NCLT & IBC Committee, PHDCCI

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IBC Pulse

Monthly Updates on Insolvency & Resolution

A. FROM THE DATE OF ISSUANCE OF A RECOVERY CERTIFICATE BY THE DRT, A FRESH PERIOD OF LIMITATION COMMENCES; AN ACKNOWLEDGMENT EXTENDING LIMITATION MUST INDICATE EXISTENCE OF DEBT EVEN IF ITS PAYABILITY IS DISPUTED – NCLAT

TThe National Company Law Appellate Tribunal in ***D.N.V. Srinivasa Raju v. IDBI Bank Ltd. & Anr.,*** Company Appeal (AT) (Insolvency) No. 1189 of 2025, decided on 25.02.2026, held that the issuance of a Recovery Certificate by the Debt Recovery Tribunal gives rise to a fresh period of limitation for initiating proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016. The Tribunal further clarified that for the purpose of extending limitation under Section 18 of the Limitation Act, the acknowledgment relied upon must indicate the existence of a subsisting debt, even if the debtor disputes or denies its immediate payability.

The Tribunal observed that the financial creditor had obtained a Recovery Certificate from the DRT on 26.07.2018 in respect of the dues arising from a corporate guarantee executed by the corporate debtor. In view of settled law, including the Supreme Court's decision in ***Dena***

B***ank v. C. Shivakumar Reddy,*** the Tribunal held that the Recovery Certificate triggered a fresh limitation period of three years for initiating insolvency proceedings.

The Appellate Tribunal further noted that entries in the corporate debtor's balance sheets for the relevant financial years recorded the existence of the corporate guarantee and the contingent liability arising therefrom. Such disclosures constituted acknowledgment of liability within the meaning of Section 18 of the Limitation Act, as they reflected a subsisting jural relationship between the debtor and creditor. The Tribunal reiterated that an acknowledgment need not contain an express promise to pay; it is sufficient if the document indicates the existence of a debt, even where the debtor disputes the extent or enforceability of payment.

Forthcoming Events

- **Conference on IBC Pulse at Delhi**
  18th April'26
- **National Summit & IBC Awards at Delhi**
  Sep'26

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In addition, the Tribunal took note of settlement-related correspondence issued by the corporate debtor in 2022 acknowledging the liability and discussing payment under a proposed settlement scheme. These communications were also treated as acknowledgments extending the limitation period.

Accordingly, the NCLAT held that the Section 7 application filed by the financial creditor was within limitation and upheld the order of the NCLT admitting the Corporate Insolvency Resolution Process against the corporate debtor. The Tribunal, however, permitted withdrawal of the appeal in light of a subsequent settlement between the parties and directed the financial creditor to pursue withdrawal of the CIRP through an application under Section 12A of the IBC before the Adjudicating Authority.

B. MORATORIUM UNDER SECTION 101 OF THE IBC FOR PERSONAL GUARANTORS CANNOT BE EXTENDED BEYOND 180 DAYS, BUT THE PERSONAL INSOLVENCY RESOLUTION PROCESS (PIRP) PERIOD MAY BE EXTENDED IN APPROPRIATE CASES – NCLAT

The National Company Law Appellate Tribunal in ***Purusottam Behera (RP) v. State Bank of India & Ors.***, Company Appeal (AT) (Insolvency) Nos. 258–262 and 292 of 2026, decided on 26.02.2026, held that while the moratorium under Section 101 of the Insolvency and Bankruptcy Code, 2016 for personal guarantors is statutorily capped at 180 days and cannot be extended, the period for completion of the Personal Insolvency Resolution Process (PIRP) may nevertheless be extended by the Adjudicating Authority in appropriate circumstances.

The Tribunal observed that under the statutory scheme governing insolvency resolution of personal guarantors, a moratorium commences upon admission of an application under Section 100 and continues for a maximum period of 180 days or until an order on the repayment plan is passed under Section 114, whichever is earlier. Given the clear language of Section 101(1), the Tribunal held that neither the NCLT nor the Appellate Tribunal possesses the jurisdiction to extend the moratorium period beyond the statutorily prescribed limit.

