prohibition for trading in securities or accessing securities markets attracting Sec 29A(f) read with sub-clause (i)

Refer L N Mittal's shareholding structure and Uttam Galva and KSS Petron Chronology

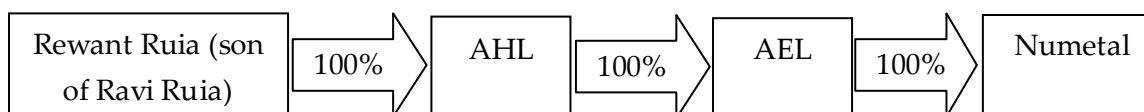
SC rejected AMIPL's contention that AMNLBV never appointed directors or exercised voting rights in Uttam Galva as the de jure position of foreign promoter was shown in the latter's annual reports all along

SC also held that sale by Fraseli of its KSS Global shareholding was undertaken with the sole objective of avoiding situation under Sec 29A(c)

Ordinarily, these appeals would have been disposed of by declaring both resolution applicants as ineligible under section 29A(c). However, counsel for CoC requested for one more opportunity to resolution applicants to pay off their debts. SC acceded to this request and exercised its power to ensure complete justice under Article 142 and also as law for Sec 29A was being laid down for the first time by this judgment

Judgment One more opportunity allowed to resolution applicants to pay off NPAs of their related entities within 2 weeks from receipt of this order. If resolution plans are re-submitted after paying off dues as aforesaid, CoC given 8 weeks to choose the best resolution plan

"Looming presence" of Rewant Ruia



Numetal Chronology

Date	Event	Remarks
Prior to 2-Aug-17	ESIL classified as NPA for more than 1 year prior to commencement of CIRP	
13-Oct-17	Numetal incorporated in Mauritius	Expressly for submitting resolution plan for ESL
13-Oct-17	AEL and AHL in Mauritius	
18-Oct-17	AEL transferred 26.1% in Numetal to ECL (object being to meet minimum tangible net worth requirement)	ECL ultimately owned by Virgo Trust and Titan Trust, beneficiaries of which are companies owned by Ruia family
19-Oct-17	Rewant Ruia settled an irrevocable	Beneficiaries of Crescent Trust are general

Landmark Judicial Pronouncements under IBC

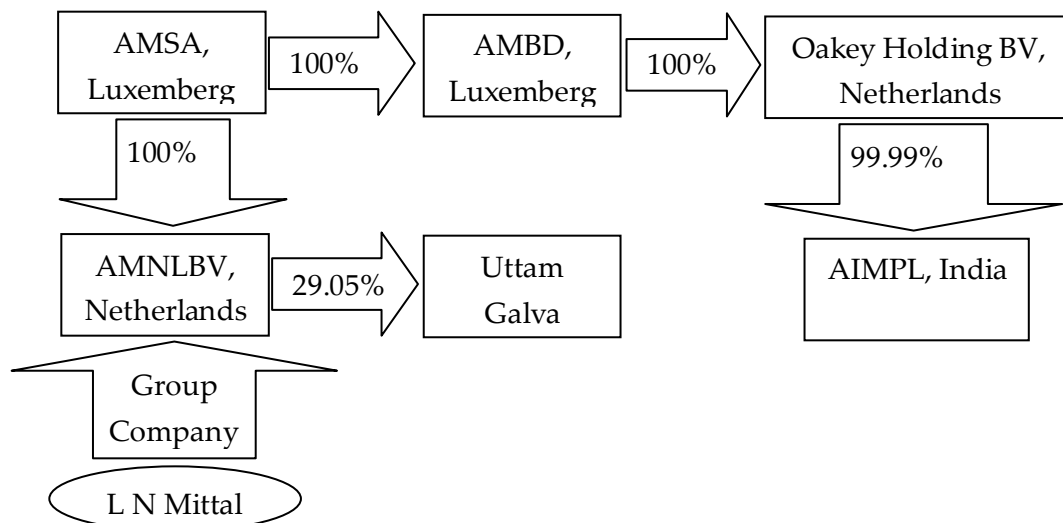
14-Nov-18

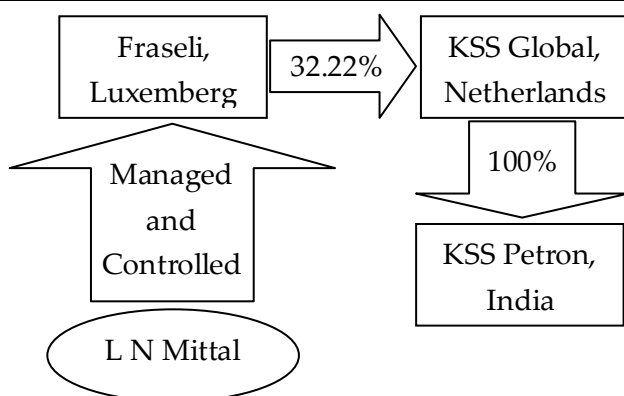
	and discretionary Crescent Trust and settled share capital of AHL therein at US\$ 10,000	charities and entities owned by Rewant Ruia and his uncle Shahshikant Ruia
20-Nov-17	Rewant Ruia settled another irrevocable and discretionary Prisma Trust	Beneficiaries of Prisma Trust are general charities and Solis Enterprises Ltd, Bermuda, owned by Rewant Ruia
22-Nov-17	Trustees of Prisma Trust acquired 100% shares of AHL for US\$ 10,000 from trustees of Crescent Trust	
22-Nov-17	ECL transferred 26.1% of its holding in Numetal to VTB (whose shares are held by Russian Government)	
22-Nov-17	AEL also transferred 13.9% of its holding in Numetal to VTB	
22-Nov-17	AEL also transferred 25.1% of its holding in Numetal to Indo	
22-Nov-17	AEL also transferred 9.9% of its holding in Numetal to TPE	
29-Mar-18	AEL holding in Numetal was zeroised by transfer to other 3 shareholders	

Shareholding of Numetal on 12-Feb-18 i.e. date of submitting first resolution plan

- i. 40 % - VTB
- ii. 25.1% - Indo
- iii. 9.9% - TPE
- iv. 25% - AEL

Lifting corporate veil – L N Mittal





Uttam Galva Chronology

Date	Event	Remarks
4-Sep-09	Co-Promotion Agreement between AMNLBV (foreign promoter) and Miglani family (promoters of Uttam Galva)	Non-Independent Directors to be appointed by AMNLBV and Miglanis equally Miglanis held 31.82% and balance held by public
31-Mar-16	Uttam Galva's account classified as NPA by Canara Bank and Punjab National Bank	Classification continued for more than 1 year till 2-Aug-17
7-Feb-18	AMNLBV sold its holding in Uttam Galva as an off-market sale to Sainath Trading Pvt Ltd (sale price Rs. 1 per share when market price was Rs. 19.50 per share and cost price was Rs. 120 per share)	No open offer was made as it was exempt under Regulation 10 of SEBI Takeover Regulations Consent of lenders of Uttam Galva was also not obtained, though required as per Non Disclosure Undertaking executed by AMNLBV

