

ARBITRATION CLAUSE

Hotel Guadvan (P.) Ltd. v. Alchemist Asset Reconstruction Co. Ltd. [2018] (NCL-AT)

- When moratorium came into effect, in view of section 14, no arbitration proceeding could have taken place [Sec. 14]
- In order of the supreme court, instant appeals were to be dismissed with cost.

Achenbach Buschhutten GmbH & Co. v. Arcotech Ltd. [2017] (NCL-AT)

- Mere existence of arbitration clause in relevant agreement would not lead to rejection of an application to initiate insolvency process [Sec. 9] where bank which was maintaining accounts of operational creditor, gave certificate confirming that there was no payment of unpaid operational debt by Corporate Debtor, but said bank was not a financial institution as defined in section 3(14), application under section 9 was not maintainable [Sec. 9]

Alchemist Asset Reconstruction Company Ltd. V. Hotel Gaudavan (P.) Ltd. [2017] 88taxmann.com 202/[2018] 145 SCL 428 (SC)

- Arbitration proceedings cannot be initiated after imposition of moratorium alter section 14(l)(3i) has come into effect; it will be non-est in law and cannot be allowed to continue [Sec. 14]

Anapurna Infrastructure (P) Ltd. V. SORIL Infra Resources Ltd. [2018] (NCL-AT)

- As apparent from Form 5 of Insolvency and Bankruptcy (application to adjudicating authority) rules, 2016, for purpose of insolvency and bankruptcy code, an arbitral award has been held to be a document of debt [sec 3(11)].
- For purpose of Code, an Arbitral Award has been held to be a document of debt and non-payment of awarded amount to default in payment of debt [sec 3 (12)].
- From clause (a.) of sub-section (2) of section 8, it is clear that pendency of an arbitration proceedings has been termed to be an existence of dispute and not the pendency of an application under section 34 or section 37 of the arbitration act form 5 of the insolvency and bankruptcy (application to adjudicating authority) rules, 2016 is the form required to be filled to apply under section 9 wherein the order passed by arbitral panel has been cited as one of the document, record and evidence of default.

Anapurna Infrastructure (P) Ltd. V. SORIL Infra Resources Ltd. [2018] (NCLT-New Delhi)

- During pendency of arbitration proceedings operational creditor could not initiate insolvency process against corporate debtor [sec 9]
- Held that, during the pendency of arbitration of proceedings operational creditor could not initiate insolvency process against corporate debtor.

DISPUTE

K. K. V Naga Prasad v. LancoInfratech Ltd. [2018] (NCLT-Hyd)

- Where dues claimed by petitioner, an ex-employee of respondent-company, were totally in dispute as petitioner's claim was not only rejected by company but it also filed a statement showing that petitioner himself had to pay company, petition filed by petitioner for initiating corporate insolvency resolution process against company was rejected [Sec. 9]

Kirusa Software (P.) Ltd. v. Mobilox Innovations (P.) Ltd. [2017] (NCL-AT)

- Where Adjudicating Authority rejected application filed by operational creditor to initiate corporate insolvency resolution process without examining issues, i.e., whether dispute raised by corporate debtor was qualified as dispute or whether notice of dispute fulfilled conditions stipulated in section 8, same was to be remitted to adjudicating authority [Sec. 9]

MCL Global Steel (P.) Ltd. v. Essar Projects India Ltd. [2018] (NCL-AT)

- Adjudicating Authority is bound to issue a limited notice to corporate debtor before admitting a case for ascertainment of existence of default based on material submitted by financial creditor to find out whether application is complete and/or there is any other defect required to be removed [Sec. 7]

- Where in response to demand notice corporate debtor raised dispute regarding quality of construction work and non-compliance of work within time frame, application to initiate insolvency resolution process was to be rejected. [Sec. 8]

- Where impugned order for initiating corporate insolvency resolution process was passed without prior notice to corporate debtor and Operational creditor had not disputed same but submitted that no other notice was to be provided to the corporate debtor except for service of application at time of filing, principle of rules of natural justice was violated and, thus, impugned order by Adjudicating Authority was to be rejected [Sec. 9]

Meyer Apparel Ltd. v. Surbhi Body Products (P.) Ltd. [2018] (NCL-AT)

- Where corporate debtor had raised dispute relating to quality of goods which culminated into pendency of Company Petition before High Court, such dispute fell within ambit of expression 'dispute as defined under sub-section (6) of section 5 and also within ambit of expression existence of a dispute, if any, as mentioned under sub-section (2) of section 8 [Sec. 5(6)]
- Once in a petition under section 7 or 9 corporate resolution process is initiated, Adjudicating Authority has no jurisdiction to initiate another corporate resolution process against same corporate debtor [Sec. 9]

