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AN INTERIM MORATORIUM UNDER SECTION 96 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 ("IBC") DOES NOT APPLY TO PENALTY PROCEEDINGS UNDER SECTION 27 OF THE CONSUMER PROTECTION ACT, 1986 ("CP ACT")- SUPREME COURT

The Hon'ble Supreme Court, in the case of ***Saranga Aggarwal v. Bhavesh Dhirajlal Sheth & Ors.[1]*** held that the interim moratorium under Section 96 IBC does not bar proceedings under Section 27 CP Act and explained that Section 79(15) of the IBC excludes certain liabilities, such as fines and penalties, from the moratorium's effect. As a result, penalties imposed by Consumer Redressal Forums under the regulatory statutes like the CP Act do not fall within the scope of the moratorium.

The appeal was filed by Saranga Aggarwal, proprietor of East & West Builders (RNA Corp. Group Co.), against an order passed by the National Consumer Disputes Redressal Commission (NCDRC). The NCDRC had directed the appellant to deliver possession of flats to homebuyers and imposed 27 penalty orders for delay and deficiency in service under Section 27 of the Consumer Protection Act, 1986. It rejected the appellant's plea for stay of execution proceedings despite ongoing insolvency proceedings under Section 95 of the IBC, triggered by the appellant being a personal guarantor to a corporate debtor.

Appellant claimed protection under Section 96 of the IBC, arguing that once insolvency proceedings are initiated against a personal guarantor, all proceedings related to any debt must be stayed. The Appellant further asserted that penalties imposed by NCDRC were in the nature of debt recovery and thus fell within the ambit of the moratorium. It also relied on P. Mohanraj v. Shah Brothers to equate quasi-criminal actions like NI Act proceedings with the NCDRC penalties. The Appellant also emphasized ongoing financial hardship, partial settlement with some homebuyers, and substantial payments already made.

In response, the he Respondents (home buyers) contended that the penalties under Section 27 of the CP Act are regulatory and punitive, aimed at ensuring compliance with consumer protection laws, and do not constitute "debt" under the IBC. They added that penalties are "excluded debts" under Section 79(15) of the IBC, which include fines and damages imposed by courts or tribunals.

The Court reasoned that including regulatory penalties within the scope of the moratorium would be a travesty of justice for homebuyers, who have already faced significant delays and financial hardship. Allowing a stay on such penalties would undermine consumer protection laws and enable errant developers to evade liability through insolvency proceedings. It observed that NCDRC penalties are distinct from NI Act cases; unlike a bounced cheque, they are not tied to repayment of financial obligations but to failure in performance and compliance. Permitting a stay would lead to abuse of IBC as a shield against liability, defeating the purpose of consumer protection laws. The Court clarified that individual insolvency moratoriums (Section 96) are narrower in scope than corporate ones (Section 14).

In terms of the aforesaid, the Court dismissed the appeal, and the Appellant was directed to comply with the penalties imposed by the NCDRC within eight weeks from the date of this judgment.

[1] Civil Appeal No. 4048 of 2024

RESOLUTION PLAN APPROVED BY HON'BLE NCLT WOULD BE BINDING ON STAKEHOLDERS WHO DID NOT RAISE THEIR CLAIM BEFORE THE RESOLUTION PROFESSIONAL- SUPREME COURT OF INDIA

In the matter of ***M/s JSW Steel Ltd. v. Pratistha Thakur Haritwal & Ors.,[2]*** the Supreme Court of India reaffirmed the binding effect of an approved Resolution Plan under the Insolvency and Bankruptcy Code, 2016, and quashed recovery proceedings initiated by the Chhattisgarh State Commercial Tax Department. The Court held that such post-resolution tax demands, not forming part of the Resolution Plan, amounted to

contemptuous defiance of its authoritative ruling in Ghanshyam Mishra & Sons v. Edelweiss ARC (2021), where it had been categorically held that all pre-CIRP claims not included in the approved plan stand extinguished.

It was contended by the Appellant that JSW Steel Ltd., formerly known as JSW Ispat Special Products Ltd., was the successful resolution applicant for Monnet Ispat and Energy Ltd., pursuant to a Resolution Plan approved by the NCLT, Mumbai Bench, on 24 July 2018. Despite the conclusion of the CIRP and the judicial clarity laid down in Ghanshyam Mishra, the Commercial Tax Department of Chhattisgarh issued multiple notices in 2021 and 2022, demanding taxes under the Chhattisgarh VAT Act, the Central Sales Tax Act, and the Entry Tax Act for the period 1 April 2017 to 30 June 2017. The Appellant argued that these demands, exceeding ₹4.3 crores, were issued in wilful disregard of the Supreme Court's binding precedent, and that they undermined the sanctity of the CIRP and the principle of a clean slate.

