

## Landmark Judgments by the Hon'ble NCLAT 1ST -15TH SEPTEMBER



### Mr. Vijay Kumar Garg Liquidator Vs. Power Grid Corporation of India Ltd.- CA (AT) (CH) (INS.) No. 260 of 2023, 01-September-23

In the instant case, a Transmission Agreement was signed between a company and the Corporate Debtor, allowing the company to encash the bank guarantee if the Corporate Debtor's progress on a transmission line construction turned adverse. When adverse progress occurred, the company invoked the bank guarantee. Subsequently, the Liquidator/Appellant filed a petition with the NCLT, contending that the company couldn't encash the bank guarantee because the Corporate Debtor was undergoing liquidation. However, the NCLT rejected the Liquidators petition, citing insufficient reasons to interfere with the Bank Guarantee's invocation. Aggrieved by, the same, an appeal was preferred before the Hon'ble NCLAT. The issue that arose consideration before the hon'ble NCLAT was **whether a bank guarantee could be invoked during a company's liquidation while considering the applicability of a moratorium?**

The appellant authority held that the Guarantee falls under "Performance of Bank Guarantee," explicitly excluded from the Section 3(31) definition in the I & B Code, 2016. Consequently, it does not fall under the "Moratorium" as defined in Section 14 of the I & B Code. They further held that Section 14 of the Code does not prohibit actions against the Corporate Debtor's Guarantors. The "Moratorium" strictly applies to the "Assets of the Corporate Debtor" and excludes "Bank Guarantee," which is neither an "Asset" nor a "Liability" of a "Company." Therefore, Moratorium does not apply to Bank Guarantees. Consequently, the Bank guarantee can indeed be invoked, and the appeal was found to lack merit and was dismissed.

**Link:** <https://shorturl.at/xzSWX>

### Ahluwalia Contracts (India) Ltd. Vs. Jasmine Buildmart Pvt. Ltd., CA (AT) (Insolvency) No. 345 of 2023, 01 September 23

In the instant case, the appellant, an operational creditor, initially engaged in an agreement with the corporate debtor, leading to an unpaid bill. Subsequently, a Section 8 application was filed, followed by a Section 9 application. During the Section 9 application process, a Term Sheet of Settlement, including securities, was executed, wherein the corporate debtor acknowledged the unpaid amount but later failed to fulfil the agreement. Therefore, another Section 9 application was submitted but was ultimately rejected by the Adjudicatory authority, contending that the debt didn't arise from the supply of goods or services but rather from the breach of the Settlement Agreement, making it ineligible as operational debt. Challenging this decision, the appeal was brought before the appellant authority, focusing on **whether a settlement agreement qualifies as operational debt and whether the filing of a claim in a security undergoing CIRP can hinder the claim of operational debt or not.**

The appellant authority determined that the operational debt in question was related to the payment of bills submitted by the Operational Creditor, and a Settlement Agreement had been established for this purpose. Since the payment wasn't made as per the Settlement

Agreement, the Corporate Debtor's liability to make the payment persisted, and the Operational Creditor was justified in filing the Section 9 Application. It was also clarified that security's CIRP doesn't affect the Section 9 Application's maintainability. While the amount received by the appellant during CIRP may be adjusted, this cannot be a reason to halt the Section 9 Application. Therefore, the Adjudicating Authority decision was erred and set aside.

**Link:** <https://shorturl.at/sFG14>

**Dauphin Cables Pvt. Ltd. Vs. Mr. Praveen Bansal, RP Abloom Infotech Pvt. Ltd. - CA(AT)(I)-971/2023-NCLAT, 11 September 2023**

In the instant case, an Application under Section 7 was filed and ultimately accepted, resulting in the receipt of claims from financial creditors. The appellant, a shareholder of the corporate debtor, made an application requested the resolution professional to provide documents and calculations regarding the admission of the financial creditor's claim. The Adjudicatory Authority issued an order directing the Resolution Professional to file an additional affidavit stating the claims admitted, along with all supporting documents. The Resolution Professional applied to file this additional affidavit in a sealed envelope without e-filing, the request of the RP was accepted by the Adjudicatory Authority. Aggrieved by this decision, an appeal was preferred before the Hon'ble NCLAT, wherein the issue that arose consideration was **whether the Adjudicating Authority had the authority to direct the Resolution Professional to provide documents in a sealed envelope without electronic filing?**

The Hon'ble Appellate Body determined that there is a statutory requirement prohibiting the sharing of certain information with third parties. The overall structure of the IBC does not mandate the sharing of all information gathered by the Resolution Professional with requesting shareholders. Moreover, the Adjudicating Authority, through an application under Section 60(5), issued a direction to the Resolution Professional to file the documents in a sealed cover without e-filing. Under Rule 43 of NCLT Rules 2016, the adjudicatory authority is empowered to call for any information or evidence. Additionally, since the Resolution Plan had already been approved at this stage by the Adjudicatory Authority, the issues raised by the appellant were considered academic and required no further deliberation in this appeal. Consequently, the appeal was dismissed.

