NCLT & IBC Committee, PHDCCI

IBC Pulse

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Monthly Updates on Insolvency & Resolution

A. OFFSETTING OF RECEIVABLES AND PAYABLES THROUGH ACCOUNTING ENTRIES, RESULTING IN EXTINGUISHMENT OF THE CORPORATE DEBTOR'S ENFORCEABLE RECEIVABLE AND CONFERRING A BENEFIT ON A RELATED PARTY, CONSTITUTES A "TRANSFER OF PROPERTY" AND A PREFERENTIAL TRANSACTION UNDER SECTION 43 OF THE IBC – NCLAT

The National Company Law Appellate Tribunal in ***Atul Babulal Prajapati and Anr. v. Suhas Dinkar Bhattbhatt (Liquidator) and Ors., Company Appeal (AT) (Insolvency) No. 2273 of 2024***, decided on 25.03.2026, held that the extinguishment of a corporate debtor's receivable through accounting set-off entries, without actual fund movement, constitutes a "transfer of property or interest therein" under Section 43(2)(a) of the Insolvency and Bankruptcy Code, 2016, where such transaction benefits a related party and places it in a more advantageous position vis-à-vis other creditors.

The Tribunal observed that the Corporate Debtor had receivables from a related entity, Wholesale Hub LLP, which were not routed through the Corporate Debtor's bank account but were instead adjusted through accounting entries against payables owed to the Appellant's proprietorship concern. The Appellant, being a director and key managerial person of the Corporate Debtor and in control of the related entities, admitted that such adjustment was undertaken to avoid banking transactions.

Forthcoming Events

- **National Summit & IBC Awards at Delhi** *Sep'26*
- **Residential Workshop on Board Governance.** *Oct'26*

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On facts, the impugned transaction of 2,00,50,141/- was effected on 30.06.2019 and was evidenced through ledger entries and forensic audit findings, which demonstrated that the receivable of the Corporate Debtor stood extinguished while the liability towards the Appellant was simultaneously satisfied. The Tribunal held that such extinguishment of an enforceable receivable constitutes a valuable property interest of the Corporate Debtor and its reduction amounts to a transfer within the meaning of Section 43.

Rejecting the contention that no "transfer" occurred in the absence of actual fund flow, the Tribunal clarified that Section 43 is not confined to physical movement of money; extinguishment, relinquishment, or reduction of a receivable through book entries is sufficient to constitute transfer of property.

The Appellate Tribunal further held that the transaction satisfied both limbs of Section 43(2):

1. It was in respect of an antecedent liability and
2. It placed the Appellant, a related party, in a more beneficial position than other creditors, particularly as multiple creditors remained unpaid at the relevant time while the Appellant's dues stood adjusted.

The Tribunal also rejected the defence that the transaction was in the ordinary course of business, noting that it involved related parties under common control, lacked corporate authorisation, bypassed banking channels, and resulted in depletion of the Corporate Debtor's asset pool to the detriment of other creditors.

Accordingly, the NCLAT upheld the finding that the impugned set-off constituted a preferential transaction under Section 43 of the IBC, affirmed the direction for repayment, and dismissed the appeal.

B. SECURITY DEPOSIT MADE BY THE CORPORATE DEBTOR REMAINS ITS PROPERTY AND CANNOT BE APPROPRIATED TOWARDS PRE-CIRP DUES AFTER COMMENCEMENT OF MORATORIUM; SET-OFF OF PRE-CIRP LIABILITIES IS NOT PERMISSIBLE DURING CIRP – HON'BLE SUPREME COURT

The Hon'ble Supreme Court in ***Central Transmission Utility of India Ltd. v. Sumit Binani and Ors., Civil Appeal Nos. 2216–2217 of 2025***, decided on 23.03.2026, held that a security deposit furnished by a corporate debtor remains its property until validly appropriated, and any appropriation thereof towards pre-CIRP dues after commencement of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 is impermissible. The Court further clarified that set-off of pre-CIRP liabilities during CIRP is not recognised under the IBC framework.

The dispute arose in relation to a cash deposit of 108.44 crores made by the Corporate Debtor with the appellant as a payment security mechanism in lieu of a Letter of Credit under a Transmission Service Agreement. Following commencement of CIRP on 03.10.2019, the appellant appropriated the deposit on 28.03.2020 towards outstanding dues, including 85.13 crores pertaining to pre-CIRP liabilities.