The Respondents contended that the State of Chhattisgarh had not been made a party to either the insolvency proceedings or the writ petition decided in Ghanshyam Mishra. It was submitted that since the state was not afforded an opportunity to present its claims during CIRP, the ruling could not be applied against it. The Respondents sought to draw support from State Tax Officer v. Rainbow Papers Ltd. (2023), arguing that statutory dues could not be extinguished unless formally rejected by the Committee of Creditors.
The Court distinguished the reliance placed on Rainbow Papers, noting that the factual matrix there involved the filing of a claim by the tax authority during CIRP, which was consciously excluded by the CoC. In the present case, however, the Chhattisgarh authorities had failed to respond to the public notice dated 27 July 2017 inviting all creditors to submit claims. The Court reaffirmed that once a Resolution Plan is approved under Section 31(1) of the IBC, it becomes binding on all stakeholders—irrespective of whether they participated in the process. It emphasized that statutory authorities are not an exception to the rule and that the "clean slate" principle is essential to ensure commercial certainty and successful revival of the corporate debtor.

The Court reiterated its earlier observations in Essar Steel India Ltd. v. Satish Kumar Gupta, cautioning that a resolution applicant cannot be exposed to undecided claims after assuming control. Allowing such post-resolution claims would destabilize the process and disincentivize resolution applicants from stepping in. It reiterated that the IBC has overriding effect over all other statutes by virtue of Section 238, and that finality in claims is not only legislative but also judicially affirmed.

The Court declared the demand notices and all proceedings initiated pursuant thereto as illegal and quashed them in their entirety, reaffirming that claims not raised during CIRP stand conclusively extinguished. This judgment serves as a reaffirmation of the clean slate principle and the binding nature of approved resolution plans.

[2] Contempt Petition (Civil) No. 629 of 2023 in Writ Petition (Civil) No. 1177 of 2020

PROCEEDINGS UNDER S.138 OF NEGOTIABLE INSTRUMENTS ACT, 1881 CANNOT BE INITIATED AGAINT EX-DIRECTOR OF COMPANY WHEN CAUSE OF ACTION AROSE AFTER IBC MORATORIUM WAS DECLARED: SUPREME COURT

The Supreme Court in the case of Vishnoo Mittal Versus M/S Shakti Trading Company [1] held that when the cause of action for cheque dishonour under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) has arisen after the declaration of moratorium as per the Insolvency & Bankruptcy Code, 2016 (IBC), then the proceedings under S.138 NI Act cannot be continued against the ex-director of the company.

The appellant, Vishnoo Mittal, challenged the order dated 21.12.2021 of the Punjab and Haryana High Court, which had dismissed his petition under Section 482 CrPC seeking to quash proceedings under Section 138 of the Negotiable Instruments Act, 1881. The proceedings had been initiated on account of 11 dishonoured cheques (amounting to approx. Rs. 11.17 lakhs) issued by him as director of Xalta Food and Beverages Pvt. Ltd. (“Corporate Debtor”) to the Respondent, Shakti Trading Company, pursuant to a super stockist agreement.

Significantly, insolvency proceedings against the corporate debtor commenced on 25.07.2018, and a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) was imposed on the same day. Nonetheless, the criminal complaint under Section 138 NI Act was filed later, in September 2018, after the statutory demand notice was issued on 06.08.2018.

The Appellant argued that the issuance of the demand notice and the subsequent criminal complaint occurred after the imposition of the IBC moratorium, hence the cause of action under Section 138 NI Act arose when the Appellant no longer had control over the company's affairs or its bank accounts. Under Section 17 of the IBC, once an Interim Resolution Professional (IRP) is appointed, the board of directors stands suspended, and the IRP assumes control. Citing this, the Appellant contended that he was incapable of complying with the demand notice, and thus, criminal liability should not attach. The High Court erroneously relied on P. Mohan Raj v. Shah Brothers Ispat Pvt. Ltd. (2021) 6 SCC 258, which involved a different factual matrix.

