

COMPANY

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INSOLVENCY

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IBC NEWSLETTER

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1 The Committee of Creditors can in their commercial wisdom, decide to return a rented asset during CIRP and this will not be in violation of the moratorium imposed by Section 14 of the Code

The Hon'ble Supreme Court in **Sincere Securities Pvt. Ltd. & Ors. v. Chandrakant Khemka & Ors.**¹ held that returning a rented property during CIRP, is not barred by moratorium under the IBC and a CoC's commercial wisdom would prevail.

The Corporate Debtor had availed loans from the Appellant and provided a property as security. Upon default in repaying the loan, the property was conveyed in favour of the Appellant, but possession was retained by the Corporate Debtor (through the Respondent, a suspended director) on a leave and license basis with a rent of INR 6 lakhs per month. Upon further default in rent payment, the Appellant filed eviction suits.

The CoC and the RP, agreed that the property was no longer required and supported the return of possession to the Appellant. The Respondent argued that the property was essential for the functioning of the CIRP and invoked Section 14(1)(d) of IBC, being the moratorium, which prohibits recovery of property occupied by corporate debtor during CIRP.

The Hon'ble Court reiterated the settled principle that commercial wisdom of CoC is paramount and non-justiciable. The Court further held that Section 14(1)(d) IBC moratorium doesn't apply when CoC and RP themselves decide to surrender possession to avoid financial burden. The Court therefore held that NCLAT's remand was unnecessary; NCLT order was valid.

2. Gratuity to employees is not separately payable once employees' dues are contemplated in an approved Resolution Plan

The Hon'ble NCLAT, New Delhi in the matter of

Jadeja Ravrajsinh Juvansinh v. Nuvoco Vistas Corporation Ltd. & Ors.² held that the resolution plan clearly contemplated a payout of all employees' dues, including gratuity, and that valuation issues cannot be raised after approval of the resolution plan.

The Corporate Insolvency Resolution Process (CIRP) against M/s Vadraj Cement Ltd. commenced on 02.02.2024, initiated by Oriental Bank of Commerce (now Punjab National Bank). The RP admitted almost 73% of the employees' claims. The Resolution Plan was approved unanimously, while admitting Rs.10,51,00,841/- for provident fund dues (100% admitted claim) and Rs.6,30,10,916/- for employees' claims, including gratuity dues.

The Appellant challenged the order approving the Resolution Plan, arguing that gratuity should be paid in addition to the Rs.6,30,10,916/- payout.

The bench examined Clause 13.1.2 of the Resolution Plan, which clearly stated that the Rs.6,30,10,916/- payout included all employee claims, including gratuity dues. The note in Form-H relied upon by the Appellant was part of a compliance certificate summarizing the Resolution Plan and did not contradict the Plan's provisions. The Tribunal found no inconsistency or illegality in the Resolution Plan or the RP's email dated 24.04.2025. The liquidation value of employees was noted as "Nil," yet the Plan proposed payments to employees, demonstrating fairness. The bench therefore rejected the Appellant's attempt to raise valuation issues at this stage.

3. Homebuyers' delay in filing claims does not affect their locus standi to appeal withdrawal of CIRP

The Hon'ble NCLAT Delhi, in **Bharti Goyal & Anr.v. Hector Realty Venture Pvt. Ltd. & Ors.** concluded that the IRP failed to perform his duty³ in collating the Appellants' claims as part of the CoC, even though their payment details were part of the Corporate Debtor's records.

[1] Civil Appeal No. 12812 of 2024

[2] Company Appeal (AT) (Insolvency) No.733 of 2025

[3] Company Appeal (AT) (Ins.) No. 1545 of 2024 & I.A. No. 5594 of 2024

The Appellants are homebuyers who invested in Marvella City project in 2015 but did not receive possession of their flats. CIRP against the Corporate Debtor was initiated in December 2019. Subsequently, the CIRP was withdrawn vide order of September 2022.

However, the CoC constituted by the IRP was unfairly skewed, as many of the homebuyers were unaware of the public announcement made by the IRP. The IRP, however, was aware of the Appellants' payments made to the Corporate Debtor, as the same were reflected in the books. The IRP had also suppressed the fact that the CoC existed, while approaching the Tribunal for withdrawal.