The Court observed that such security deposit, until adjusted, continues to be an asset of the Corporate Debtor and forms part of the insolvency estate. Once moratorium under Section 14 comes into effect, recovery or appropriation of amounts towards pre-CIRP dues is barred, and creditors are required to submit their claims before the Resolution Professional in accordance with the statutory scheme.

Rejecting the appellant's contention that the deposit was equivalent to a Letter of Credit or could be appropriated by way of set-off, the Court held that even if it were treated as a security mechanism, enforcement post-commencement of CIRP would be hit by the moratorium. The Court further clarified that Section 14 permits payments only towards post-CIRP dues to keep the Corporate Debtor as a going concern, and not towards extinguishment of past liabilities.

On the issue of set-off, the Court relied on *Bharti Airtel Ltd. v. Aircel Ltd.* and reiterated that insolvency set-off is not recognised during CIRP, and that pre-CIRP dues cannot be adjusted against amounts payable to the Corporate Debtor after commencement of CIRP. The Court distinguished cases involving mutual dealings and contractual set-off, holding that no such mutuality existed in the present case, where the deposit merely functioned as security for payment obligations.

The Court also noted that the appellant had already filed its claims before the Resolution Professional and had not challenged their adjudication, and that the resolution plan proceeded on the basis that the deposit formed part of the Corporate Debtor's assets. Permitting unilateral appropriation would defeat the pari passu distribution mechanism under the IBC.

Accordingly, the Hon'ble Supreme Court upheld the findings of the NCLT and NCLAT, directed that the deposit be adjusted only towards post-CIRP dues, and held that pre-CIRP claims must be dealt with strictly through the insolvency process. The appeals were dismissed.

C. LIMITATION FOR FILING APPEAL UNDER SECTION 61(2) OF THE IBC COMMENCES FROM THE DATE OF PRONOUNCEMENT OF THE ORDER IN OPEN COURT AND NOT FROM THE DATE OF UPLOADING; DELAY BEYOND 30+15 DAYS IS NON-CONDONABLE AND JURISDICTIONAL – NCLAT

The National Company Law Appellate Tribunal in ***Mukesh Sumermal Sanghvi v. R. D. Engineer (India) Pvt. Ltd., Company Appeal (AT) (Ins) No. 1194 of 2025,*** decided on 25.03.2026, held that limitation for filing an appeal under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 commences from the date of pronouncement of the order in open court, and not from the date of uploading of the order. The Tribunal further held that the statutory period of 30 days, extendable by a maximum of 15 days, is mandatory and non-condonable beyond the prescribed limit.

The appeal arose from dismissal of a restoration application seeking revival of a Section 9 petition withdrawn pursuant to a settlement. The appellant contended that limitation should run from the date of uploading of the order (29.04.2025), whereas the respondent asserted that the order had been pronounced in open court on 21.04.2025.

The Tribunal, relying on *V. Nagarajan v. SKS Ispat & Power Ltd*. and subsequent Hon'ble Supreme Court decisions, reiterated that once an order is pronounced in open court, knowledge is imputed to the parties and limitation begins from that date. Uploading of the order is merely an administrative act and does not determine commencement of limitation.

On facts, the Tribunal noted that the impugned order expressly recorded the date of delivery as 21.04.2025 and the appearance of counsel for both parties, and there was no specific denial by the appellant that the order was pronounced in open court. In the absence of any material to

the contrary, the Tribunal held that limitation must be computed from the date of pronouncement.

Applying Section 61(2), the Tribunal held that the limitation period expired on 20.05.2025 (30 days) and the outer condonable period expired on 04.06.2025. Since the appeal was filed on 10.06.2025, it was beyond even the maximum condonable period, and the Tribunal lacked jurisdiction to entertain it.

The Tribunal emphasised that limitation under Section 61(2) is not merely procedural but jurisdictional in nature, and once the statutory window of 30+15 days expires, the Appellate Tribunal is rendered functus officio in respect of the appeal.

Accordingly, the NCLAT held the appeal to be barred by limitation and dismissed it without examining the merits, while reserving liberty to the appellant to pursue other remedies in accordance with law.