The Respondent relied on P. Mohan Raj, arguing that while the corporate debtor is protected by the IBC moratorium, the directors or natural persons remain liable under Sections 138/141 of the NI Act. It was contended that the cheques were dishonoured before the moratorium, and hence proceedings could validly be initiated.

Referring to the statutory scheme under Section 138 and its proviso, the Court emphasized that an offence is not complete merely upon dishonour of the cheque — it requires failure to pay within 15 days of receipt of a valid demand notice. Since the Appellant ceased to have any managerial control post 25.07.2018 (due to the IRP's appointment), and the accounts were under the IRP's exclusive authority, he was not in a position to fulfill the demand notice. The Court also noted that the Respondent had in fact filed a claim before the IRP in the insolvency process, acknowledging its status as a creditor.

Accordingly, the appeal was allowed and the summoning order dated 07.09.2018 and the complaint pending before the Chief Judicial Magistrate, Chandigarh, were quashed.

[3] Special Leave Petition (CRL) No. 1104 of 2022

UPON FAILURE OF DECREE HOLDER TO FILE ITS CLAIM, DUE TO PENDENCY OF AN APPEAL AGAINST DECREE, CLAIMS MADE UNDER THE DECREE STANDS EXTINGUISHED ONCE THE RESOLUTION PLAN IS APPROVED.

In the matter of ***Garden Silk Mills Ltd. v. Gayatri Industries & Ors.,[4]*** the Bombay High Court dismissed an Interim Application filed by the Appellant seeking the release of the bank guarantees, stating that all claims which are not part of the Resolution Plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of any such claim.

The Applicant, Garden Silk Mills Ltd., sought a declaration that the decree passed in favour of the Respondent stood extinguished upon the approval of the Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, and further prayed for the release of bank guarantees furnished as a condition of stay in earlier appellate proceedings.

It was contended by the Appellant/Applicant that the Corporate Debtor was admitted into CIRP on 24 June 2020 by the NCLT, Ahmedabad, and a Resolution Plan was approved on 1 January 2021. The Respondent, despite having a decree in its favour from 2003, failed to lodge its claim with the Resolution Professional. The Applicant argued that under Section 3(6) of the IBC, the decree in question constituted a claim, and the respondent, being a decree-holder, fell squarely within the definition of "creditor" under Section 3(10). Since the claim did not form part of the approved Resolution Plan, it stood extinguished by operation of law. Relying on Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC and Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, it was submitted that upon approval, the Resolution Plan binds all creditors, including those with adjudicated claims, and all unsubmitted claims are barred from further enforcement.

The Respondents contended that the monies deposited as bank guarantees pursuant to a stay order of 17 June 2003 had passed into the control of the Court and thus fell within custodia legis. They relied upon the judgment of the Bombay High Court in Rajendra Prasad Bansal v. Reliance Communications Ltd., which held that once money is deposited in Court, it is placed beyond the reach of both parties and becomes subject to judicial control. The respondent argued that the extinguishment

of the debt under IBC could not affect the equities that had crystallised over the pendency of the litigation, especially especially when the decree in question had been in force for over two decades. It was further urged that the equities favoured the decree-holder who had already secured favourable orders and had only been prevented from enjoying the fruits of the decree due to the procedural pendency of the appeal.

The Court rejected the Respondent's submissions, observing that the statutory effect of Section 31 of the IBC is absolute and overrides all claims not forming part of the Resolution Plan. It held that the definition of "claim" under Section 3(6) includes a right to payment whether or not reduced to judgment, and that decree-holders are not exempt from the consequences of failing to participate in CIRP proceedings. The High Court referred to paragraph 102 of the Supreme Court's judgment in Ghanshyam Mishra, reiterating that once a resolution plan is approved, all excluded claims—whether adjudicated, unadjudicated, or contingent—stand extinguished, and no proceedings for recovery or execution thereof can be permitted to continue.

The Court also considered whether the bank guarantees furnished in 2003 could be retained by the Registrar in light of the extinguished claim. It noted that the purpose of such guarantees was to secure the outcome of the appeal. Since the appeal had been withdrawn and the claim extinguished by operation of law, there remained no basis for their continued retention. The Court distinguished the factual matrix in Rajendra Prasad Bansal, noting that it dealt with proceedings pending at the time of CIRP admission, whereas in the present case, the Resolution Plan had already been approved. It further affirmed that the decision in Siti Networks Ltd. v. Rajiv Suri clarified that prior case law on custodial control of court deposits could not override the extinguishment of claims under an approved Resolution Plan.