**Link:** <https://shorturl.at/fwBNZ>

**Beetel Teletech Ltd. Vs. Arcelia IT Services Pvt. Ltd., CA (AT)(Insolvency) No. 1459 of 2022, 11 September 2023**

In the instant case, the Appellant, an operational creditor, supplied goods to the Respondent, a corporate debtor. Despite multiple reminders and meetings, payment remained outstanding, leading to the issuance of a demand notice. When the notice went unanswered, the operational creditor filed a Section 9 application. The adjudicatory authority rejected the application, on the ground that the interest mainly accrued during the Section 10A period and no interest can be claimed for the suspension period of IBC and that the creditor's discretion in adjusting part payments prevented reaching the Rs. 1 crore threshold. Consequently, aggrieved by this, the appeal was filed.

with the central legal issue revolving around **whether interest during the Section 10A period should be excluded from the threshold calculation and whether the creditor can exercise discretion in adjusting part payments?**

The appellant authority held that Section 10A of the IBC prevents the initiation of CIRP proceedings for defaults during its period but doesn't apply if the default started before and continued into 10A. In this case, the default occurred well before 10A, so the Adjudicating Authority's view to disregard interest accrued during 10A is incorrect. Furthermore, Section 60 of the Indian Contract Act, 1872, grants the creditor discretion in allocating debtor payments when no specific allocation is indicated. Therefore, the Adjudicating Authority's finding that the Operational Creditor acted improperly by adjusting payments against other invoices' principal or accrued interest is unjustified. The Operational Creditor rightfully exercised its discretion. Consequently, the appeal is allowed, and the NCLT's order is set aside.

**Link:** <https://shorturl.at/dyQY1>

**Agarwal Polysacks Ltd. Vs. K. K. Agro Foods and Storage Ltd. Company Appeal (AT) (Insolvency) No.1126 of 2022, order dated 11th September 2023.**

This Appeal has been filed challenging an order of the NCLT, by which a Section 7 application filed by the Appellant has been rejected holding that Financial Creditor failed to show the nature of transaction between the parties. Aggrieved by the same an Appeal was preferred. The issues that arose consideration before the Hon'ble NCLAT were

- (i) Whether to prove a financial debt a Financial Creditor has to enter into a written financial contract?
- (ii) Whether the Appellant from the materials brought on the record was unable to prove that the Corporate Debtor owes a financial debt?

The Hon'ble NCLAT observed that Rule 4(1) of the 2016 Rules requires Form 1 for initiating CIRP against a Corporate Debtor, including specified documents. Part IV of Form 1 deals with 'Particulars of Financial Debt,' and Part V addresses 'Particulars of Financial Debt [Documents, Records, and Evidence of Default],' where essential evidence for the financial debt is detailed. That Regulation 8(2) of the CIRP regulations clears that Regulation do not contemplate existence of all documents. Use of word "or" in Regulation 8(2)(a) indicate by any of the document referred to in Sub-regulation (2) existence of debt can be proved. A financial contract supported by financial statements as evidence of the debt is one of the documents contemplated in Regulation 8(2) but that is not exclusive requirement for proving existence of debt. Financial contract thus can very well be furnished to prove the financial debt but a plain reading of Regulation 8(2) indicate that it is not mandatory that existence of financial debt has to be proved by a financial contract. When we look into the statutory scheme as reflected in the Application to Adjudicating Authority Rules, 2016 and CIRP Regulations, 2016, it is clear that financial debt can be proved from other relevant documents and it is not mandatory that written financial contract can be only basis for proving the financial debt. Thus, it is not necessary that written financial contract be the only material to prove the financial debt. The Hon'ble Bench concluded that order of the Adjudicating Authority rejecting Section 7 application is unsustainable and deserve to be set aside.

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**Link-** <https://shorturl.at/aboMR>



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