D. FILING OF A SECTION 95 APPLICATION DURING THE SUBSISTENCE OF INTERIM MORATORIUM UNDER SECTION 96 IS NON-EST IN LAW, AND SUBSEQUENT WITHDRAWAL OF THE EARLIER PROCEEDINGS DOES NOT CURE SUCH INVALIDITY – NCLAT

The National Company Law Appellate Tribunal in ***Sushant Chhabra v. Catalyst Trusteeship Ltd. and Anr., Company Appeal (AT) (Insolvency) Nos. 443–444 of 2026,*** decided on 27.03.2026, held that any application under Section 95 of the Insolvency and Bankruptcy Code, 2016 filed during the subsistence of an interim moratorium under Section 96 is non-est in law, and such defect is not cured by subsequent withdrawal of the earlier proceedings which had triggered the moratorium.

The Tribunal observed that applications under Section 95 had already been filed by Canara Bank against the personal guarantors on 12.01.2025, upon which an interim moratorium under Section 96 commenced and continued to operate. During the subsistence of this moratorium, the respondent filed fresh Section 95 applications on 05.08.2025 against the same personal guarantors.

Interpreting Section 96, the Tribunal reiterated that upon filing of an application under Section 94 or Section 95, an interim moratorium comes into effect in respect of all debts, during which (i) all pending proceedings are deemed to be stayed, and (ii) no creditor can initiate any legal action or proceeding against the debtor. The statutory scheme does not contemplate multiplicity of proceedings against a personal guarantor during the currency of such moratorium.

The Tribunal rejected the respondent's contention that withdrawal of the earlier applications on 10.11.2025 obliterated the moratorium retrospectively and validated the subsequent applications. It held that although the interim moratorium ceases upon withdrawal, admission, or rejection of the earlier application, any proceeding initiated during the subsistence of the moratorium is void ab initio and cannot be revived or validated thereafter.

Relying on the principle laid down by the Hon'ble Supreme Court in *Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan Pvt. Ltd.,* the Tribunal held that proceedings initiated in violation of a statutory moratorium are non-est in law from inception. Applying this principle, it concluded that the Section 95 applications filed during the currency of the interim moratorium were invalid at their inception and could not be sustained.

The Tribunal further held that the Adjudicating Authority erred in overlooking the legal effect of the subsisting interim moratorium and in proceeding to admit the applications based on the Resolution Professional's report, without first addressing the jurisdictional bar.

Accordingly, the NCLAT set aside the orders admitting the Section 95 applications and dismissed the proceedings as non-maintainable, while granting liberty to the financial creditor to file fresh applications in accordance with law after cessation of the interim moratorium.

E. MORATORIUM UNDER SECTION 14(1)(d) BARS RECOVERY OF LEASED PROPERTY IN POSSESSION OF THE CORPORATE DEBTOR EVEN WHERE THE LEASE WAS TERMINATED PRIOR TO CIRP; PHYSICAL OCCUPATION ATTRACTS STATUTORY PROTECTION – NCLAT

The National Company Law Appellate Tribunal in Sudha Apparels Ltd. v. Ravi Sethia, RP of Future Lifestyle Fashion Ltd., Company Appeal (AT) (Ins) No. 2026 of 2024, decided on 06.04.2026, held that Section 14(1)(d) of the Insolvency and Bankruptcy Code, 2016 bars recovery of property by an owner or lessor where such property is in possession of the corporate debtor, and such protection applies notwithstanding termination of the lease prior to commencement of CIRP, so long as the corporate debtor continues in physical occupation.

The appeal arose from dismissal of an application seeking recovery of leased premises by the appellant–landlord, who had terminated the lease prior to initiation of CIRP due to non-payment of rent. The appellant contended that upon valid pre-CIRP termination, no right, title, or interest survived in favour of the corporate debtor and therefore the property could not be treated as part of the insolvency estate.

The Tribunal, however, held that Section 14(1)(d) is attracted based on actual possession or occupation of the corporate debtor and not on the subsistence of contractual rights. Drawing from the statutory language and precedent, the Tribunal emphasised that the moratorium protects property "occupied by" the corporate debtor, and such occupation includes physical possession even if the underlying lease has been terminated.