KSS Petron Chronology

Date	Event	Remarks
19-May-11	Shareholders' Agreement between KSS Holding, KSS Infra EALQ, Fraseli and KSS Global	First 3 companies given right to appoint equal number of Directors of KSS Global
30-Sep-15	KSS Petron declared NPA	
9-Feb-18	Fraseli divested its holding in KSS Petron	Directors appointed through Fraseli on Board of KSS Global resigned

Important dates and events in ESIL insolvency

Date	Event
27-Jun-17	Application u/s 7 by SBI and SCB in NCLT, Ahmedabad
2-Aug-17	Matter admitted
2-Oct-17	Expressions of Interest invited
23-Nov-17	Sec 29A introduced
12-Feb-18	Numetal and ArcelorMittal submit bids
21-Mar-18	Held bids ineligible due to Numetal's close connection with Essar Group's Rewant Ruia and ArcelorMittal's stake in NPA accounts (Uttam Galva and KSS Petron)
20-Mar-18	Numetal moves NCLT against rejection
26-Mar-18	ArcelorMittal challenges disqualification in NCLT
2-Apr-18	Second round of bids invited
19-Apr-18	NCLT asks CoC to re-consider first round of bids
26-Apr-18	Numetal and ArcelorMittal move NCLAT against disqualification of bids in first round
7-Sep-18	NCLAT holds Numetal's Rs. 37,000 crore bid in second round to be valid (after exit of Rewant Ruia) ArcelorMittal asked to clear dues of Rs. 7,000 crores within 3 days
10-Sep-18	ArcelorMittal moves SC
20-Sep-18	Numetal tells SC that NCLAT erred in allowing ArcelorMittal to pay dues after bidding
4-Oct-18	SC allows ArcelorMittal, Numetal to bid after clearing dues
18-Oct-18	ArcelorMittal to clear dues \$ 1 billion and bid for Essar
26-Oct-18	Ruias offer to clear all dues of banks and pull Essar out of insolvency proceedings
26-Oct-18	SCB files caveat petition as dissenting financial creditor in NCLT
28-Oct-18	Ruias to deleverage Rs. 1.25 lakh crores debt if its offer for Essar Steel is accepted

Menaka Doshi in BloombergQuint (29-Oct-18) "Ruia offer is bigger but is it better?"

- 4 hours after CoC voted in favor of ArcelorMittal's plan offering Rs. 50,000 crores, Ruias offered to clear all dues for Rs. 54,389 crores (including upfront payment of Rs. 47,507 crores)
- This amounts to full recovery for lenders against ArcelorMittal's offer which envisages 80% recovery
- In first round, Numetal offered Rs. 17,000 crores against ArcelorMittal's Rs. 37,000 crores
- When ArcelorMittal offered Rs. 42,000 crores (and further sweetened it with equity infusion of Rs. 8,000 crores), Numetal bettered the offer to Rs. 37,000 crores
- Ruias offered to settle in Apr-18 and Jul-18, but CoC rejected their offer (as no details of financial arrangements were provided – lenders may thus doubt the offer)

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- AreclorMittal, on the other had paid earnest money of Rs. 500 crores and a bank guarantee of Rs. 4,000 crores
 - Whether Essar can be spared insolvency in light of newly inserted Sec 12A (withdrawal by applicant with 90% CoC approval) and Regulation 30A (withdrawal before invitation of expression of interest)? Unlikely, as these would apply prospectively
 - SC would decide final outcome

4

Date 14-Aug-18

In the State Bank of India v/s V Ramakrishna
matter of

Issue Applicability of moratorium under Sec 14 to personal guarantor of CD

Case in brief Respondent being Managing Director, issued a personal guarantee with respect to credit facilities availed by CD

On default, Appellant proceeded under SARFAESI to recover dues of Rs. 61.13 crores

CD then preferred an application u/s 10 of IBC which was admitted on 19-Jun-17. During pendency of these proceedings, Respondent took the plea that moratorium u/s 14 would apply to personal guarantor as well. NCLT held that since u/s 31, a Resolution Plan would bind the guarantor as well and since after the creditor is proceeded against, the guarantor stands in the shoes of the creditor, allowed the interim application.

NCLAT dismissed the appeal and similarly reasoned that since personal guarantor can also be proceeded against and forms part of Resolution Plan which is binding on him, he is part of the CIRP process against CD and moratorium u/s 14 would apply to him.

K V Vishwanathan who assisted as Amicus Curiae (impartial advisor) pointed out that earlier debt recovery statutes were heavily loaded in favor of CDs which has resulted in huge amounts due to banks and FIs. He also drew attention to Sec 22 of SICA which did not permit creditors to proceed against guarantors without BIFR approval. Repeal of SICA and several later enactments including Companies Act, 2013 which omitted a provision akin to Sec 22 shows that Sec 14 of IBC is a deliberate enactment. He also stated that the IBC amendment on 6-Jun-18 which substituted Section 14 (3) was clarificatory and hence retrospective. Hon'ble SC concurred with reasoning of Bombay High Court in Sicom Investments and Finance Ltd v/s Rajesh Kumar Drolia.

Key recommendations of Insolvency Law Committee in its Report dated 26-Mar-18 were also considered i.e. the liability of the principal debtor and the surety is co-extensive and is joint and several. Also, this characteristic of such contracts i.e.

of having remedy against both the surety and the corporate debtor, without the obligation to exhaust the remedy against one of the parties before proceeding against the other, is of utmost important for the creditor and is the hallmark of a guarantee contract, and the availability of such remedy is in most cases the basis on which the loan may have been extended

Judgment Impugned judgment of NCLAT set aside and appeals allowed

5

Date 10-Aug-18

In the Pr Commissioner of Income Tax v/s Monnet Ispat and Energy Ltd
matter of

Issue Applicability of moratorium under Sec 14 to ITAT order

Case in brief In its order dated 4-Sep-17, Hon'ble Delhi High Court held that moratorium u/s 14 would apply to order of Income Tax Appellate Tribunal in respect of tax liability of CD

Reference was made to judgment of Hon'ble SC in Innoventive Industries Ltd v/s ICICI Bank

Hon'ble SC held that given the overriding effect of Sec 238, IBC will prevail in case of inconsistency with Income-tax Act

Reference was made to Dena Bank v/s Bhikhabhai Prabhudas Parekh and Co and it was made clear that income-tax dues, being in the nature of crown debts, do not take precedence even over secured creditors who are private persons

Judgment Hon'ble Delhi High Court was correct in law. Special Leave Petitions are dismissed

6

Date 25-Jan-18

In the Shivam Water Treaters Pvt Ltd v/s Union of India
matter of

Issue Validity of IBC/ NCLT

Case in brief Ahmedabad HC requested to address relief limited to action taken by Respondents or order passed by NCLT