Mobilox Innovations (P.) Ltd. v. Kirusa Software (P.) Ltd. [2017] (SC)

- Claim of corporate debtor that there existed dispute in relation to breach of Non-Disclosure Agreement was sufficient to refuse entertainment of insolvency application by operational creditor; Appellate Tribunal was wholly incorrect in characterizing defense as vague, got-up and motivated to evade liability [Sec. 5(6)]
- Adjudicating authority, when examining an application under section 9 will have to determine (a) whether there is an operational debt exceeding 1 lac as defined in section 4, (b) whether documentary evidence furnished with applications shows that aforesaid debt is due and payable and has not yet been paid and (c) whether there is existence of a dispute between parties or record of pendency of a suit or arbitration proceedings filed before receipt of demand notice operational debt in relation to such dispute; if any one of aforesaid conditions is lacking, application would have to be rejected (sec 9)
- One of principal reasons why Code was enacted was because liquidation proceedings went on interminably, thereby damaging interest of all stakeholders, except a recalcitrant

management which would continue to hold on to company without paying its debts; both Tribunal and Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by Code and will strictly adhere to time frame within which they are to decide matters under Code [Sec. 9]

Philips India Ltd. v. Goodwill Hospital and Research Centre Ltd.[2017](NCL-AT)

- Where corporate debtor much prior to issuance of notice under section 8 raised a dispute relating to quality of service/maintenance pursuant to notice under sections 433(e) and 434(1)(a) of Companies Act, 1956, there was existence of dispute about claim of debt and, therefore, application under section 9 for initiation of corporate insolvency resolution process against respondent-corporate debtor was to be rejected [Sec. 5(6)]

One Coat Piaster v. Ambience (P.) Ltd. [2017] (NCLT - New Delhi)

- where in response to demand notice under section 8, corporate debtor raised a dispute regarding defective and poor quality of work provided by operational creditor, application under section 9 for initiation of corporate insolvency resolution process against corporate debtor was to be rejected[Sec.5(6)]

Sandeep Reddy v. Jaycon Infrastructure Ltd. [2017] (NCL-AT)

- Where prior to issuance of notice corporate debtor had raised a dispute that operational creditor had failed and ignored to complete works under agreement by scheduled date and executed only a part of work and willfully abandoned work after some time, admission of application under section 9 against corporate debtor was to be set aside [sec. 5(6)]

Softwareone India (P.) Ltd. v. Emkor Solutions Ltd. [2018] (NCLT- New Delhi)

- Where corporate debtor furnished sufficient documents in support of existence of dispute regarding quality of service, application filed under section 9 was to be rejected [sec 5(6)]

Uttam Galva Steels Ltd. v. DF Deutsche Forfait Ag [2017] (NCLT-New Delhi)

- Where operational creditor's claim was disputed by debtor much prior to notice issued under insolvency resolution process, there was an existence of dispute and hence no application to initiate insolvency process could be filed [sec 5(6)]
- Where lawyer of operational creditor company was neither authorized by its Board of Directors nor did he hold any position with relation to said company, demand notice issued by him could not be treated as notice issued under insolvency resolution process [sec 8]
- Joint application to initiate insolvency resolution process by more than one operational creditor is not maintainable [sec 9]
- Along with application to initiate insolvency resolution process it is mandatory for operational creditor to file certificate of recognized financial institution that there was no payment of unpaid operational debt by corporate debtor [sec 9]

V.R. Polyfab (P.) Ltd. v. Sadbhav Enterprise (P.) Ltd. [2018] (NCLT-Ahd.)

- Where applicant financial creditor provided unsecured loan to respondent company, fact corporate debtor deducted tax on interest on loan amount, would show that there was an outstanding debt/ financial debt due from corporate debtor to

financial creditor, even if it was assumed that respondent was entitled for certain amount from applicant, it could only be treated as set off or counter claim, and it could not be a dispute relating to financial debt due to applicant from respondent [sec 5(8)]

MORATORIUM

Alpha & Omega Diagnostics (India) Ltd. V. Asset Reconstruction Company of India Ltd. [2018] (NCL-AT)

- Adjudicating Authority was justified in admitting application under section 10 subject to exception that property not owned by corporate debtor would not fall within ambit of moratorium as per section 14 and, consequently, moratorium would include assets of corporate debtor only (Sec. 10)
- NOT any assets movable or immovable of third party

Schweitzer systemtek India (P.) Ltd. V. Phoenix ARC (P.) Ltd. [2018] (NCL-AT)