However, the Tribunal clarified that the IBC does not prescribe any absolute outer limit for completion of the Personal Insolvency Resolution Process itself. Regulation 19 of the IBBI (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019, which requires the repayment plan to be filed within 120 days of commencement, was held to be procedural and directory in nature. The Tribunal noted that the absence of a consequence clause in the regulations indicates that delay in completion of the process does not automatically terminate the proceedings.

In the present case, the repayment plan submitted by the personal guarantors had ultimately received 100% approval from the creditors, and the delay in completing procedural formalities was attributable to ongoing negotiations and creditor deliberations. The Tribunal further relied on its earlier decisions permitting extension of insolvency timelines where the process was substantially advanced and extension would facilitate effective resolution rather than frustrate it.

Accordingly, the NCLAT set aside the NCLT's order refusing extension and allowed the appeals, holding that the PIRP period could be extended even though the statutory moratorium had expired. Considering that the repayment plan had already been approved by the creditors, the Tribunal extended the PIRP period up to 15.03.2026 to enable the Resolution Professional to submit the report before the Adjudicating Authority for passing an order on the repayment plan under Section 114 of the IBC.

C. AMOUNT PAID TOWARDS SUBSCRIPTION OF SHARES DOES NOT CONSTITUTE A FINANCIAL DEBT UNDER SECTION 5(8) OF THE IBC EVEN IF SUBSEQUENTLY DESCRIBED AS A "DEPOSIT" IN THE COMPANY'S BOOKS – NCLAT

The National Company Law Appellate Tribunal in ***Prakash Ambure & Ors. v. Invent Bio-Med Pvt. Ltd.,*** Company Appeal (AT) (Ins.) No. 582 of 2024, decided on 13.02.2026, held that money paid towards subscription of shares cannot be treated as a financial debt under Section 5(8) of the Insolvency and Bankruptcy Code, 2016, even if the amount is subsequently described as a "deposit" in the company's financial records.

The Tribunal observed that the appellants had transferred an amount of ₹55 lakhs to the corporate debtor between February and June 2015 with the intention of acquiring equity shares in the company. The correspondence between the parties clearly indicated that the payments were made towards share subscription and that the appellants were awaiting allotment or transfer of shares. When the shares were not allotted, the appellants later sought return of the amounts and attempted to characterize the payment as an unsecured deposit.

The Appellate Tribunal noted that although the corporate debtor's trial balance for the financial year ending 31.03.2018 reflected the amount as a "deposit," such accounting treatment could not alter the true nature of the transaction. The Tribunal held that share subscription money does not fall within the definition of a "deposit" in terms of Rule 2(c)(vii) of

the Companies (Acceptance of Deposits) Rules, 2014, which specifically excludes amounts received towards subscription of shares from the ambit of deposits.

Relying on its earlier decisions including ***Pramod Sharma v. Karanaya Healthcare Pvt. Ltd.*** and ***Muralidhar Vincom Pvt. Ltd. v. Skoda (India) Pvt. Ltd.***, the Tribunal reiterated that an investment made for acquisition of shares does not constitute a financial debt capable of triggering proceedings under Section 7 of the IBC.

Accordingly, the NCLAT held that no financial debt existed between the parties and therefore the insolvency application was not maintainable. Since the threshold requirement of establishing a financial debt itself failed, the Tribunal declined to examine the issue of limitation and dismissed the appeal.

D. AMENDMENTS TO A SECTION 9 APPLICATION MAY BE PERMITTED BY THE ADJUDICATING AUTHORITY AT ANY STAGE, AND ALLOWING AN AMENDMENT DOES NOT AMOUNT TO A FINDING ON THE MERITS OF THE PLEADINGS – NCLAT

The National Company Law Appellate Tribunal in ***Nilachakrametal Processors Pvt. Ltd. v. Soubhagya Minerals***, Company Appeal (AT) (Ins.) No. 271 of 2026, decided on 13.02.2026, held that the Adjudicating Authority is empowered to allow amendments to pleadings in insolvency proceedings at any stage, and the mere acceptance of such amendments cannot be construed as a judicial determination of the correctness of the pleadings.