[4] Interim Application no. 3540 of 2021 in First Appeal No. 748 of 2023

DISSENTING CREDITOR GETS A PRO-RATA SHARE OF RESOLUTION PLAN VALUE RATHER THAN PRO-RATA SHARE OF LIQUIDATION VALUE – NCLAT, CHENNAI

In the matter of ***RBL Bank Ltd. v. Sical Logistics Ltd. & Ors.,[5]*** the National Company Law Appellate Tribunal, Chennai Bench, addressed a significant dispute involving the enforcement of the payment structure for dissenting financial creditors under a resolution plan. The questioned involved in the present case was whether RBL Bank, as a dissenting financial creditor, was entitled to receive payment based on the full resolution value or the reduced liquidation value, and whether it was required to part with title deeds of secured assets before receiving its full entitlement.

RBL Bank had dissented from the resolution plan for Sical Logistics Ltd., which had been approved by the CoC on 29 February 2022 and subsequently by the NCLT on 8 December 2022. The plan stipulated a total payout of Rs. 521.82 crores to the secured financial creditors, of which Rs. 425.93 crores was without invocation of bank guarantees. RBL Bank's dissenting share was calculated as Rs. 42.09 crores, i.e., 9.88% of the resolution value. However, only Rs. 9.38 crores had been paid to it from the first tranche of Rs. 94.93 crores infused by the Successful Resolution Applicant. RBL Bank maintained that the plan mandated priority payment to dissenting creditors under Section 30(2)(b) of the IBC and Regulation 38(1)(b) of the CIRP Regulations and claimed that it was entitled to its full ₹42.09 crores upfront before being required to release the title deeds.

The Respondents contended that the entitlement of dissenting financial creditors was limited to the minimum due under Section 53(1) of the Code and that RBL Bank's actual entitlement was only Rs. 34.76 crores, being 9.88% of the liquidation value of Rs. 351.88 crores. They submitted that the resolution plan, through Clause 1.2.9.1(b), read with Clause 1.2.9.1(m), clearly provided that sale proceeds of secured assets would be utilised to pay deferred amounts to financial creditors, and that upon approval of the plan, all creditors were deemed to have given consent for sale and release of security. It was further contended that the title deeds were required to be handed over for the implementation of the plan and that the objection by RBL Bank amounted to withholding implementation on grounds already adjudicated by the Adjudicating Authority.

The Appellate Tribunal held that a dissenting creditor must not receive less than what it would under liquidation, but nothing in the Code restricts it from receiving more if the plan so provides. Since the plan

explicitly recorded the Rs. 42.09 crore entitlement, and the CoC minutes acknowledged the same under both payment scenarios, the Tribunal concluded that RBL Bank must receive the full Rs. 42.09 crores.

On the issue of priority and interpreting Section 30(2)(b)(ii) and Regulation 38(1)(b), the Tribunal clarified that dissenting Financial Creditors must be paid before assenting creditors, even in pro-rata distributions. The Tribunal explained that in cases where funds are disbursed in tranches, priority must be maintained within each tranche, not necessarily that the dissenting creditors are paid in full before assenting creditors receive anything.

On the issue of title deeds, the Tribunal held that the clause 1.2.9.1(m) of the plan clearly deemed consent from financial creditors for sale of non-core assets and that the release of title documents was an obligation arising from plan approval itself. The contention that title deeds could be withheld until full payment was found to be inconsistent with the binding terms of the approved plan. The Tribunal observed that RBL Bank's conduct threatened to derail plan implementation and directed that all title deeds be handed over to the Resolution Professional, who would then facilitate onward transfer to the Successful Resolution Applicant in line with the implementation schedule.
Accordingly, the Tribunal allowed the appeals and held that RBL Bank was entitled to Rs.42.09 crores, to be paid in priority under Section 30(2)(b) and Regulation 38. The RP was directed to distribute future inflows accordingly. Simultaneously, upon receipt of full payment by 31 March 2025, all title deeds held by the dissenting creditor were to be returned through the Resolution Professional for completion of asset transfers.