The Hon'ble Court therefore examined section 12A of the Code, read with Regulation 30A of the CIRP regulations and reiterated the position that once insolvency process is admitted, proceedings become in rem. It is no longer open to the parties to privately settle the matter. In the present case, IRP's false representation that a CoC was not formed, coupled with several homebuyers' claims being suppressed amount to fraud, and thereby vitiate the withdrawal.

4. No payment to operational creditors may be necessary if the resolution plan complies with statutory requirements

The Hon'ble NCLAT Delhi in **Masyc Projects Pvt. Ltd. v. Pulkit Gupta, RP of Vadraj Cement Ltd. & Ors.**⁴ that the Adjudicating Authority had limited jurisdiction to interfere with the commercial wisdom of the CoC and would not exercise it when an approved resolution plan does not breach any statutory provisions.

The Appellants being operational creditors, challenged an order dated April 1, 2025, passed by NCLT Mumbai allowing a resolution plan submitted by the SRA. The claim filed by the Appellant for operational dues of Rs.1,09,74,486/- was admitted. However, the resolution plan approved by the CoC, contemplated payout to operational creditors (other than employees and statutory dues) as 'Nil'.

[4] Company Appeal (AT) (Insolvency) No. 831 of 2025

[5] Comp. App. (AT) (Ins.) No. 606 of 2019

[6] Comp. App (AT) (Ins.) No. 1054 of 2023

The Operational Creditors alleged that the plan violated Regulation 38(1A) of the CIRP Regulations, 2016, which mandates a statement on how the interests of all stakeholders, including operational creditors, are dealt with, in addition to several Supreme court judgements to emphasize that a plan should balance interests of all stakeholders. The RP pointed out that the resolution plan complied with Section 30(2)(b) of the IBC, which requires that operational creditors receive at least the liquidation value, which in this case was, in this case, nil.

The Hon'ble Tribunal observed that the liquidation value would not have sufficient funds to even satisfy secured creditors of the Corporate Debtor. The bench distinguished the present case from **Hammond Power Solutions Private Limited**⁵ where the CoC had not adequately considered the interests of operational creditors. The Hon'ble Tribunal concluded that the interests of all stakeholders had been dealt with, and that the Tribunal would not interfere with the commercial wisdom of the CoC where there was no breach of statutory provisions.

5. Operational Creditor is not entitled to the benefit of Section 19 of the Limitation Act, 1963 in the absence of any acknowledgement by the Corporate Debtor- NCLAT New Delhi

The National Company Law Appellate Tribunal, in **Protech Impex Pvt Ltd and Anr. Vs Uttar Pradesh Rajkiya Nirman Nigam Limited**⁶ has held that extension of limitation under Section 19 of the Limitation Act, 1963 requires both (i) payment within limitation period and (ii) acknowledgment of such payment in writing by the debtor. Refund of security deposit without acknowledgment of liability does not extend limitation for Section 9 IBC applications.

The Respondent, Uttar Pradesh Rajkiya Nirman Nigam Ltd., awarded multiple work orders to the Appellant, Protech Impex Pvt. Ltd. The works were completed and a completion certificate was issued on 15.01.2016. The Appellant raised a claim of Rs.3,65,75,820/- against the

Respondent and issued a demand notice on 23.12.2019, followed by filing a Section 9 IBC application on 20.02.2020. The Corporate Debtor contended that dues had been settled, except for a security deposit of Rs.36,14,500/- which was withheld by National Institute of Occupational Health, Ahmedabad. The NCLT dismissed the application as barred by limitation, since the date of default was 15.01.2016.

The Appellant argued that the Respondent/Corporate Debtor had made a payment on 16.10.2017, which entitled them to an extended limitation period under Section 19 of the Limitation Act, thereby making the Section 9 application filed in 2020 within time. It was submitted that the Adjudicating Authority erred in not granting the benefit of a fresh limitation period from the date of last payment.

The Respondent countered that the Section 9 application itself disclosed 15.01.2016 as the date of default, with no pleadings on extension of limitation. The payment relied upon by the Appellant pertained only to refund of security deposit, and not the acknowledgment of operational debt. Since there was no acknowledgment in writing as required under Section 19, the benefit of fresh limitation could not be claimed by the Appellant.