- Moratorium in case of corporate debtor had no application on properties beyond ownership of corporate debtor and order of adjudicating authority attaching moveable and immovable property of guarantor was justified [sec 14]
- Where corporate insolvency resolution process or liquidation proceedings against principal corporate debtor is pending before Adjudicating authority, application for initiation of resolution process against personal guarantor is required to be filed before very same Bench of Adjudicating authority [sec 60]

ICICI Bank Ltd. v. ABG Shipyard Ltd. [2018] 91 taxmann .con 89 (NCLT-Ahd.)/ ABG Shipyard Ltd. v. ICICI Bank Ltd. [2017] 88 taxmann.com 196 / [2018] 145 SCL 430 (NCLT-Ahd.)/ Nitin Hasmukhal Parikh v. Madhya Gujarat Vij Company Ltd. [2018] 90 taxmann.com 398/146 SCL 412 (NCLT-Ahd.)

- section 14 of bankruptcy code must prevail over section 56 of electricity act ,2003, since electricity is an essential goods with reference to corporate debtor, in view section 14(2) electricity company was not entitled to disconnect power supply to corporate debtor during moratorium period for non-payment of electric bill [sec 14]

Financial Creditor

PEC Ltd. r. Sree Ramakrishna Alloys Ltd. [2018] (NCL - AT)

- Where corporate debtor had borrowed money from appellant against payment of interest, appellant came within meaning of 'Financial creditor' and was eligible to file an application under section 7 there being a debt and default on part of corporate debtor [Sec. 5(20)]

- Where an application was filed under section 7 and Adjudicating Authority concluded that applicant was not a 'Financial creditor', in such case Adjudicating Authority had jurisdiction to reject application filed under section 7, but said Authority could not treat application filed under section 7 as an application under section 9 nor could treat said applicant as an 'Operational creditor', in absence of any claim made under section [Sec. 7]

PEC Ltd. v. Sri Ramakrishna Alloys Ltd. [2018] (NCL-AT)

- As per Rule 7 of Adjudicating Authority Rules, 2016, an application filed under section 7 or 9 could be withdrawn prior to admission of case, which means that after admission of an application, an operational creditor's 'financial creditor' cannot withdraw application [Sec.7]

- Held that, if the adjudicating authority had granted some time to the corporate debtor before admission of application, impugned order was not to be interfered with.

Agroh Infrastructure Developers (P.) Ltd. V. Narmada construction (Indore) (P.) Ltd. [2018] (NCL-AT)

- Where NCLT admitted application under section 9 without giving any notice to corporate debtor, order admitting application being passed in violation of natural justice was to be set aside [Sec. 9]

- Held that impugned order was passed in violation of principles of natural justice and hence the impugned order was to be set aside and the liberty should be given to the financial creditor to withdraw application filed under section 9

Chitra Sharma v. Union of India [2017] 85 taxmann .com 209/144 SCL 1 (SC)

- Where MCLT admitted CIRP application filed by financial creditor bank IDBI against corporate debtor infrastructure company JIL for non-payment of debt and Supreme Court granted stay on order of NCLT, on plea of financial creditor bank-IDBI in instant petition, Supreme Court restored management of company JIL to IRP to secure management of company JIL by IRP who would make all necessary provisions in Interim Resolution Plan to protect interest of consumer-home buyers; further, holding company of JIL, namely, company JAL, was directed to deposit Rs.2000crore with Court [Sec. 17]

- supreme court allowed petition filed by home buyer and stayed order passed by NCLT whereby it admitted application filed by financial creditor against corporate debtor - developer [sec 7]

- where NCLT admitted CIRP application filed by financial creditor bank IDBI against corporate debtor infrastructure company JIL for non-payment of debt, supreme court allowed petition filed by consumer home buyer and stayed order passed by NCLT [sec 17]

- where NCLT admitted CIRP application filed by financial creditor bank-IDBI against corporate debt-or-infrastructure company JIL for non-payment of debt, on plea of consumer-home buyers in instant application, holding company of JIL, namely, company 3AL, was directed to deposit Rs.2000crore with Court; company JAL was further directed to deposit Rs.275crore with Registry of Court on date of hearing and pay balance sum in installments [See. 17]

- Where CIRP against infrastructure company JIL was stayed but IRP was given management by Supreme Court and holding group company JAL was directed to deposit Rs.2000crore but it failed to do so, giving priority to inclination of home buyers who sought refund, deposit schedule was made and developer was directed not to raise demand from such home buyers towards outstanding sum [sec 17]

Edelweiss Asset Reconstruction Company Ltd. v. Synergies Dooray Automotive Ltd. [2017] (NCLT-Hyd.)

