



# *RECENT JUDGEMENTS*

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# *CIRP AGAINST STRUCK OFF COMPANIES IS MAINTAINABLE*

- HEMANG PHOPHALIA VS THE GREATER BOMBAY COOPERATIVE BANK LTD
- FACTS: The bank had filed an application u/s 7 to initiate CIRP against Penguin Umbrella Works Pvt Ltd, which was admitted by Mumbai NCLT. The appellant filed an appeal to NCLAT that as the corporate debtor was struck off from ROC CIRP cannot be initiated.
- Ratio
- It was held that CIRP application against companies struck off by the RoC is maintainable. Further, it was also stated that NCLT also has the power to restore the name of the company and all other persons in their respective position for the purpose of initiating CIRP under section 7 and 9 of IBC.

# *Parallel Insolvency Proceedings in 2 jurisdictions*

- Jet Airways (India) Ltd. vs. State Bank of India & Anr.
- Facts
- In this case CIRP proceedings were going on against Jet airways in two countries simultaneously, in India and in Netherlands. The issue arose whether separate proceedings of CIRP can take place against a common 'Corporate Debtor', if it takes place in two separate jurisdictions or countries?
- Ratio
- The NCLAT held that the Dutch Trustee also holds the same position as the RP in India. Therefore, the NCLAT after a guarantee from the Dutch counterpart that it will not be interfering with the CIRP in India, it allowed Dutch Trustee to attend the CoC meetings in India.

# *Applicability of Limitation Act*

- **Jignesh Shah and another v. Union of India and Anr.**
- **Facts** - In this case, a winding up petition was initiated against La-Fin Financial Services Private Limited by the Bombay High Court. A letter of undertaking given by La Fin, a group company promoted by Jignesh Shah, on 20 August 2009, to IL&FS in which it undertook to purchase the shares held by IL&FS in MCS Stock Exchange within three years. IL&FS exercised the option in 2012 but La Fin refused to honour the undertaking. But after the coming up of the IBC, 2016, the winding up petition was converted into company petitions under section 7 of the IBC. So the main issue was whether a winding up petition, which is converted into a Section 7 application under IBC be barred by lapse of time under the limitation act.
- **Ratio**
- The Supreme Court stated that in winding up or commercial insolvency cases, first there is a requirement that the default should take place, after which the debts remain outstanding. It is only on this date that the limitation period is triggered. It also clarified that the winding up proceeding is a right in rem and not a recovery proceeding. Thus, concluding that the Limitation Act is applicable in cases of insolvency.

# Moratorium period before the initiation of CIRP

- NUI Pulp and Paper Industries Pvt Ltd v Roxcel Trading GmbH
- Facts
- Roxcel Trading GmbH had filed an application under section 9 of the IBC against NUI Pulp and Paper Industries for the unpaid operational debt. The Corporate Debtor claimed that the debt was disputed therefore it sought time for filing the reply. But Roxcel had apprehensions that the CD might be intending to sell its assets thus leading to abuse of the process of the IBC. Therefore, the NCLT under Rule 11 of the NCLT rules, 2016 passed an order stating that the Directors of the Corporate Debtor shall create no interests or no assets shall be sold to any third party, ordering a pre- moratorium order. This was challenged by the Corporate Debtor in the NCLAT. So, the issue was whether the NCLT has inherent powers under rule 11 of NCLT rules to alienate powers of the Directors of the Corporate Debtor?
- Ratio
- The NCLAT stated that there were no such restrictions which have been imposed upon the NCLT to pass orders under rule 11 of the NCLT Rules. If the NCLT feels that there has been a situation of abuse of process of law or injustice, then the NCLT can pass such interim relief at any stage.

# *Can High Court interfere in the orders passed by NCLT*

- M/s Embassy Property Developments Pvt Ltd v State of Karnataka and Ors
- Facts
- The Resolution Applicant, CoC and the Corporate Debtor had filed appeal in the Supreme Court challenging the interim order passed by the Karnataka High Court, which had put a stay on an order passed by the NCLT. The application in High Court was filed by the Resolution Professional. The issue which arose in this case was whether the High Court can pass any interim order under article 226/227 interfering with the order of the NCLT and also ignoring the fact that there is an alternative remedy of appealing to the NCLAT for the same?
- Ratio
- The Supreme Court stated that the NCLT is a creation of the special statute to discharge specific functions. Therefore, it cannot be given a status higher than judicial courts which have power of judicial review over the administrative action. It also stated that NCLT's are not even civil courts, thus , it can only try cases within its statute which has been prescribed by law and no other matters i.e. matters of public interest, civil nature etc. Therefore, the HC can try matters in realm of public law which arise in matters of IBC 2016.

# *Treatment of Secured and Unsecured Creditors*

- **ArcelorMittal India Private Limited v. Satish Kumar Gupta and Others (Essar Insolvency case)**
- Facts
- In this case Financial Creditors of the Essar Steel India Limited had filed an application for CIRP under section 7 of the IBC. The main issue in this case was with regard to the treatment of the secured and unsecured creditors, determining of the powers of the CoC , powers in relation to the powers of accepting the resolution plan and the constitutional validity of the section 12(3) and section 30(2) of the IBC.
- Ratio
- The Supreme Court differentiated with regard to the payment of debts to the Secured and Unsecured creditors. It pressed on the fact that the unequals cannot be treated equally. Thus, a resolution plan cannot be rejected on the ground that the plan is unjust or unfair to a certain class of creditors, if the interest of the each class of the creditor has been looked into.
- Section 12(3) of the IBC, which provided for the mandatory timeline of 330 days for completion of CIRP, if not complied with, the corporate debtor would be liquidated. The Supreme Court partially struck down the section in which the word 'mandatory' was considered as arbitrary and unreasonable under article 14 of the Indian Constitution and it also hindered with the rights of the carrying out business under article 19(1) (g). Section 30(2) of the IBC provided for the minimum payment that needs to be made dissenting financial creditors as well as the operational creditors. The Supreme Court held that this section was a mere guideline that the CoC needs to follow while it arrives at any decision regarding the resolution plan and any such decision must be taken taking the feasibility and the ground realities. Thus, section 30(2) was upheld by the Supreme Court

# THANK YOU