[5] Company Appeal (AT)(CH)(Ins) No. 36 of 2024 along with I.A. No. 106, 107 & 779 of 2024

NCLT CANNOT INTERFERE WITH THE DECISION OF COC ON REJECTION OF BELATED RESOLUTION PLAN- NCLAT, NEW DELHI

In the matter of ***Authum Investment and Infrastructure Ltd. v. Ashdan Properties Pvt. Ltd. & Ors.,[6]*** the National Company Law Appellate Tribunal, Principal Bench, New Delhi, set aside the order of the Adjudicating Authority that had directed the Resolution Professional and Committee of Creditors to consider a resolution plan submitted after the prescribed deadline. The Appellate Tribunal reaffirmed that strict timelines under the Insolvency and Bankruptcy Code, 2016 and the CIRP Regulations must be respected and that a plan received beyond the final date cannot be considered unless expressly permitted within the statutory framework.

It was contended that the last date for submission of the resolution plan was extended up to 14 February 2024, 5:00 PM, by the Resolution Professional after consultation with the Committee of Creditors. Authum Investment, one of the Resolution Applicants, submitted its resolution plan on 9 February 2024, well within the deadline. However, the Respondent No. 1, Ashdan Properties, submitted its resolution plan a day later—on 15 February 2024. The Resolution Professional placed this fact before the CoC in its meeting on 16 and 17 February 2024. Upon due deliberation and relying on legal opinion, the CoC unanimously decided not to consider the late plan and to proceed with evaluating the timely-submitted resolution plans, including that of the appellant. A subsequent challenge process was conducted on 29 April 2024, in which the appellant was declared as H1 bidder. Despite these developments, the Adjudicating Authority, on an application filed by Ashdan Properties, directed the CoC to consider its plan, leading to the present appeal.

The Respondents argued that the delay in submission of the plan was due to the lack of timely access to necessary documents and information. They argued that the plan was submitted just one day after the final deadline, prior to the meeting where all resolution plans were to be considered. Relying on the Supreme Court's decision in Kalparaj Dharamshi v. Kotak Investment Advisors, it was urged that maximisation of value must remain the paramount objective and that a one-day delay in the interest of a better plan should not be fatal. The Adjudicating Authority, accepting this reasoning, held that the RP and CoC failed to exercise the discretion granted under Regulation 36B (6) of the CIRP Regulations and directed consideration of the belated plan.

The Appellate Tribunal found that the extension for submission of plans had already been granted from the initial date of 5 February 2024 to 14 February 2024, and that all PRAs were explicitly informed that no further extension would be allowed. It held that Regulation

36B (6) permits extension of timelines only with the approval of the CoC and that such extension had already been exhausted. The CoC's decision on 16 and 17 February 2024 not to consider Ashdan's plan, taken after legal advice and proper deliberation, was therefore well within its commercial wisdom. The Tribunal noted that the Adjudicating Authority had not recorded any finding that the CoC's decision was arbitrary, irrational, or in breach of any legal provision. In the absence of such a finding, judicial interference with CoC's commercial decision was held to be impermissible.

The Tribunal also relied on its earlier decision in Jindal Stainless Ltd. v. RP, Mittal Corp Ltd., and the Supreme Court's judgment in Ngaitlang Dhar v. Panna Pragati Infrastructure Pvt. Ltd., both of which reinforced the principle that resolution plans submitted after the deadline cannot be entertained when the CoC has already exercised its discretion not to extend timelines. It distinguished Kalparaj Dharamshi, relied upon by the respondent, by pointing out that in that case the CoC had itself resolved to accept the late plan. In the present case, however, the CoC had explicitly refused to do so.

The Tribunal further held that the entire challenge process had already been concluded and the appellant had been declared H1 bidder in accordance with due procedure. Permitting a previously excluded plan to re-enter the process would not only defeat the timelines envisaged under the Code but also undermine the finality of the challenge mechanism. Regulation 39(1B) of the CIRP Regulations was cited to emphasise that the CoC is statutorily barred from considering any resolution plan received after the deadline or from entities not included in the final list of prospective resolution applicants.

Accordingly, the Appellate Tribunal allowed the appeal, set aside the Adjudicating Authority's order dated 29 July 2024, and rejected the application filed by Ashdan Properties. It further directed that the interim order in operation since 8 August 2024 be accounted for while computing the CIRP period and permitted the Resolution Professional to proceed with plan finalisation and submission to the Adjudicating Authority in accordance with law.