- Where financial creditor failed to provide any documentary proof to substantiate its claim that before initiation of insolvency proceedings corporate debtor assigned its debt to others to reduce creditors voting right in Committee of

Creditors, application to held said assignment as invalid was to be dis-missed [Sec. 21]

IDBI Bank Ltd. v. Lanco Infotech Ltd. [2018] (NCLT-Hyd.)

- Where corporate debtor failed to repay loan taken from financial creditor, corporate insolvency resolution process initiated by financial creditor was to be admitted [Sec.7]

- Where Insolvency Resolution Professional (IRP) proposed by financial creditor had been recently appointed as IRP to two large companies and current corporate debtor itself was a large company, proposed IRP would not be able to find sufficient time to act as IRP for respondent-company and, therefore, financial creditor was to be suggested to change aforesaid 7RP[Sec. 16]

Lokhandwala Kataria Construction (P.) Ltd. v. Nisus Finance and Investment Managers LLP[2018] (NCL-AT)

Before admission of an application under section 7, it is open to financial creditor to withdraw application but once it is admitted, it cannot be withdrawn [Sec. 7]

Anil Mahindroo v. Earth Iconic Infrastructure (P.) Ltd. [2018] 91 taxmann.com 143(NCL-AT)

- Where respondent /corporate debtor undertook to pay 'committed returns' from date of execution of agreement till physical possession of unit was handed over to appellant, appellant had successfully proved that money disbursed by them was against consideration for time value of money and thus, for all purpose, they came within meaning of financial creditor [See. 5(8)].

Engenoius Engineering (P.) Ltd. v. Oneax Natura (P.) Ltd. [2018] (NCL-AT)

- where appellant invested some amount with respondent company and was allotted equity shares in a LLB cancelled allotment of shares capital in favour of appellant and amount was lying with respondent, appellant would not come within meaning of the financial creditor [Sec. 5(8)]

- The tribunal was justified in rejecting insolvency resolution process initiated by the appellant.

Forech India (P.) Ltd. v. Edelweiss Assets Reconstruction Company Ltd. [2018] (NCL-AT)

- where winding up cases were pending against corporate debtor but no winding up order was passed or liquidation proceedings was initiated against corporate debtor, financial creditor and operational creditor were free to file application for initiation of corporate insolvency resolution process [See. 7]

- Held that the financial creditor and operational creditor were free to file application for initiation of the corporate insolvency resolution process.

IDBI Bank Ltd. v. Asian Natural Resources India Ltd. [2018] (NCLT-Ahd.)

- Where petitioner-financial creditor sanctioned working capital limits of a sum comprising of fund based and non fund based limit by way of inland letter of credit to respondent corporate debtor and inspite of repeated reminder given by petitioner, respondent did not choose to repay amounts, since debt due to petitioner was a financial debt and petition was complete in all respect, instant petition under section 7(5) was to be admitted. [sec.5(8)]

Insolvency Professional

Innovative Industries Ltd. v. ICICI Bank Ltd. [2017] 84 taxmann.com 320/143 SCL625 (SC)

- Where once an insolvency professional is appointed to manage company, erstwhile directors of company who are no longer in management cannot maintain an appeal on behalf of company [Sec. 17]
- Where once an insolvency professional is appointed to manage company, erstwhile directors of company who are no longer in management cannot initiate appeal on behalf of company [Sec. 61]
- Maharashtra Relief Undertaking (Special Provisions) Act, 1958 being repugnant to Insolvency and Bankruptcy Code could not have come in way of corporate insolvency resolution process under IBC; where appellant-corporate debtor defaulted in making payments of amounts due under credit facilities obtained from respondent bank, application filed by respondent bank to initiate insolvency process had rightly been admitted [Sec. 238]
- **For triggering sec 7(1) of IBC default could be in any FC.** Non obstante clause of IBC to prevail over non obstante clause in MRU article 254 of the Cl

Macro Leafin (P.) Ltd. v. Arrow Resources Ltd. [2018] (NCLT-New Delhi)

- Where certificate of practice of IRP had expired pendency of petition, application for replacement of IRP was to be accepted [sec.16]
- Held that the application for replacement of insolvency resolution professional was to be accepted as in absence of Insolvency Professional no steps could be taken to proceed with corporate Insolvency process.

SARFAESI Act

BharatbhaiVrajlalbhaiSelani v. State Bank of India, Rajkot [2018] (NCLT-Ahd.)