HC also requested not to enter into any pertaining to validity of IBC or constitutional validity of NCLT

	Petitioner not debarred from challenging composition of NCLT or constitutionality of IBC before SC under Article 32 of Constitution (Right to Constitutional Remedies)
Judgment	Special leave petition stands disposed off accordingly with no order as to costs
7	
Date	23-Oct-17
In the matter of	Alchemist Asset Reconstruction Company Ltd v/s Hotel Gaudavan Pvt Ltd
Issue	Application under Sec 9
Case in brief	Several proceedings had been undertaken and ultimately NCLT admitted petition under IBC, moratorium came into effect and an IRP was appointed A writ petition against said NCLT order (which was admitted only to the extent of challenge to vires of the Insolvency Code) is pending, while a special leave petition thereagainst was dismissed Despite moratorium arbitration proceedings were commenced which were questioned by NCLT order and notice Appeal u/s 37 of Arbitration and Conciliation Act was filed and appeal was asked to be registered Order admitting arbitration set aside. Criminal proceedings to prevent IRP proceedings were quashed
Judgment	Appeal allowed and steps taken under IBC would continue unimpeded by any order of any other court
8	
Date	19-Sep-17
In the matter of	Surendra Trading Company v/s Juggilal Kamalapat Jute Mill Co Ltd
Issue	Nature of period allowed for rectification of application
Case in brief	Question with which SC is concerned is whether 7 days period for rectifying defects is mandatory or directory SC held that provision of removing defects is directory but in order to address instances where applicants/ their counsel may show laxity by not removing objections within time granted (under presumption that unlimited time would

	be granted), a balanced approach is prescribed i.e. applicant to show reason why defects could not be removed within 7 days
Judgment	Appeals allowed
9	
Date	24-Jul-17
In the matter of	Lokhandwala Kataria Construction Pvt Ltd v/s Nisus Finance and Investment Managers LLP
Issue	Exercise of power to allow compromise
Case in brief	Interesting question whether under rule 8 (I&B (Application to Adjudicating Authority Rules)) and rule 11 (National Company Law Appellate Tribunal Rules), NCLAT could utilize inherent power to allow compromise before it after admission of matter. SC agreed with NCLAT that it could not be done SC utilized its powers under Article 142 of the Constitution (to make such decree/ order as is necessary for doing complete justice in any matter before it) to put quietus to matter before it Consent terms entered into by parties taken and undertaking of appellant to abide thereby in toto recorded
Judgment	Appeal disposed off
10	
Date	21-Feb-17
In the matter of	Bank of New York Mellon London Branch v/s Zenith Infotech Ltd
Issue	SICA repeal
Case in brief	On 23-Jul-13, Respondent filed a reference before BIFR was refused registration by Registrar on the ground that R was not an industrial company Subsequent appeals to Secretary and Chairman were dismissed While the matter was before BIFR, a winding-up petition was admitted by Bombay High Court on 30-Jul-13 and order of admission was affirmed by Division Bench in appeal Present proceedings have arisen out of writ petition challenging orders of Secretary and Chairman of BIFR rejecting reference Two questions arose in petition before Delhi High Court i.e. whether dismissal

by Secretary and Chairman of BIFR was within jurisdiction of said authorities and secondly (implicit question if positive answer to the first question) is whether in view of winding up order there is scope for registration of reference under SICA if order declining registration is understood to be non est
SC decided that High Court was correct in concluding that refusal of registration by BIFR was non est in law and the reference must be understood to be pending thereby attracting sec 252 of IBC
The second question is redundant
SC disposed appeal by holding that it would be open to Respondent to seek remedies u/s 252 of IBC

Judgment Appeal disposed off accordingly

II – High Court cases

1 Allahabad
Date 27-Aug-18

In the Independent Power Producers Association of India v/s Union of India
matter of

Issue Validity of Sec 35 AA and Sec 35AB of Banking Regulation Act, 1949

Case in brief This petition challenges the vires of Sec 35 AA (RBI direction to banks to initiate CIRP) and Sec 35 AB (RBI directions for stressed assets) of the Banking Regulation Act, 1949
It also seeks to quash RBI's order dated 5-May-17 as well as its 12-Feb-18 circular
As per Petitioners, during last 5 years, various factors like fuel supply crisis in thermal sector, evacuation system constraints etc. eroded financial credit worthiness of power sector which account for almost 23% of India's total gross NPAs
Petitioners contended that the RBI circular is arbitrary and violates Article 14 (equality before law) as it equates the heavily regulated electricity sector with other unregulated sectors
Also, if implemented, it would prove disastrous for the power sector. The need for a separate framework for the power sector as acknowledged by parliamentary Standing Committee on Energy was emphasized
The circular requires independent credit evaluation by credit rating agencies for restructuring of large accounts. However, list of credit rating agencies was approved by RBI on 21-May-18
RBI circular addresses only financial issues and not sectoral issues; hence, systemic issues like cancellation of coal blocks, tariff-related disputes, project

	<p>implementation delays which are partly responsible for affecting stress in the power sector have been ignored</p> <p>Hon'ble Dilip Bhosale, Chief Justice opined that every effort should be made to ensure that power projects with huge investments do not become NPAs. It appears that deadline provided under RBI's circular to reach 100% consensus is perhaps impossible to meet. Whether RBI is empowered to issue directions under Sec 35AA and Sec 35AB and expected to take into account sectoral issues needs to be addressed at final stage of hearing. But reality of electricity sector cannot be overlooked</p> <p>No interim relief to be granted. However, Petitioners may apply for urgent interim relief if need be. Central Government to consider commencing consultative process under Sec 7(1) of RBI Act and conclude within 15 days. High Level Empowered Committee to include senior RBI official and to submit its report within 2 months of its constitution</p>
Judgment	<p>This order will not curtail rights of FCs under Sec 7 or RBI in issuing directions in specific cases under Sec 35AA</p>
2 Date	<p>Hyderabad 26-Jul-18</p>
In the matter of	<p>Leo Edibles & Fats Ltd v/s Tax Recovery Officer</p>
Issue	<p>IBC proceedings take precedence over actions under other laws</p>
Case in brief	<p>Petitioner aggrieved due to refusal to register its purchase of immovable property in liquidation proceedings under IBC relating to VNR Infrastructures Ltd</p> <p>Sub-registrar's refusal was at behest of Income-tax Department which claimed a charge over the property</p> <p>In Ananta Mills Ltd (in liquidation) v/s City Deputy Collector, Ahmedabad, Hon'ble Gujarat High Court held that purpose of attachment appeared to be to prevent alienation of the property but creditor does not acquire any interest in the property due to attachment. It was also held that attachment simpliciter, of properties of a company ordered to be wound up subsequently, without any further action would be of no consequence and the official liquidator could dispose of the property wholly ignoring the attachment</p> <p>While Sec 178 of the Income-tax Act, 1961 provides for priority in appropriation of amounts set aside by liquidator for clearing tax dues, it stands excluded as per Sec 247 of IBC read with Third Schedule</p> <p>Despite order of attachment dated 27-Oct-16 i.e. before initiation of liquidation</p>