Relying on *Shanti Conductors Pvt. Ltd. v. Assam State Electricity Board* [(2020) 2 SCC 677], the Tribunal emphasized the necessity of specific pleadings and acknowledgment. It observed that the Section 9 application did not plead any extension of limitation and the Appellant's own pleadings in Part V of the application stated that no payment had been received. The alleged payment on 16.10.2017 was merely a refund of security deposit and not acknowledgment of debt and there was no acknowledgment in writing by the Corporate Debtor of liability towards the operational debt claimed.

The Tribunal upheld that refund of security deposit without acknowledgment of liability does not constitute

part-payment of debt under Section 19 of the Limitation Act, 1963. Therefore, it does not extend the period of limitation for filing a Section 9 IBC application. The appeal was accordingly dismissed.

6. NCLT has jurisdiction under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 to hear applications by the RP seeking to enforce arbitral awards: NCLAT, New Delhi.

The National Company Law Appellate Tribunal (NCLAT) in the case of **Jindal Lifestyle Ltd. v. RP of Arkin Creations Pvt. Ltd**⁷ has reaffirmed the overriding power of the Insolvency and Bankruptcy Code, 2016 (IBC).

CIRP was initiated against Arkin Creations Pvt. Ltd. on 7 October 2022. Prior to CIRP, the corporate debtor, registered as an MSME, had initiated arbitration against Jindal Lifestyle (formerly JSL Architecture Ltd.) for unpaid dues of Rs.21.5 lakh. The matter was referred to a sole arbitrator by the Haryana MSME Facilitation Council, culminating in an ex parte arbitral award dated 23 January 2017 in favour of Arkin Creations.

The Appellant claimed it first received the award only in January 2023 when the RP sent a demand notice seeking enforcement of Rs.44.99 lakh (principal plus interest). The NCLT Chandigarh Bench allowed enforcement during CIRP, prompting Jindal to appeal before NCLAT.

The Appellant/Jindal Lifestyle argued that the award was not binding, as the arbitrator failed to submit it to the MSME Facilitation Council and the award is enforceable only before a civil court under Section 36 of the Arbitration Act, 1996, not NCLT. The Appellant alleges that the enforcement was void for being issued beyond the 90-day period mandated under Section 18(5) MSME Act. The Appellant further argued that the award unenforceable since no action was taken for over five years. It was also contended that the award was ex parte,

[7] Comp. App. (AT) (Ins.) No. 1180 of 2024

with no proper notice served, violating natural justice.

The RP countered that the IBC has an overriding effect through Sections 60(5) and 238, granting NCLT jurisdiction to enforce arbitral awards during CIRP. He argued that the award is enforceable as a decree under Section 36 of the Arbitration Act, with a 12-year limitation under Article 136 of the Limitation Act, valid until 2029.

The Appellate Tribunal dismissed the appeal, holding that Section 60(5) IBC empowers NCLT to deal with all claims relating to CIRP, including enforcement of arbitral awards. Section 238 IBC ensures that the Code prevails over the Arbitration Act in case of inconsistency. Since the arbitral award was never challenged, it attained finality and could be pursued by the RP to aid revival of the corporate debtor.

7. A Resolution Professional cannot omit or delay their statutory obligations in lieu of fee payment

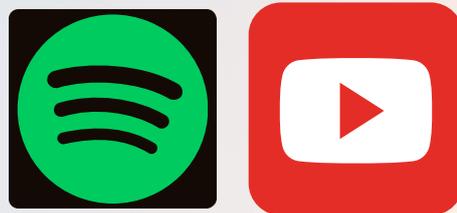
The Hon'ble NCLT New Delhi in **Central Bank of India v. Ritu Garg & Anr**⁸ held that by not submitting the report as required under section 99 of the Code, the RP failed to comply with its' statutory obligations. The Court also held that directions regarding fees and expenses of the Resolution Professional, prior to adjudication of the Section 99 report, would be premature.

The Adjudicating Authority vide order dated July 26, 2024 appointed Mr. Sudhir Kumar Agarwal as the Resolution Professional under Section 97(5) of the Code and directed to submit his report under section 99 of the Code. Without submitting the report, the RP raised an invoice of resolution fees payable to him, demanding that the same be cleared upfront prior to any steps being taken.