- Initiation of proceedings under SARFAESI Act or pendency of proceedings before DRT is no ground for not commencing Insolvency Resolution Process, in view of overriding effect given to section 238 [sec. 10]

Neeta Chemicals (I) (P.) Ltd. (NCIPL) v. State Bank of India [2017] (NCLT - Hyd.)

- Where corporate debtor without taking any steps to clear even a part of loan, filed application to initiate insolvency resolution process only to scuttle proceedings of SARFAESI Act initiated against it, same was to be dismissed [Sec. 10]

Sarthak Creation (P.) Ltd. V. Bank of Baroda [2018] (NCLT-Ahd.)

- Pendency of proceedings before DRT or innovation of provisions of SARFAESI Act is no ground to not to commence Corporate Insolvency Resolution Process (sec. 10)
- Application by the corporate debtor to initiate corporate insolvency resolution process was to be admitted.

Schweitzer systemtek India (P.) Ltd. V. Phoenix ARC (P.) Ltd. [2018] (NCLT-Mum)

- Property not owned by corporate debtor do not fall within ambit of moratorium as per section 14 and, consequently, moratorium shall prohibit action only against properties reflected in balance sheet of the corporate debtor [sec 14]
- SARFAESI Act may come within ambit of moratorium if an action is to foreclose or to recover or to create any interest in

respect of property belonged to or owned by a corporate debtor and not otherwise [sec 14]

Supreme Court

Bikram Chatterji v. Union of India [2018] 92 taxmann.com 176 (SC)

- Supreme Court directed Amrapali Builders to submit opinion about various deficiencies in their projects and completion of those projects [Sec. 17]
- NO coercive action would be taken by any authority with respect to buildings where completion was going on under order passed by the Supreme Court.

Mothers Pride Dairy India (P.) Ltd. v. Portrait Advertising and Marketing (P.) Ltd.[2018] (SC)

- Where settlement had been entered into between parties and Supreme Court accepted said settlement, proceeding pending before National Company Law Tribunal would stand disposed of [sec-9]

Lokhandwala Kataria Construction (P.) Ltd. v. Nisus Finance and Investment Managers LLP[2018] (SC)

- where NCLT was of view that inherent power recognized by Rule 11 of NCLAT Rules ,2016 could not to be utilized by NCLAT to allow a compromise before it by parties after admission of matter , prima facie this appeared to be correct position in law ; Supreme court should take on record consent terms entered into between parties and undertaking of appellant to abide by consent terms in toto [sec 61]

Neelkanth Township and Construction (P.) Ltd. v. Urban Infrastructure Trusties Ltd.[2018] (SC)

- Where NCLAT held that in absence of regulation framed by Insolvency Board relating to 'record of default', 'documents', 'record', and 'evidence of default', terms prescribed in Adjudicatory Rules, 2016 would hold good to decide default of debt, appeal against said order was to be dismissed [Sec. 3(12)]
- Where debentures matured in three consecutive years, were not paid by the corporate debtors, there was a 'default' as defined under section 3(12) [Sec. 3(12)]
- Debentures come within meaning of financial debt [Sec. 5(8)]
- Where NCLAT held that Limitation Act, 1963 does not apply to Bankruptcy Code and therefore application by financial creditor to initiate insolvency process even after 6 years couldn't be said to be time barred, "Supreme Court kept question of law viz. whether Limitation Act would apply to this proceeding, open [Sec. 7]

Era Infra Engineering Ltd. v. Prideco Commercial Projects (P.) Ltd. [2018] (NCL-AT)

- Where earlier a notice was issued to corporate debtor under section 271 of Companies Act, 2013 for winding up, same could not be treated as a notice for purpose of section 8 and in view of mandatory provision under section 8, read with rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, a demand notice was to be sent by operational creditor to corporate debtor[Sec. 8]

- order passed by Adjudicating Authority accepting application of the corporate debtor initiating corporate insolvency resolution process was to be set aside.

JK Jute Mills Co. Ltd. v. surendra Trading Co. [2017] (NCL-AT)

- Nature of provisions contained in sub-section (5) of section 7 or sub-section (5) of section 9 and sub-section (4) of section 10 stipulating that within 14 days of receipt of application for initiating corporate insolvency resolution process, 'Adjudicating Authority' is required either to admit or to reject application, being procedural; same cannot be treated as mandatory [Sec. 7, Sec. 9 and Sec. 10]

Kaliber Associates (P.) Ltd. v. Mrs. Tripat Kaur [2018] 92 taxmann.com 183 (NCL-AT)