Relying on *Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority* and subsequent NCLAT decisions, the Tribunal reiterated that recovery of property during moratorium is impermissible where the corporate debtor remains in possession, as the objective of Section 14 is to preserve the corporate debtor as a going concern.

The Tribunal further observed that even after termination of tenancy, the possession of a tenant is juridically protected until lawfully recovered through due process, and such possession falls within the ambit of protection under Section 14(1)(d).

On facts, the Tribunal noted that the corporate debtor continued to be in possession of the premises and that the property was critical for maintaining operations as a going concern. The Resolution Professional demonstrated that a substantial portion of the corporate debtor's business was being conducted from the premises, and disruption of possession would adversely affect the CIRP.

Rejecting the appellant's reliance on precedents relating to extinguishment of contractual rights prior to CIRP, the Tribunal distinguished such cases on the ground that they did not involve recovery of property during subsistence of moratorium where the corporate debtor was in actual occupation.

Accordingly, the NCLAT held that recovery of possession by the landlord during moratorium was barred under Section 14(1)(d), upheld the impugned order, and dismissed the appeal while directing expeditious completion of CIRP proceedings.

F. ATTACHMENT OF PROPERTY UNDER THE PMLA IS NOT SUBORDINATE TO SECURED CREDITOR PRIORITY UNDER SARFAESI OR RDB ACT; COMPETING STATUTES MUST BE HARMONISED, AND CLAIMS OF SECURED CREDITORS ARE SUBJECT TO ADJUDICATION UNDER THE PMLA FRAMEWORK – BOMBAY HIGH COURT

The High Court of Bombay in ***Joint Director, Enforcement Directorate v. HDFC Bank Ltd., First Appeal Nos. 1413 of 2017 and 9 of 2019***, decided on 23.03.2026, held that attachment of property under the Prevention of Money Laundering Act, 2002 is not overridden by the priority accorded to secured creditors under Section 26-E of the SARFAESI Act or Section 31-B of the Recovery of Debts and Bankruptcy Act, 1993, and that the competing statutory regimes must be harmoniously construed, with adjudication of third-party claims falling within the PMLA framework.

The appeals arose from orders of the Appellate Tribunal under the PMLA which had set aside confirmation of provisional attachment of mortgaged properties on the ground that secured creditors enjoy statutory priority. The Enforcement Directorate challenged this finding, contending that the PMLA, being a penal statute with overriding effect under Section 71, governs attachment and confiscation of "proceeds of crime."

The Court examined the interplay between the PMLA and recovery legislations, noting that while the SARFAESI Act and RDB Act confer priority to secured creditors for recovery of debts, the PMLA operates in a distinct field aimed at attachment and eventual confiscation of tainted property. The State, in exercising powers under the PMLA, does not act as a creditor seeking recovery but as a sovereign enforcing penal consequences against proceeds of crime.

Rejecting the Tribunal's view that secured creditor priority would prevail, the Court affirmed that Section 71 of the PMLA grants overriding effect in matters concerning money laundering and proceeds of crime, and that neither SARFAESI nor the RDB Act can be interpreted to dilute or defeat this statutory mandate.

At the same time, the Court clarified that attachment under the PMLA does not automatically extinguish bona fide third-party interests. A secured creditor's charge is not rendered

illegal merely by attachment; however, enforcement of such interest is subject to adjudication within the statutory scheme of the PMLA, particularly under Section 8(8), which empowers the Special Court to restore property to claimants with legitimate interests.

The Court emphasised that once attachment is confirmed or proceedings under Section 4 of the PMLA commence, claims of third parties, including secured creditors, must be adjudicated by the Special Court, and cannot be independently enforced through recovery mechanisms under other statutes.

On facts, the Court found that the Appellate Tribunal had set aside the attachment solely on the erroneous premise that SARFAESI and the RDB Act override the PMLA, without examining whether the attachment was supported by material linking the property to proceeds of crime.

Accordingly, the High Court set aside the Tribunal's orders, restored the attachment, and granted liberty to the secured creditor to seek appropriate relief before the Special Court under Section 8(8) of the PMLA for restoration of property, if entitled.

NCLT & IBC Committee Leadership

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