[6] Company Appeal (AT)(Ins) No. 1566 of 2024 along with I.A. No. 5973, 6389 of 2024

NOTICE UNDER RULE 7(1) OF THE 2019 RULES, ISSUED IN FORM B, IS NOT EQUIVALENT TO A NOTICE INVOKING A PERSONAL GUARANTEE.

In the matter of ***Canara Bank v. Babulal Gumanlal Jain & Ors.,[7]*** the National Company Law Appellate Tribunal, Principal Bench, New Delhi, dismissed three appeals filed by Canara Bank challenging the rejection of its applications under Section 95 of the Insolvency and Bankruptcy Code, 2016, against the personal guarantors of the corporate debtor, M/s Nakoda Ltd. The Tribunal held that the applications were barred by limitation and that issuance of Form B notice under Rule 7 of the Personal Guarantor Insolvency Rules, 2019 could not extend the period available for initiation of the insolvency process against personal guarantors.

The Appellant contented that it had extended financial assistance to the Corporate Debtor through a consortium lending arrangement and that, personal guarantees had been executed by the Respondents on various dates in 2010, 2013, and 2014. Upon default, a demand notice under Section 13(2) of the SARFAESI Act was issued on 12 March 2015. Recovery proceedings were also initiated before the Debts Recovery Tribunal, and a Section 7 application against the corporate debtor had already been admitted, with liquidation presently ongoing. The Bank contended that it issued notice under Form B on 2 December 2023 in accordance with Rule 7 of the 2019 Rules, and the Section 95 applications filed on 18 November 2024 were therefore well within limitation.

The Respondents contended that the recall notice dated 26 February 2015 had already invoked the personal guarantees, triggering the limitation period under Article 137 of the Limitation Act, 1963. Since no fresh invocation of the guarantee had occurred thereafter, the statutory limitation of three years expired on 29 May 2022, and the applications filed in November 2024 were clearly time-barred. It was argued that the notice in Form B, being procedural and issued as part of the application process under the 2019 Rules, could not be construed as a notice invoking the guarantee so as to reset the clock of limitation.

The Tribunal upheld the reasoning of the Adjudicating Authority and relied on its prior ruling in State Bank of India v. Deepak Kumar Singhania (Company Appeal (AT) (Ins.) No. 191 of 2025), decided on 28 February 2025. It reiterated that a notice under Rule 7(1) of the

2019 Rules, issued in Form B, is not equivalent to a notice invoking a personal guarantee. The default must pre-exist before such notice is issued, and the procedural notice under the IBC framework cannot be retroactively used to extend limitation periods. The Tribunal noted that the guarantee had already been invoked in 2015, and the subsequent issuance of Form B notice in 2023 was of no legal consequence for the purpose of limitation.

Observing that the facts of the present appeal were materially identical to the Deepak Kumar Singhania case, the Tribunal declined to interfere with the order of the Adjudicating Authority and found no merit in the Bank's contention that the Form B notice constituted a fresh invocation of the guarantee. It confirmed that the limitation period had lapsed, and the Section 95 applications were rightly dismissed.

Accordingly, the Tribunal dismissed all three appeals and clarified that the interim period during which the appeals were pending would not alter the limitation framework. It affirmed that financial creditors must invoke personal guarantees within the statutory period and cannot rely on procedural formalities to extend or revive otherwise expired claims.

[7] Company Appeal (AT)(Ins) No. 297 of 2025 along with I.A. No. 1135 of 2025

COMPUTATION OF LIMITATION FOR ACKNOWLEDGEMENT IN BALANCE SHEET WILL BE FROM THE DATE ON WHICH THE BALANCE SHEET WAS SIGNED AND NOT THE DATE ON WHICH IT WAS SUBMITTED WITH THE ROC- NCLAT, NEW DELHI

In the matter of ***IL&FS Financial Services Ltd. v. Adhunik Meghalaya Steels Pvt. Ltd.,[8]*** the National Company Law Appellate Tribunal, Principal Bench, dismissed the appeal filed under Section 61 of the Insolvency and Bankruptcy Code, 2016, challenging the order of the Adjudicating Authority that had rejected a Section 7 application as time-barred. The core issue in the appeal was whether successive acknowledgments of debt in the corporate debtor's balance sheets could effectively extend the period of limitation, and whether the limitation period could be computed from the date of filing the balance sheet with the Registrar of Companies instead of the date of its signing.