	<p>proceedings, Tax Recovery Officer cannot claim any priority. Sec 26 (3) (b) clearly provides that liquidation estate would include assets that may or may not be in CD's possession (including but not limited to encumbered assets) Tax Recovery Officer is at liberty to submit its claim before liquidator and Sub-registrar shall register sale transaction in favor of petitioner</p>
Judgment	Writ petition allowed declaring legal position as abovestated
3 Date	Chandigarh 1-May-18
In the matter of	SEL Manufacturing Co Ltd v/s Union of India
Issue	Numerous reliefs sought including setting aside of NCLT order dated 11-Apr-18
Case in brief	<p>Petitioners are one of India's biggest textile companies providing direct/ indirect employment to over 50,000 persons. They set up a spinning unit in Madhya Pradesh at a cost of Rs. 2,500 crores and contend that they turned into NPA due to actions/ inaction of (i) Government in releasing subsidy of Rs. 542 crores and (ii) lenders in releasing working capital and balance term loan aggregating Rs. 1,000 crores</p> <p>At one point in time the NPA was less than the subsidy receivable and it was due to lenders inaction which precipitated the situation. All these points were raised before NCLT but it proceeded to admit the application under Sec 7 without taking cognizance thereof</p> <p>These and other issues cannot be decided by AA or under the IBC and only this Court is competent to look at all pleas raised by the Petitioners. The reliefs sought in this write petition cannot be granted in an appeal under Sec 61 of IBC</p> <p>Respondents averred that writ jurisdiction cannot be invoked to seek reliefs originating out of contractual obligations</p> <p>Hon'ble Court held that many of the points raised are questions of fact which can be adjudicated upon by NCLAT in appeal proceedings. Also there are no extraordinary circumstances which allow Petitioners to avail remedies beyond IBC. Observations made herein are prima facie opinion only for deciding instant writ and these shall not be taken as expression of views on merits</p> <p>To enable Petitioners to avail alternative remedy of statutory appeal, IRP directed not to take-over management of Petitioner till 15-May-18 to enable them file statutory appeal</p>
Judgment	Writ petition is disposed of in above terms

4	Calcutta
Date	2-Feb-18
In the matter of	Akshay Jhunjhunwala v/s Union of India
Issue	Distinction between FC and OC unjust
Case in brief	<p>Petitioners have assailed vires of Sec 7/ 8/ 9 of IBC stating that distinction made between FC and OC creditor is unjust, unfair, irrational and unintelligible. Also, undue preference has been given to FC and a situation may arise where an OC, despite having a claim greater than that of FC may have no say in CIRP as only FC is entitled to be on CoC</p> <p>Also, AA is not empowered to look into validity and sufficiency of FC's claim whereas a deeper scrutiny is sought in the case of OC's claim</p> <p>Further CD is not permitted to claim set-off or make a counter claim against FC</p> <p>Hon'ble SC in Bhavesh D Parikh v/ In the matter of has held that Courts should be slow in staying applicability of a piece of legislation in economic spheres unless manifestly unjust or glaringly unconstitutional</p> <p>In Government of Andhra Pradesh v/s P Laxmi Devi Hon'ble SC held that Courts should presume constitutionality while dealing with legislations in economic matters</p> <p>Bankruptcy Law Reforms Committee gives the rationale for treating FCs and OCs differently</p> <p>In Innoventive Industries Ltd v/s ICICI Bank, contentions of breach of principles of natural justice were found to be misplaced</p>
Judgment	The writ petition fails and is dismissed
5	New Delhi
Date	11-Dec-17
In the matter of	Power Grid Corporation v/s Jyoti Structures
Issue	Petition under Sec 34 of Arbitration
Case in brief	<p>Petition under Sec 34 of Arbitration law for setting aside arbitral award favoring Respondent. Award is pure money decree favoring Respondent</p> <p>Question arises if proceedings under Sec 34 need to be stayed as per Sec 14 of IBC (moratorium)</p> <p>It is concluded that present proceedings would not be hit u/s 14 (1) (a) as</p>

moratorium is intended to prohibit debt recovery actions against assets of CD
Continuation of proceedings u/s 34 which do not endanger, diminish, dissipate
or adversely impact assets of CD are not prohibited u/s 14 (1) (a) of IBC
Second limb of objection raised is once moratorium is declared, decision to
continue objections need to be taken by RP only. In peculiar circumstances
where Petitioner filed counter claim before arbiter but was disallowed, it would
be appropriate if RP be made aware of these proceedings and he consents to its
continuation

Judgment

6 New Delhi
Date 5-Dec-17

In the matter of ATV Projects v/s Union of India

Issue Constitutional validity of SICA Repeal Act

Case in brief Present writ petition challenges constitutional validity of Sec 4 (b) of SICA Repeal Act
This Court, vide order dated 1-Nov-17, in a similar case (Ashapura Minechem) has rejected said challenge
It is clear view of the Court that once a law is repealed and a new legislation has been put in place, it is not open for anyone to contend that it should be continued to be governed by the old enactment except where actions under existing laws had concluded
Grievance of Petitioner is that its scheme pending before BIFR was at very advanced stage. Petitioner vehemently urges that abatement of proceedings would result in sever injustice to it

Judgment Validity of Sec 4 (b) is upheld

7 New Delhi
Date 1-Nov-17

In the matter of Ashapura Minechem v/s Union of India

Issue Vires of certain provisions of SICA Repeal Act

Case in brief Counsel for Petitioner has given up prayer challenging constitutional validity of

	<p>SICA Repeal Act and restricts challenge to amended Sec 4 (b) and Sec 5 (1) (d) as being violative of Constitution (Article 14 – Discrimination)</p> <p>Whenever violation of Article 14 is alleged, it is necessary to ascertain policy underlying statute and object sought to be achieved</p> <p>To summarize – (i) Classification of cases where draft schemes for reconstitution have been sanctioned and those cases where schemes are pending is non-discriminatory and is based on intelligible differentia as also has nexus to object sought to be achieved by enacting IBC</p> <p>(ii) Inclusion of Eighth Schedule to IBC is in exercise of powers under section 242 and 252 and thus is not ultra vires</p> <p>(iii) Prescribing of a cut-off date by notification dated 1-Dec-16 is not contrary to law</p> <p>Petitioner may avail remedy provided under IBC. It may approach NCLT with request for condonation as time limit of 180 days has lapsed</p>
Judgment	Writ petition is dismissed
8	Allahabad
Date	6-Sep-17
In the matter of	Sanjeev Shriya v/s State Bank of India
Issue	Pendency of proceedings before DRT
Case in brief	<p>In both writ petitions, Appellant is assailing order of DRT</p> <p>Appellant is ex-director of company in liquidation</p> <p>R has filed application for recovery of loans due before DRT against principal borrower and petitioners as guarantors</p> <p>Application u/s 10 was filed and NCLT imposed moratorium</p> <p>DRT has directed Appellant to give details of pending permanent immigration/ visa applications with foreign authorities and details of properties in foreign lands</p> <p>HC opined that there are sufficient safeguards under IBC and liability has not been crystallized against principal borrower or guarantors and hence pending proceedings before DRT cannot continue and is stayed till NCLT approves resolution plan or liquidation proceedings are initiated under IBC</p>
Judgment	Writs are thus disposed off with said observations
9	Calcutta
Date	7-Apr-17