The Tribunal observed that the Operational Creditor had sought amendment of its Section 9 application to incorporate certain subsequent transactions, including payments made by the Corporate Debtor and the return of certain materials, which were inadvertently omitted in the original filing. The Adjudicating Authority allowed the amendment under Rule 155 read with Rule 11 of the NCLT Rules, 2016.

The Appellate Tribunal rejected the contention of the Corporate Debtor that permitting such amendment prejudiced its defence. It noted that the Adjudicating Authority had expressly clarified in the impugned order that allowing the amendment would not amount to expressing any opinion on the merits of the case, including allegations of fraud, settlement, or forgery, which would be examined at the appropriate stage during adjudication of the Section 9 petition.

Relying on the principle laid down by the Supreme Court in ***Dena Bank v. C. Shivakumar Reddy,*** the NCLAT reiterated that amendments to insolvency applications may be permitted to ensure complete and accurate adjudication of disputes. However, the Tribunal emphasized that allowing such amendments does not imply that the court has accepted the factual assertions contained therein.

Accordingly, the NCLAT held that the Corporate Debtor retained full liberty to raise all permissible objections at the time of hearing of the Section 9 application, and since the amendment order did not affect the substantive rights of the parties, no interference was warranted. The appeal was therefore dismissed.

E. WHILE EXAMINING A SECTION 9 APPLICATION, THE TRIBUNAL NEED NOT DETERMINE WHETHER THE CORPORATE DEBTOR IS LIKELY TO SUCCEED ON THE MERITS; IT IS SUFFICIENT IF A PLAUSIBLE PRE-EXISTING DISPUTE EXISTS – NCLAT

The National Company Law Appellate Tribunal in ***Shashi Beriwal & Company Pvt. Ltd. v. Laxmi Foils Pvt. Ltd.,*** Company Appeal (AT) (Insolvency) No. 762 of 2024, decided on 24.02.2026, reiterated that while adjudicating an application under Section 9 of the Insolvency and Bankruptcy Code, 2016, the Tribunal is not required to examine the merits of the dispute or determine whether the corporate debtor is likely to succeed. The limited enquiry is only to ascertain whether a genuine pre-existing dispute exists between the parties prior to the issuance of the demand notice.

The Tribunal observed that the Operational Creditor had raised invoices claiming commission for introducing customers to the Corporate Debtor under an alleged arrangement for payment of commission at 3% of invoice value. The Corporate Debtor, however, had disputed the claim even prior to issuance of the demand notice under Section 8, contending that there was no privity of contract, no agreement evidencing the alleged arrangement, and no supporting material demonstrating the services allegedly rendered by the Operational Creditor.

The Appellate Tribunal noted that the Corporate Debtor had issued a notice dated 06.07.2022 seeking details regarding the alleged services, including the identities of customers, nature of transactions, and proof of goods supplied or services rendered. Despite such request, the Operational Creditor failed to provide any substantiating details. The Tribunal also observed that the invoices relied upon by the Operational Creditor did not contain particulars of customers or transactions and appeared stereotyped.

Relying on the principles laid down by the Supreme Court in ***Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., Rajratan Babulal Agarwal v. Solartex India (P) Ltd., and Sabarmati Gas Ltd. v. Shah Alloys Ltd.,*** the NCLAT reiterated that the adjudicating authority is only required to examine whether there exists a plausible contention requiring investigation and whether the defence raised is not spurious, hypothetical, or illusory. The Tribunal emphasized that it is not
necessary for the adjudicating authority to determine the likelihood of success of the defence or to adjudicate the merits of the dispute at the admission stage.

Accordingly, since the Corporate Debtor had raised a genuine dispute regarding the existence of the operational debt prior to issuance of the demand notice, the NCLAT held that the Section 9 application was not maintainable. The order of the NCLT rejecting the insolvency petition was therefore upheld and the appeal was dismissed.