It was contended by the aggrieved that the default occurred on 1 March 2018, when the corporate debtor failed to repay the loan facility of Rs.24.44 crores disbursed under a loan agreement dated 27 February 2015. The account was classified as NPA on the said date, and a recall notice followed on 10 August 2018. Although the Section 7 application was filed on 15 January 2024—well beyond the initial three-year limitation period—the appellant argued that acknowledgments in the corporate debtor's balance sheets for the financial years 2016–17 to 2019–20, particularly the entry of ₹24.41 crores under "secured borrowings," operated to revive the limitation period under Section 18 of the Limitation Act. It was further urged that the limitation period must be computed from the date of filing the balance sheet on the MCA portal (14 February 2021), and not the date of signing (12 August 2020). The appellant relied on the Supreme Court's decisions in Vidya Sagar v. UCO Bank, Tulip Star Hotels, and Arif Azim Co. Ltd. v. Aptech Ltd., and argued that the Adjudicating Authority had also misapplied the Supreme Court's suo motu orders on limitation by invoking paragraph 5.III instead of 5.I.

The Respondents contended against the averments of the applicant that the default date was 1 March 2018 and, even accounting for the exclusion of time under the Supreme Court's suo motu orders, the application remained barred. The respondents submitted that the applicable paragraph of the order was indeed paragraph 5.III, which afforded a maximum extension of 90 days from 1 March 2022, thus making 30 May 2022 the last permissible date for filing the petition. The filing on 15 January 2024, they argued, was indisputably late. They further contended that mere entries in the balance sheet, without specific reference to the name of the financial creditor, do not amount to unequivocal acknowledgment of debt. Citing the Supreme Court's judgment in Asset Reconstruction Company v. Tulip Star Hotels Ltd., they argued that the limitation period is to be counted from the date of signing of the balance sheet, not its filing with the RoC.

The Tribunal concurred with the findings of the Adjudicating Authority, affirming that the signing date of the balance sheet governs the acknowledgment for the purposes of Section 18 of the Limitation Act. It rejected the appellant's contention that the clock should start from the date of uploading the financial statements. Citing G.S. Buildtech Pvt. Ltd. v. Ardree Infrastructure

Venture Pvt. Ltd., the Tribunal reiterated that it is the signature date which triggers the fresh limitation period. In this case, even taking 12 August 2020 (date of signing of FY 2019–20 balance sheet) as the relevant date, and applying paragraph 5.III of the suo motu order, the outer date to file the application would have been 30 May 2022. The Section 7 application, filed on 15 January 2024, was thus hopelessly time-barred.

The Tribunal further held that while entries in a balance sheet may constitute acknowledgment of debt, they must establish a jural relationship between the creditor and debtor. Since the FY 2019–20 balance sheet did not name IL&FS, the Tribunal refrained from making a positive finding that it established a creditor-debtor relationship. It held that such acknowledgment must be unambiguous and attributable to the particular creditor, and should not require speculative or inferential reasoning on the part of the adjudicatory forum.

Accordingly, the Tribunal dismissed the appeal, upheld the impugned order of the Adjudicating Authority, and found no error in the rejection of the Section 7 application. It declined to interfere on the ground that the principles of limitation and judicial consistency must be upheld, especially when the creditor had already allowed ample time to lapse despite multiple opportunities to act.

[8] Company Appeal (AT)(Ins) No. 1379 of 2024

INDIA BUSINESS LAW JOURNAL

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Deals of the Year 2024

Nirmal Lifestyle Realty CIRP

VALUE	LAW FIRMS
USD31 million	ANM Global Wadia Ghandy & Co

Nirmal Lifestyle Realty was once a key player in Mumbai's real estate market and held development rights on 20,000 square metres of land in the Mulund area.

However, the company faced financial difficulties and was admitted into the corporate insolvency resolution process (CIRP) in December 2021 by the National Company Law Tribunal (NCLT). Oberoi Constructions emerged as the successful resolution applicant through voting by the committee of creditors, after which the NCLT approved the resolution plan in an August 2024 order. Under the resolution plan, INR2.7 billion (USD31 million) of the total INR7.4 billion in admitted claims would be paid to creditors.

The majority of the amount was allocated to operational creditors, including more than 675 workmen who had been seeking their dues for more than 20 years. The workmen received payments of more than 200% of their entitlement under the Insolvency and Bankruptcy Code.