In the Sree Metaliks Ltd v/s Union of India
matter of

Issue Vires of Sec 7

Case in brief Vires of Sec 7 and relevant Rules assailed by Appellant on the premise that it does not afford an opportunity of hearing to CD
Notice received by Appellant did not mention date when application would be taken up by NCLT and an ex-parte order was passed
An appeal preferred by Appellant (wherein it objected to appointment of IRP but did not contest application u/s 7 or raise violation of principles of natural justice) has been disposed of
Sec 7 is silent on whether respondent party has a right of hearing before AA
NCLT must afford a reasonable opportunity of hearing to the CD under an application u/s 7
Adherence to principles of natural justice does not necessitate NCLT or NCLAT to afford a reasonable of hearing before passing order
In case an ex-parte interim order is required to be passed, it may do so after recording reasons for deviating from principles of natural justice at that stage
Thereafter respondent should be afforded an opportunity of hearing before confirming such order

Judgment It would be open to parties to agitate their respective grievances. But challenge to the vires of Sec 7 fails

III – NCLAT cases

1

Date 4-Oct-18

In the Sudhir Sales & Services Ltd v/s D-Art Furniture Systems Pvt Ltd
matter of

Issue Pre-existing dispute in application by OC

Case in brief Appellant has contested order dated 24-Apr-18 of NCLT, New Delhi rejecting application under section 9 of IBC on the ground that there is a pre-existing dispute as per letter dated 13-Nov-13
On examining merits, NCLAT found that parties had entered into turnkey contract for gen sets for Commonwealth Games 2010. Of the total contract value of Rs. 2.61 crores, an amount of Rs. 0.56 crores was unpaid and there was no question relating to quality of service or material supplied

In the letter dated 13-Nov-13, Respondent has stated that amount due would be released after reconciliation with third party as there is an arbitration pending before Tribunal. However, there is no mention of dispute therein with Appellant NCLAT also examined letter issued by Respondent on 9-Sep-17 in reply to notice under section 8 (1) of IBC. It was observed that claim has been termed “time-barred” and subject to pre-existing dispute

NCLAT relied on Supreme Court order in Innoventive Industries Ltd v/s ICIC Bank (wherein dispute has been held to be the one pre-existing before notice or invoice issued under section 8 of IBC) and Mobilox Innovations Pvt Ltd v/s Kirusa Software (P) Ltd (wherein it has been held that dispute should not be spurious, hypothetical or illusory)

NCLAT held that NCLT wrongly relied on above letters and erred in rejecting the Appellant’s claim. It set aside the impugned order and remitted the case to NCLT for admitting the application under section 9 of IBC if free from defects. It was also observed that the order would not come in the way if parties wish to settle before admission

Judgment Appeal allowed with no order as to costs

2

Date 14-Aug-18

In the matter of EXIM Bank v/s RP of JEKPL Pvt Ltd

Issue Whether holder of counter corporate guarantee can be treated as FC

Case in brief EXIM Bank granted a Dollar term loan to JENV, Netherlands under Appellant’s Overseas Investment Finance Program. The term loan was secured by corporate guarantee issued by JEPL which was further secured by JEKPL’s counter corporate guarantee (JENV, JEPL and JEKPL are part of the Jubilant Group) JENV’s account turned NPA from 1-May-16. During JEKPL’s CIRP under Sec 10, EXIM Bank’s claim as FC was rejected by RP without calling for any explanations. AA also affirmed RP’s decision

Respondent averred that as per Sec 5(8)(h), counter indemnity obligation in respect of a guarantee should have been issued by a bank or financial institution. EXIM Bank is neither regulated by RBI nor governed/ licensed under Banking Regulation Act. Further, JEKPL’s liability would arise only when JEPL defaulted on its corporate guarantee obligation and on valid invocation and is limited NCLAT found both JEPL and JEKPL are jointly and severally liable to EXIM Bank and held it to be counter indemnity obligation falling within ambit of Sec 5(8)(h)

Judgment AA's order rejecting claim of EXIM Bank as FC set aside. AA and RP directed to treat EXIM Bank as members of CoC and reconsider resolution plans

3

Date 10-Aug-18

In the Renaissance Steel India Pvt Ltd v/s Electrosteels Steel Ltd
matter of

Issue Appeals arising out of resolution process

Case in brief Common judgment in the case of both Electrosteels Steels Ltd and Bhushan Steel Ltd as Tata Steel Ltd is a common resolution applicant
Renaissance has challenged approval of plan submitted by Vedanta Ltd as it is hit by Sec 29A. Vedanta is a connected person Konkola Copper Mines, Zambia. Konkola has been charged with criminal prosecution for pollution which includes imprisonment for 3 years; however, the Zambian company is not capable of being punished as a company cannot be imprisoned. While we hold that the offence for which aforesaid punishment is not corresponding to Sec 29A(d), it is to be seen if an individual has been punished or not (as corporate person cannot be imprisoned). Vedanta is thus eligible resolution applicant
Similarly, Tata Steel Ltd's ineligibility under Sec 29A arises from it being a connected person with Tata Steel UK which was found guilty of violating Health and Safety at Work Act, UK. It was not imprisoned, but a fine was imposed. Sec 29A(d) only talks of imprisonment, it was found that its severity of offence punishable is much more than that of Sec 33(1)(a). Tata Steel is thus eligible resolution applicant

Judgment Appeals dismissed

4

Date 9-Aug-18

In the AVON Capital v/s Tattva & Mittal Lifespaces Pvt Ltd
matter of

Issue Application under Sec 9 and existence of dispute

Case in brief AA rejected application under Sec 9 on the grounds that Appellant is not OC and there is existence of dispute
Appellant was engaged for the providing advisory and capital-raising services.