The Hon'ble Tribunal concluded that the resolution professional had failed to carry out his duty as was

statutorily required and therefore, a replacement of resolution professional under section 97(1) of the Code was allowed.

[8] I.A. NO. 4923/ND/2024 in C.P. (IB) No. 96/ND/2024



ANM ThinkPod

FIRM HIGHLIGHTS

ANM Global successfully defended Balaji Telefilms Ltd. in a copyright infringement suit over Dream Girl 2. The Bombay High Court rejected the Plaintiff's request for interim relief, holding that copyright cannot be claimed over common ideas. This decision reinforces key principles of copyright law.



Copyright cannot be claimed on common ideas':
Bombay HC dismisses copyright infringement case against Balaji Telefilms for 'Dream Girl 2'

ANM Global Advises GSharp Media on Hoopr - Turnkey Music Partnership

CEO & Co - Founder
Gaurav Dagaonkar

Managing Director
Atul Churamani

Mumbai | New Delhi | Bengaluru | Chennai

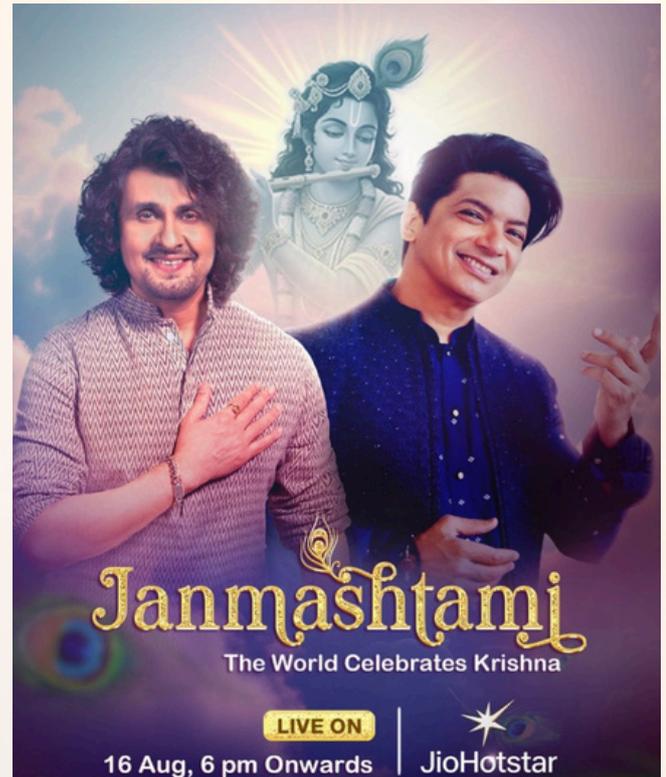
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ANM Global advised GSharp Media Pvt. Ltd., parent company of Hoopr, on its strategic partnership with Turnkey Music & Publishing Pvt. Ltd. This collaboration adds 1,250+ English-language tracks to Hoopr's platform, expanding its catalogue to over 20,000 tracks. ANM provided end-to-end legal and transactional support, ensuring a compliant and commercially aligned deal.

FIRM HIGHLIGHTS

ANM Global represented Sol Production LLP for the Janmashtami Event 2025, which premiered live on JioHotstar on 16th August 2025. The event was headlined by Sonu Nigam and Shaan. The firm provided comprehensive legal and advisory support for talent engagement and production activities during this festive celebration.



ANM Global advised Sol Production LLP on the Ganpati Event 2025, which streamed live on JioHotstar on 27th August 2025 and was headlined by Rahul Vaidya. The firm provided end-to-end legal and advisory support for talent engagement and production activities for this festive event.

FIRM HIGHLIGHTS

ANM Global has launched a specialised Sports & Gaming Practice to support India's rapidly growing yet highly regulated entertainment sectors. The vertical will be led by founder Nidhish Mehrotra & Anushree Rauta, bringing deep experience in advising athletes, clubs, associations, and leagues.



ANM Global and Scriboard have launched a joint venture, ANM-Scriboard, to offer specialized legal services focused on digital laws. The collaboration brings together ANM Global's expertise in media and IP with Scriboard's strength in data privacy, AI governance, and tech law. The venture aims to serve the growing legal needs of the digital economy through a comprehensive, future-ready legal framework.



ANM Global and Scriboard launch specialised joint venture

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