F. WHERE OPTIONALLY CONVERTIBLE DEBENTURES ARE NOT ACTUALLY CONVERTED INTO EQUITY SHARES, THE DEBENTURE HOLDER RETAINS THE STATUS OF A FINANCIAL CREDITOR AND MAY VALIDLY EXERCISE A PUT OPTION; FAILURE TO REDEEM THE DEBENTURES THEREAFTER CONSTITUTES DEFAULT UNDER SECTION 7 OF THE IBC – NCLAT

The National Company Law Appellate Tribunal in ***Arvind Kumar v. Beacon Trusteeship Ltd. & Anr.,*** Company Appeal (AT) (Insolvency) No. 171 of 2026, decided on 25.02.2026, held that where Optionally Convertible Debentures (OCDs) are not actually converted into equity shares in accordance with statutory and contractual requirements, the debenture holder continues to remain a financial creditor. Consequently, upon valid exercise of a contractual put option and failure of the corporate debtor to redeem the debentures, the requirements of "debt" and "default" under Section 7 of the Insolvency and Bankruptcy Code, 2016 stand satisfied.

The Tribunal observed that the corporate debtor had issued OCDs under a Debenture Trust Deed (DTD) with a tenure of 60 months from the date of allotment. Although conversion notices were issued by the debenture holder calling upon the corporate debtor to convert the OCDs into equity shares, the corporate debtor failed to complete the conversion process. The Appellate Tribunal noted that the corporate debtor itself admitted that conversion could not be effected due to expiry of the ISIN and absence of necessary corporate actions.

Rejecting the appellant's contention that the debentures stood automatically converted upon issuance of the conversion notice, the Tribunal held that the deeming provision in the DTD could not be read in isolation. The relevant clause required not only issuance of a conversion notice but also completion of statutory and procedural
requirements, including allotment of shares, updating statutory registers, activation of ISIN, and filing of requisite forms with the Registrar of Companies. In the absence of such steps, the conversion could not be treated as having taken effect.

The NCLAT further held that since the debentures were never converted into equity shares, the debenture holder continued to retain its status as a debenture holder and therefore had the contractual right to exercise the put option after expiry of the stipulated period under the DTD. Once the put option was exercised and the corporate debtor failed to redeem the debentures within the stipulated time, an event of default occurred.

Accordingly, the Tribunal upheld the order of the NCLT admitting the Section 7 application, holding that the debentures constituted financial debt within the meaning of Section 5(8) of the IBC and that the corporate debtor's failure to redeem the debentures after exercise of the put option clearly established the existence of debt and default. The appeal was therefore dismissed.

G. THE DATE OF DISHONOUR OF CHEQUES DOES NOT ALTER THE ORIGINAL DATE OF DEFAULT UNDER THE IBC – NCLAT

The National Company Law Appellate Tribunal in ***Irfan Khan v. Rakesh Kumar Goswami & Anr.,*** Company Appeal (AT) (Ins.) No.

1392 of 2023, decided on 24.02.2026, held that the dishonour of cheques issued towards discharge of an existing liability does not shift or determine the date of default under the Insolvency and Bankruptcy Code, 2016. The relevant date of default remains the date on which the debt originally became due and payable and was not paid.

The Tribunal observed that the Operational Creditor had supplied goods to the Corporate Debtor through various invoices dated between 20.04.2019 and 19.09.2019. Each invoice stipulated that payment was to be made within 30 days of the invoice date. Consequently, the Tribunal held that the debt became due and payable upon expiry of the 30-day period, and at the latest by 19.10.2019.

The Appellant contended that the parties maintained a running account and that the date of default should instead be reckoned from 29.01.2021, when cheques issued by the Corporate Debtor were dishonoured.

This argument was advanced to bring the alleged default within the suspension period under Section 10A of the IBC. The Appellate Tribunal rejected this contention, holding that the dishonour of cheques issued towards repayment of an already existing liability does not alter the original due date of the debt.

The Tribunal further clarified that Section 10A only bars initiation of insolvency proceedings for defaults arising on or after 25.03.2020 during the notified suspension period. Since the underlying default in the present case occurred in 2019 when the invoices became due and payable, the statutory bar under Section 10A was held to be inapplicable.
Accordingly, the NCLAT upheld the order of the NCLT admitting the application under Section 9 of the IBC, holding that the Corporate Debtor had committed default prior to the Section 10A suspension period. The appeal was therefore dismissed.

NCLT & IBC Committee Leadership

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- **Mr. Abhishek Anand,** Co-Chair
- **Ms. Ranjana Roy Gawai,** Co-Chair
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