As per its letter dated 7-Jan-16, it was entitled to appointment fee, retainer fee, success fee and specific assignment fee

Appellant raised invoices for fees but AA, while examining the application held that “evidences such as work done by the professional or any due diligence report submitted are missing in this case” It also observed that no evidence to demonstrate that a corporate financier had factually invested in the respondent company through efforts of the Appellant

AA further proceeded on the presumption that Appellant was FC. A subsequent letter of cancellation of retainer-ship has been treated as notice of dispute on the ground that Respondent has categorically objected to the claim

Dispute raised on imaginary facts while replying to demand notice cannot be treated as existence of dispute for rejecting the application

From the letter of engagement dated 7-Jan-16, the Appellant is OC and in absence of evidence of payment, it is to be accepted as default

It would be open to the Respondent to settle the claim before admission of the application

Judgment Impugned order dated 11-Jul-17 set aside and remitted to AA to admit the case

5

Date 1-Aug-18

In the matter of IBBI v/s Wig Associates Pvt Ltd

Issue Incorrect interpretation of Sec 29A

Case in brief NCLAT remarked that it is unfortunate that though IBBI is not an aggrieved party, it has preferred this appeal under Sec 61

AA, based on judgments on applicability of an amendment, made an erroneous judgment (on applicability of Sec 29A from 23-Nov-17) which resulted in selection of an ineligible resolution plan (as it was submitted by a resolution applicant who was related to the promoter Director of CD)

It also held that RP is duty bound to ensure resolution plan contrary to Sec 29A should not have been placed before CoC

Though legal interpretation is within AA’s domain, if it is against provisions of IBC and legislative intent, RP should bring the same AA’s notice by preferring an appeal

Judgment IBBI to inform RP to move appeal

6

Date	1-Dec-17
In the matter of	Unigreen Global Pvt Ltd v/s Punjab National Bank
Issue	Application under Sec 10
Case in brief	<p>Questions involved in appeal –</p> <p>a. Whether non-disclosure of facts beyond statutory requirements can be a ground for dismissal of application for CIRP?</p> <p>b. Whether penalty imposed u/s 65 is legal?</p> <p>CA filed application u/s 10 for CIRP</p> <p>Objections of FC relating to non-mentioning of collateral proceedings are beyond scope of IBC as CA not involved in those proceedings</p> <p>AA noticed extraneous factors unrelated to CIRP and erred in rejecting application on the ground of suppression of facts</p> <p>There is nothing on record to suggest that CD suppressed any fact or has come with unclean hands or filed application fraudulently or with malicious intent</p> <p>Before imposing penalty (of Rs 10 lacs) AA has not served any notice to CA recording its intent to punish CA and hence it violates principle of natural justice</p> <p>Impugned order set aside and case remitted back to AA for admission of application</p> <p>Form 1, 5 or 6 contain no provision for parties to state whether winding up proceedings have been initiated or liquidation order has been made against CD. Central Government should amend Form 6 to disclose ineligibility u/s 11. In the meantime, AA may direct FC/ CA to file affidavit u/s 11 and state whether winding up proceedings have been initiated or liquidation order made</p>
Judgment	Appeal allowed but no costs imposed

7

Date	18-Aug-17
In the matter of	Prowess International Pvt Ltd v/s Parker Hannifin India Pvt Ltd
Issue	Closure of proceedings through settlement
Case in brief	<p>On coming to know of the petition filed by OC, CD settled the dispute and filed an Interlocutory Application for withdrawal of the petition which was rejected on the ground that it was not possible to do so after petition has been admitted</p> <p>CD also submits that no notice of admittance was given and the same was</p>

against the principles of natural justice

If the order of the AA had been challenged by CD, NCLAT would have set aside the same and permitted OC to withdraw the petition

As the meeting of Committee of Creditors u/s 24 has been completed and if interests of all stakeholders are balanced, it is desirable to close the proceedings without delay so that CD can function as a going concern

Instead of interfering with impugned order, matter remitted to AA for its satisfaction that interests of all stakeholders have been met

Judgment After following due process, proceedings may be closed

8

Date 3-May-17

In the Era Infra Engineering Ltd v/s Prideco Commercial Pvt Ltd
matter of

Issue Application under Sec 9

Case in brief AA initiated IRP on application by OC though it was not complete
CD was not served notice u/s 8 was not served and it was not in terms of Form 3
OC contended that earlier notice u/s 271 of Companies Act, 2013 to be treated as notice u/s 8
AA failed to notice facts and mandatory provisions of law
NCLAT set aside order of AA
Application u/s 9 stands dismissed being incomplete

Judgment All orders, interim arrangements quashed, action by IRP declared illegal

IV – NCLT cases

1 Hyderabad Bench

Date 31-Oct-18

In the S V Solar Solutions v/s Thrive Solar Energy Pvt Ltd
matter of

Issue Application under Sec 9

Case in brief OC filed application under section 9 stating that it has been supplying raw materials (comprising solar cells, EVA, toddler, bus bars etc) for over 5 years to CD

	<p>CD admitted liability and expressed inability to pay due to factors such as increase in prices, cheaper supplies from China sudden change in specifications by a customer after CD acquired materials worth Rs. 30 crores for that order CD also stated that SBI has initiated SARFAESI proceedings for taking possession of its property and DRT has issued summons AA heard both sides and found application complete</p>
Judgment	Petition admitted
2	Mumbai Bench
Date	12-Sep-18
In the matter of	Precision Fasteners Ltd (through Liquidator) v/s Employees Provident Fund Organisation
Issue	Miscellaneous Application u/s 60(5)(c) seeking to nullify attachment of properties
Case in brief	<p>This application has been made to enable Liquidator to dispose of CD's properties As no resolution plan was received, CD was forced into liquidation Due to long-standing defaults in depositing provident fund dues by CD of its employees at Thane, Vapi and Vashi, EPFO attached movable and immovable assets of CD As attached assets are to form part of liquidation estate, Liquidator needs attachment to be lifted. Further, EPF dues would not fall within ambit of secured debt. EPFO countered that attachment cannot be vacated before dues are cleared Further, part of attached properties have been mortgaged to various lenders and their interests would be jeopardized unless the attachment is lifted As per Sec 36 (4)(a)(iii), provident fund and other dues credited as due to employees are excluded from liquidation estate. But arrears yet to be deposited with EPFO are to be treated differently Due to overriding effect of IBC as per section 238, Liquidator is empowered to include within liquidation assets, the assets attached under EPF Act Interplay between sec 529A of Companies Act, 1956 (which deals with preferential payments during winding up) and sec 11 of EPF Act, discussed in Employees Provident Fund Commissioner v/s O L of Esskay Pharmaceuticals Ltd wherein it was held that sec 11 (2) will have first charge on assets of an establishment and will be paid in priority to other debts as EPF Act is a social welfare legislation intended to protect weaker sections of society Right of other creditors over assets of a company is a property right but</p>

workmen's dues, specifically PF dues are interwoven with Right to Life. Hence, the latter cannot be treated on par with debts of other creditors

Once PF contribution is deducted from workmen, it is to be deemed matching contribution has been allocated by CD. It make no difference whether it has been released by the CD, as deduction, once made from workmen, it is not an asset of CD

Sec 8 (1) of EPF Act also has overriding effect and these dues can be recovered as arrears of land revenue and amounts credited to a member's account cannot be attached under any decree or Court order. Sec 11 also provides that PF dues will be paid in priority in distribution of assets of company being wound up

Overriding effect of Sec 238 applies in case the other law is inconsistent with IBC. But as Sec 36 (4) (a) (iii) excludes PF dues from liquidation assets treating it as workmen's assets lying with CD