- Where before admission of application under section 7, Adjudicating Authority had not issued any notice to corporate debtor, impugned order admitting application had been passed in violation of rules of natural justice and thus, same was to be set aside [Sec. 7]

P.K. Ores (P.) Ltd. v. Tractors India (P.) Ltd. [2018] (NCL-AT)

- Where application preferred by respondent-operational creditor under section 9 was admitted but no notice was given to corporate debtor by Adjudicating Authority prior to admission of application under section 9, impugned order of admitting application against corporate debtor was to be set aside [Sec. 9]

Prowess International (P.) Ltd. v. Parker Hanniini India (P.) Ltd. [2017] (NCL-AT)

- Adjudicating Authority may permit withdrawal of application on request of applicant before its admission but it has no power to allow any applicant or any other person to withdraw application after admission [Sec. 9]

Anark Aluminium Ltd. V. State Bank of India [2018] (NCLT-Hyd.)

- where corporate debtor, a special purpose vehicle (SPV) was established to take up implementation of alumina refinery for manufacture of alumina but it could not commence commercial operations due to non-availability of raw material as state mineral development corporation APMDC had cancelled ore supply agreement, since corporate debtor had not taken matter to State Government and in view of fact huge public money had already been invested by banks and said project had a potential of employment generation for more than 1000 employees' application filed under section 10 to initiate insolvency resolution process was to be rejected [Sec. 10]

Anil Kumar v. Rolex Cycles (P.) Ltd. [2017] (NCLT-Chd.)

- where personnel of corporate debtor did not co-operate with Interim Resolution Professional (IRP) appointed by Tribunal, IRP would continue to function as Resolution Professional till he was replaced and would not become functus officio to stall resolution process in petition which had been admitted by Tribunal [Sec. 19]

Axis Bank Ltd. v. Edu Smart, Services (P.) Ltd. [2017] (NCLT-New Delhi)

- Where CIRP was admitted against corporate debtor and IRP invited public claims, and applicant bank invoked corporate guarantee which was given by corporate debtor to applicant bank few years back in restructuring and reconstitution of a sister company, since CIRP commenced much prior to date of invoking corporate guarantee by applicant bank, Resolution Professional was not able to verify applicant bank's claim under that guarantee and, therefore, had rightly rejected applicant's claim [Sec. 14]

Impex Ferro Tech Ltd. v. Agarwal coal Corporation (P.) Ltd. [2018] (SC)

- Where after passing of order of MCLT, settlement was entered into between parties, same was to be taken on record and also undertaking of both parties to abide by consent terms was to be recorded and judgment of NCLT would accordingly be substituted by instant order [Sec. 9]

Inderpreet Singh v. Marines Buildcon India Ltd. [2018] (NCLT-New Delhi) (SB)

- Where corporate debtor failed in repayment of loan with interest and debt had been acknowledged by one of directors of corporate debtor, application for initiation of corporate insolvency process was to be admitted [sec 7]

Aruna Hotels Ltd. v. N. Krishnan [2018] (NCL-AT)

- Where insolvency resolution process under section 9 was admitted on ground that appellant-employer had not paid arrears of salaries due to ex-employees, appellant-employer pleaded that no demand notice, as required under section 8, was separately given by any of ex-employees and that all notices of ex-employees were issued by same advocate, which were served as advocates notice, for want of valid demand notice under section 8, impugned order for initiating corporate insolvency resolution process was to be set aside [Sec. 8]

Bank of New York Mellon, London Branch v. Zenith Infotech Ltd. [2017] 78 taxmann.com 254/140 SCL 333 (SC)

- When Registrar or Secretary and Chairman of BIFR had not been conferred any power of adjudication to determine question as to whether a company was an industrial company within meaning of section 3(e) and 3(f) of SICA, refusal of registration of reference on that basis was non-est in law; and reference must, therefore, be deemed to be pending on date of commencement of Insolvency and Bankruptcy Code attracting provisions of section 252 thereof

IDBI Bank Ltd. v. BCC Estate (P.) Ltd. [2018] (NCLT-Ahd.)