ANM Global, with partner Shikha Ginodia leading, represented resolution professional Jayesh Sanghrajka for Nirmal Lifestyle. The firm handled various applications from the ex-director, promoter, statutory authorities and workmen. It argued various applications before the NCLT Mumbai bench on behalf of the resolution professional, including securing approval of the resolution plan and addressing objections against it.

Among the key challenges was assessing and admitting the claims of the workmen, given the extended period over which they had accumulated.

Another major challenge was the land development restrictions due to the site's proximity to Sanjay Gandhi National Park. Circulars issued by the Thane Forest Division raised concerns that portions of the company's land may fall within an eco-sensitive zone, potentially derailing the resolution plan. However, a later clarification excluded the land from the forest land demarcations.

Wadia Ghandy and Co represented the committee of creditors.

Mumbai | New Delhi | Bengaluru | Chennai contact@anmglobal.net https://anmglobal.net

ANM Global ranked among IBLJ's Top Deals of the Year

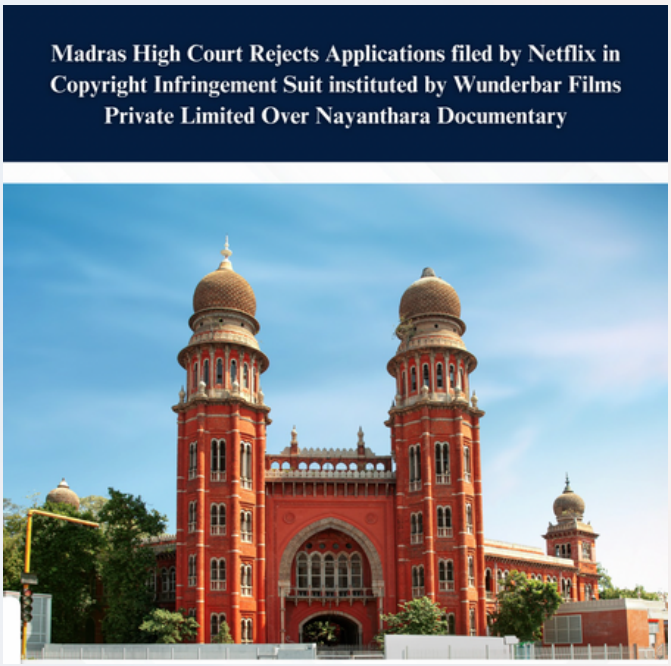
Thrilled to share that **ANM Global** has been recognized for its role in the Nirmal Lifestyle Realty CIRP, a $31M resolution ranked among India Business Law Journal's Deals of the Year!

Led by Shikha Goenka Ginodia, our team represented resolution professional, securing NCLT approval while tackling objections from multiple stakeholders.

ANM Global Hosts INTA's Pre-Annual Meeting Reception in Mumbai

ANM Global was proud to host the INTA Pre-Annual Meeting Reception in Mumbai on March 7, 2025, bringing together industry leaders, legal experts, and brand strategists to discuss the evolving landscape of brand building and trademark law.

FIRM HIGHLIGHTS



Madras High Court rejects Applications filed by Netflix in Copyright Infringement Suit instituted by Wunderbar Films Private Limited over Nayanthara Documentary

ANM Global's Mr. Krunal Mehta, Associate Partner and Ms. Karen Koya, Associate, shared insights on the Madras High Court's ruling in the Applications filed in Wunderbar Films' copyright infringement Suit against Netflix.

Read the full article to know more

Anushree Rauta on the Broadcasting Services (Regulation) Bill

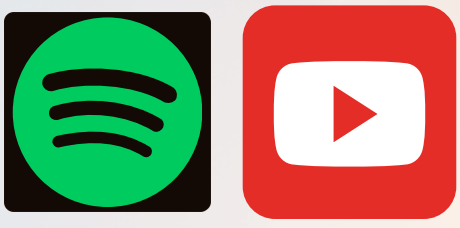
Anushree Rauta, Equity Partner & Head of Media & Entertainment Practice at ANM Global, shared her expert insights on the Broadcasting Services (Regulation) Bill.

Read the full article to know more

Big Tech, Data Protection, and Cross-Border Transfers: What Lies Ahead?

ANM Global's Managing Partner, Nidhish Mehrotra, recently shared his insights in ETLegalWorld, on Big Tech, Data Protection and Cross Border Transfers.

Read the full article to know more



ANM ThinkPod

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