As liquidation process should not be obliterated by attachment against assets of CD, only viable answer is the Liquidator to pay PF/ Pension Fund/ Gratuity Fund dues in priority to waterfall mechanism u/s 53 and the charge shall remain in force until it has been paid off

Judgment Attachments against assets of CD are vacated with direction to sell the same and pay off PF dues in priority to other claims in liquidation

3 Kolkata Bench

Date 15-Jun-18

In the matter of SBI v/s Adhunik Metaliks Ltd

Issue Application for exclusion of 20 days from statutory period of 270 days

Case in brief In addition to RP's application for exclusion of period of 20 days from statutory period of 270 days, General Secretary of Adhunik Metaliks Karmachari Sangh has similarly applied for exclusion of 130 days due to application being filed after expiry of 270 days

Statutory period of 270 days was to expire on 29-Apr-18 and received 2 resolution plans on 6-Mar-18. Resolution plan from Maharashtra Seamless Ltd was rejected as it was below liquidation value of CD. Resolution plan from Liberty House Group was placed before CoC meeting on 13-Apr-18

While plan from Liberty House Group was being considered, on 19-Apr-18, CoC and RP came across media reports that it was subject to ineligibilities under Sec 29A. RP called for clarifications from the resolution applicant by 23-Apr-18

At CoC on 25-Apr-18, unanimous decision to apply for extension by 20 days wasted in considering eligibility of Liberty House Group

	<p>In the application by CD's workmen's union, they have similarly prayed for extension of statutory period failing which CD would be pushed into liquidation thereby jeopardizing the future of 3,000 regular and 10,000 casual workmen</p> <p>Sec 12(3) allows extension only once which has already been exhausted. In the absence of judicial discretion and after anxious thought, given the peculiar situation, AA examined other rulings on this issue</p> <p>NCLAT in Quinn Logistics India Pvt Ltd v/s Mack Soft Tech Pvt Ltd has laid down guidelines to be considered in such situations. Apart from 5 specific instances mentioned therein (none of which were applicable in the instant case), the last eventuality mentioned is "any other circumstances which justify exclusion"</p> <p>AA sincerely felt that considering statement and object of IBC, it ought to allow resolution of CD to save it as a going concern</p>
Judgment	Both applications allowed. 20 days excluded as requested and RP to consider plans before him within this period and submit to AA for approval
4	Allahabad Bench
Date	16-May-18
In the matter of	IDBI Bank Ltd v/s Jaypee Infratech Ltd
Issue	Directions sought under Sec 43, 45 and 66 in connection with dubious transactions
Case in brief	<p>This application has been filed by RP and pertains to transactions entered by Directors and Promoters of CD creating mortgage of 858 acres to secure debt of related party Jaiprakash Associates Ltd</p> <p>Directions have been sought against these persons to make contributions to assets of CD and for directing lenders of Jaiprakash Associates Ltd to release security interest on said properties</p> <p>Despite CD's account being declared NPA on 30-Sep-15, Directors disregarded their fiduciary duties and duty of care to creditors executed the aforesaid mortgage. No shareholder approval was obtained for this</p> <p>Issues before AA were – (i) whether IRP authorized to file this application (ii) & (iii) whether impugned transactions are hit by Sec 66, 43 and 45 (iv) whether look-back period as per Sec 46 (1)(i) is 1 year or 2 years</p> <p>Held (i) in view of Hon'ble SC's direction to IRP to proceed and finalize resolution plan and after examining relevant provisions of IBC, held applicant has the necessary jurisdiction; (ii), (iii) and (iv) these issues were also decided in favor of the applicant and the look-back period was specified as 2 years before</p>

Landmark Judicial Pronouncements under IBC
14-Nov-18

	commencement of CIRP
Judgment	Application allowed and impugned transactions declared as fraudulent, preferential and undervalued as defined in Sec 66, 43 and 45 respectively
5	New Delhi Bench
Date	14-May-18
In the matter of	Reliance Commercial Finance Ltd v/s Ved Cellulose Ltd
Issue	Application under section 30 (6) read with Sec 31 – approval of resolution plan
Case in brief	RP, as required, filed a comprehensive certificate highlighting highlighting steps taken by him to comply with has IBC Resolution plan provides for payment of Rs. 14.47 crores to only financial creditor i.e. Bank of India in full settlement of their dues of Rs. 24.50 crores Certain waivers have been sought such as statutory/ tax liabilities, more than 200 workmen are unaffected and plan provides for payment of insolvency costs No dubious transactions i.e. preferential (sec 43), undervalued (sec 45), extortionate credit (sec 50) and fraudulent (sec 66) were found by RP
Judgment	No objector to plan and requirements of law have been met. Hence it is approved and appointment of RP as monitoring agency accepted
6	Chennai Bench
Date	27-Apr-18
In the matter of	Stanbic Bank Ghana Ltd v/s Rajkumar Impex Pvt Ltd
Issue	Maintainability of petition under Sec 7 by non-Indian company
Case in brief	Petitioner is bank incorporated in Ghana. Respondent issued “an on-demand guarantee” to the Petitioner in respect of indebtedness of its wholly owned subsidiary Rajkumar Impex Ghana Ltd i.e. the principal borrower. The loan agreement submits to exclusive jurisdiction on the Courts of England and Wales. As per the Guarantee and Indemnity Deed, Tribunal has competent jurisdiction is spite of lis pendens before the Ghana court On default, proceedings were initiated in Ghana against the principal borrower and before English Courts against the Respondent. While proceedings in Ghana, the English Court passed an ex-parte order on 8-Aug-17 which is proof of default

	<p>by Respondent</p> <p>Apart from questioning maintainability on grounds that the Petitioner is not an Indian company, Respondent also contended that principal borrower is not its subsidiary, no valid guarantee has been executed as required permission therefor was not obtained from RBI. It also averred that order of the English Court is not on merits as certain facts were suppressed before it and as the principal borrower has disputed amount claimed and a civil proceeding is pending in Ghana, provisions of INC cannot be invoked</p> <p>AA found that ample opportunity was given to the Respondent but it failed to appear in the English Court. Further, it has neither filed an application for to set aside the order or an appeal thereagainst. It is settled law that courts need not go beyond a decree in favor of a party. As it failed to defend its case before the English Court, the Respondent cannot now contend that the order is not on merits</p> <p>AA has no jurisdiction to enforce the foreign decree but there is no bar in taking cognizance thereof</p>
Judgment	AA concludes Petitioner has made out a prima facie case under IBC and admitted the application under Sect 7
7	New Delhi Bench
Date	5-Apr-18
In the matter of	SBI v/s Su Kam Power Systems Ltd
Issue	Application under section 7
Case in brief	<p>Due to repeated defaults, CD was declared NPA on 10-Sep-17 and FC has resorted to IBC for recovery of Rs. 71 crores</p> <p>CD averred that JLF is still exploring revival of CD and hence these proceedings are premature. However, this Tribunal has rejected similar contention in SBI v/s Bhushan Steel Ltd. Even otherwise, JLF finally rejected CD's proposal in its meeting on 8-Jan-18</p> <p>CD then stated that it is in the process of inducting a strategic investor to stabilize its financial position. However, NCLT found that merely an intent had been expressed to invest which was subject to conditions including due diligence. In any case, the proposal would be examine by CoC after admission of this petition</p> <p>An interlocutory application was also filed by Reliance India Power Fund which invested Rs. 45 crores in CD. Due to certain disputes, this Fund filed an arbitration petition in Bombay High Court and an interim order pursuant</p>