- Merely because corporate insolvency process had already commenced against principal borrower, corporate guarantor could not avoid corporate insolvency resolution process when it fail to repay amount borrowed by principal borrower [sec7]

Industrial & Commerce Bank of china v. Alok Industries Ltd. [2017] (NCLT-Ahd)

- Pendency of winding up proceeding before admission of insolvency proceeding would not bar either initiation or continuation of such insolvency proceedings [Sec. 7]

Macquaire Bank Ltd. v. Shilpi Cable Technologies Ltd. [2017] (SC)

- Section 9(3)(c) is a procedural provision, which is directory in nature and, thus, in relation to operational debt provision continued in section 9(3)(c) is not mandatory; Code cannot be construed in a discriminatory fashion so as to include operational creditors who are residents outside India and happen to bank with financial institutions included under section 3(14) [Sec. 9]

- Where there was availability of documentary evidence, merely because there was no copy of requisites certificate under section 9(3)(c), application to initiate CIRP could not be rejected [Sec. 9]

Neelkanth Township and Construction (P.) Ltd. v. Urban Infrastructure Trusties Ltd. [2017] (NCL-AT)

- Limitation Act, 1963 does not apply on Bankruptcy Code, and, therefore, application by financial creditor to initiate

insolvency process even after 6 years could not be said to be time barred(sec 9).

- Limitation Act, 1963 does not apply on Bankruptcy code, and therefore application by financial creditor to intimate insolvency process even after 6 years could not be said to be time barred.
- Held that since, instant application was filed to mala fide intentions to take advantage of the provisions of the Bankruptcy code, application to initiate the corporate insolvency resolution process was to be dismissed.

Nikhil Mehta & Sons v. AMR Infrastructure Ltd. [2017] (NCL-AT)

- where infrastructure company raised amount from appellant buyers by way of sale purchasing agreement in respect of units and had agreed to pay committed returns to appellant but defaulted on payment, appellant would be 'financial creditor within the meaning of section 5(7) and due would be debt within meaning of section 3(11) [Sec. 5(7)]

Sabari Inn (P.) Ltd. V. Rameesh Associates (P.) Ltd. [2017] (NCL-AT)

- Where winding up petition filed for company's inability to pay debts was transferred to Tribunal, but operational creditor failed to provide all details for admission of application under section 7,8 or 9, in accordance with provisions of Transfer of pending proceedings Rules, said application was to be abated [sec 9]

Sanjeev Jain v. Eternity Infracon (P.) Ltd. [2017] (NCLT- New Delhi)

- Where applicant made investment in commercial space which was under construction and said investment was made on condition of assured return, but real estate company failed to fulfill its commitment to return on said investment, applicant could not be treated as operational creditor as debt in question had not arisen out of sale/ supply of any goods or rendering of services [sec. 5(20)]

Seema Gupta v. Supreme Infrastructure India Ltd.[2018](NCL-AT)

- It is mandatory to issue a notice under section 8 before filing of an application under section 9 to initiate insolvency resolution process [sec 8]

Shivam Water Treaters (P.) Ltd. v. Union of Indiam [2018] (SC)

Validity of composition of national company law Tribunal and validity or constitutionality of Bankruptcy code can be challenged before Supreme court under article 32 of constitution [sec 62]

- Where High court was directed to address relief limited to any action taken by Government authorities or any order passed by National Company Law Tribunal and barring this, High court would not address any other relief sought in prayer clause; High court cannot enter into debate pertaining to validity of Bankruptcy code or constitutional validity of National Company Law Tribunal [sec 63]

Smart Timing steel Ltd. v. National steel & Agro Industries Ltd. [2018] (NCLT-Mum)

- Where operational creditor had not filed certificate from financial institution maintaining accounts of operational creditor confirming that there was no payment of an unpaid operational debt by corporate debtor, its application to initiate corporate insolvency resolution process was to be rejected [sec 9]

Smart Timing steel Ltd. v. National steel & Agro Industries Ltd. [2017] (NCL-AT)

- Filing of copy of certificate from financial institution maintaining accounts of operational creditor confirming that there is no payment of unpaid operational debt by corporate debtor as prescribed under clause (c) of sub-section (3) of section 9 is mandatory; argument that foreign companies having no office in India or no account in India with any financial institution will suffer in recovering debt from corporate debtor cannot be accepted as a part from code, there are other provisions of recovery like suit which can be preferred by any person [sec 9]

Speculum Plast (P.) Ltd. v. PTC Techno (P.) Ltd. [2017] (NCL-AT)

- Since Bankruptcy code came into effect on 1-12-2016, right to apply for initiating insolvency process under section 7 or section 9 or section 10 accrued only after 1-12-2016; where default was committed by corporate debtor in September, 2013 initiation of insolvency proceedings filed after 1-12-2016 could not be said to be time barred even though same was initiated after 3 years [sec 9]

Starlog Enterprises Ltd. v. ICICI Bank Ltd.[2017] (NCL-AT)

- Only principal amount which has become due and payable to financial creditor could have been claimed as default amount under code [sec 3(12)]
- Where financial creditor misrepresented material facts before adjudicating authority in order to obtain order of admission of application filed under section 7 and there was conspicuous mismatch between amount demanded in demand notice and amount stated to be in said default in said application, impugned order admitting application was to be set aside. [sec 7]

State Bank of India v. Essar Steel Ltd. [2017] (NCLT-Ahd.)