	thereto, prevented CD from changing its shareholding. AA did not consider this an impediment to initiate CIRP proceedings and left this Fund to choose its remedy with law
Judgment	AA satisfied that default has occurred and the application is complete, hence admitted it
8	New Delhi Bench
Date	17-Oct-17
In the matter of	Axis Bank v/s Edu Smart Services Pvt Ltd
Issue	Direction to RP to admit claim as FC
Case in brief	<p>Application u/s 60(5) to set aside decision of RP rejecting claim of P</p> <p>Appellant submitted proof of claim being guarantee by CD in favour of Educom Solutions Ltd (Principal Borrower) on 21-Jul-17 i.e. after commencement of insolvency resolution on 27-Jun-17</p> <p>Appellant had already claimed amount of debt in the insolvency resolution process pertaining to Principal Borrower which was a material fact suppressed by P. Also, it would lead to unjust enrichment of P</p> <p>Appellant would not suffer any prejudice as it has already claimed the amount in the insolvency process of Principal Borrower. Thus NCLT did not deem it fit to examine contention in detail</p>
Judgment	Application fails
9	Ahmedabad Bench
Date	18-Jul-17
In the matter of	Industrial and Commercial Bank of China v/s Alok Industries Ltd
Issue	Intervention in proceedings under Sec 7 filed by SBI
Case in brief	<p>Appellant filed this petition seeking permission to intervene, dismiss or stay proceedings in application for insolvency of Respondent under IBC</p> <p>Various lenders filed a winding up petition in the B'bay High Court under the Companies Act, 1956</p> <p>As winding up proceedings are at advanced stage, any order passed in application for insolvency would lead to conflicting orders by different forum</p>

	<p>In Nowfloats Technologies Pvt Ltd v/s Getit Info Services Pvt Ltd, Delhi High Court had appointed Official Liquidator; appointment of resolution professional would conflict with administering the estate assets and thus insolvency resolution process was disallowed</p> <p>In the present case, there is no order admitting the winding up petition</p> <p>Appellant also wants winding up of Respondent and it would be part of the CoC if the insolvency petition is admitted</p> <p>In case the insolvency petition is dismissed, Appellant can pursue remedies in pending winding up petition</p> <p>There are no valid grounds to grant reliefs prayed in this petition by I</p>
Judgment	Petition dismissed
10	New Delhi Bench
Date	24-Mar-17
In the matter of	Annapurna Infrastructure Pvt Ltd v/s Soril Infra Resources Ltd
Issue	Application under Sec 9
Case in brief	<p>Delhi High Court appointed sole arbitrator to adjudicate disputes arising out of a lease deed between Appellant and Respondent</p> <p>Arbitrator award granted certain reliefs to OC which was challenged by CD u/s 34 of Arbitration and Conciliation Act but was dismissed</p> <p>OC raised a demand notice and CD replied the operational debt was disputed and an appeal u/s 37 of the Arbitration Act against the aforesaid order has been preferred</p> <p>Counter arguments were made by both sides whether the amount owed is operational debt</p> <p>CD alleged deliberate suppression of material facts with respect to notice u/s 8 (2) disclosing pendency of appeal u/s 37</p> <p>Arbitration proceedings do not end on announcement of an award as it has to pass the process of challenge u/s 34 and 37 and further proceedings before Supreme Court</p> <p>It is against fundamental principles of judicial administration to allow a party to avail more than one remedy (section 10 of Code of Civil Procedure)</p> <p>In view of above, no need was felt of expressing views on other issues which were left open</p>
Judgment	Application dismissed with cost of Rs. 1 lac

11	New Delhi Bench
Date	20-Feb-17
In the matter of	Colonel Vinod Awasthy v/s AMR Infrastructures Ltd
Issue	Whether home-buyer is OC
Case in brief	<p>Appellant booked a flat in project i-Homes on payment of an advance As per an MoU, assured return was to be paid from a specified date to the date of possession on the advance amount Monthly assured return was paid to a particular date but stopped thereafter and possession was also not given on promised date On 25-Jan-17, statutory notice was issued and AA is called upon to consider if Appellant could be regarded as OC Advance made for purchase of flat or commercial site cannot be included within the scope of sections 9, 5 (20) and 5 (21) Reference to Sajive Kanwar v/s AMR Infrastructure wherein the Bench discussed possibility of treating a person like Appellant as OC</p>
Judgment	Petition dismissed
12	Mumbai Bench
Date	30-Jan-17
In the matter of	Smart Timing Steel Ltd v/s National Steel and Agro Industries Ltd
Issue	Certificate from financial institution under Sec 9 (3)(c)
Case in brief	<p>OC filed application u/s 9 without certificate from financial institution as required by Sec 9 (3) (c) Though allowed additional time OC failed to do so citing difficulty in furnishing as concerned financial institution is located outside India As it is a mandatory requirement, failure to do so renders application liable to be rejected</p>
Judgment	Application rejected

Disclaimer

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Glossary

AA	Adjudicating Authority
AEL	Aurora Enterprises Ltd
AHL	Aurora Holdings Ltd
AMBD	AreclorMittal Belvel & Differdange Societe Anonyme
AMIPL	AreclorMittal India Pvt Ltd
AMNLBV	AreclorMittal Netherlands BV
AMSA	AreclorMittal Societe Anonyme
BIFR	Board for Industrial and Financial Reconstruction
CA	Corporate Applicant
CD	Corporate Debtor
CIRP	Corporate Insolvency Resolution Process
CoC	Committee of Creditors
DRT	Debt Recovery Tribunal
ECL	Essar Communications Ltd
ESIL	Essar Steel India Ltd
FC	Financial Creditor
IBC	Insolvency and Bankruptcy Code, 2016
Indo	Indo International Ltd
JLF	Joint Lenders Forum
NCLT	National Company Law Tribunal
NCLAT	National Company Law Appellate Tribunal
NPA	Non Performing Asset
OC	Operational Creditor
RBI	Reserve bank of India
RP	Resolution Professional
SARFAESI	Securitization and Reconstruction of Financial Assets and Enforcement of Security Act, 2002
SBI	State Bank of India
SC	Supreme Court
SCB	Standard Chartered Bank
SICA	Sick Industrial Companies Act
TPE	JSC VO Tyazhpromexport
VTB	Crinium Bay indirect, wholly owned subsidiary of VTB Bank