- Even in corporate insolvency resolution plan, debt restructuring process can be taken into consideration by committee of creditor's as one of resolution plan, commencement of insolvency resolution process could not be construed as putting an end to debt restructuring process [sec 7]

- Where corporate debtor, i.e., ESSAR, had committed default in repayment of financial debt to banks SCB and SBI and applications under section 7 filed by SCB and SBI were complete in all respects, application filed by SCB and SBI were to be admitted [sec 7]

- Appointment of Insolvency Resolution Professional on insolvency process being commenced, would not cause prejudice to interest of company and stakeholders [sec 16]

- In Insolvency Resolution process through Adjudicating Authority need not appoint IRP on same day on which admission order was passed, if admission order and order appointing Interim Resolution Professional were made separate, then corporate debtor will be able to file two appeals at two stages and, thereby, gain more time which is not object of code [sec 16]

- Where different financial creditors proposed names of different IRP, one proposed by creditor having highest debt dues was to be accepted [sec 16]

State Bank of India v. Namdhari food International (P.) Ltd. [2017] (NCLT-New Delhi)

- Where Tribunal dismissed insolvency application due to non-appearance of applicant, since said application had been dismissed prior to expiry of 14 days from date of first posting and moreover, applicant bank had acted promptly in filing application for restoration that too within said period of 14 days, insolvency application was to be restored subject to payment of cost [sec 9]

State Bank of India v. Radheshyam Fibres (P.) Ltd.[2018] (NCLT-Ahd.)

- Regulations 76 and 77 of SEBI General Regulations stipulates that all officers of bank above grade 4 are authorized to sign plaints, affidavit; where financial creditor through its assistant General Manager filed instant application to initiate insolvency resolution process, it could not be said that person who signed application was not competent person [sec 7]

Surendra Trading co. v. Juggilal Kamlapat Jute Mills co. Ltd. [2017] (SC)

- It cannot be held that proviso to sub-section (5) of section 7 or proviso to sub-section (5) of section 9 or proviso to sub-section (4) of section 10 to remove defects within seven days in mandatory, on failure to comply with which applications are to be rejected [sec 7]

Unigreen Global (P.) Ltd. v. Punjab National Bank [2018] (NCL-AT)

- Where there was nothing on record to suggest that corporate applicant had filed application under section 10 fraudulently or with malicious intent, impugned order passed by Adjudicating Authority rejecting said application and imposing penalty under section 65 was to be set aside [sec 10]

- Where there was nothing on record to suggest that corporate applicant had filed application under section 10 fraudulently or with malicious intent and Adjudicating Authority before imposing penalty had not served any notice to applicant expressing intention to punish applicant, impugned order passed by Adjudicating Authority application under section 10 and imposing penalty was to be set aside [sec 65]

Union Bank of India v. Era Infra Engineering Ltd., New Delhi [2017] (NCLT-New Delhi)(SB)

- Issue as to whether process under Insolvency code could be triggered in face of pendency of winding up petition was referred to larger Bench [sec 7]

Uttara Foods and Feeds (P.) Ltd. v. Mona Pharmachem [2018](SC)

- Where both parties agreed that matter had been settled amicably between parties, settlement was to be taken on record and order of NCLAT was to be set aside [sec 9]
- In view of rule 8 of I&B (Application to Adjudicating Authority) Rules, 2016 , NCLAT, Prima facie, Adjudicating Authority could not avail of inherent powers recognized by rule 11 of NCLT Rules, 2016 so as to allow a compromise to take effect after admission of insolvency petition, thus, relevant Rules are to be amended by competent authority to empower NCLAT with such inherent powers to obviate unnecessary appeals being filed before supreme court [sec 61]

Vinod Awasthy v. AMR Infrastructure Ltd. [2017] (NCLT-New Delhi)

- Where petitioner booked a flat with a real estate company, and on company's failure to pay assured amount of return, petitioner demanded refund of entire booking amount, petitioner neither supplied any goods nor had rendered any service to acquire status of operational creditor, hence, not eligible to file application under section 9 [sec 5(20)]

Vishwa Nath Singh v. Visa Drugs & Pharmaceuticals (P.) Ltd. [2018] (NCL-AT)

- Where respondent claimed to be financial creditor failed to show that loan amount was disbursed by it to corporate debtor was against consideration for time value of money, it did not come within meaning of financial creditor [sec 5(7)]