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ANM GLOBAL'S FINANCIAL FORUM

IBC NEWSLETTER
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AUTHORS:

SHIKHA GINODIA, PARTNER

GAURAV SURYAVANSHI, SENIOR ASSOCIATE

1. THE NATIONAL COMPANY LAW APPELLATE TRIBUNAL (NCLAT) HAS NO POWER TO CONDONE DELAYS IN FILING APPEALS BEYOND THE PRESCRIBED LIMIT OF 45 (30+15) DAYS UNDER SECTION 61(2) OF THE CODE- SUPREME COURT OF INDIA

The Hon'ble Supreme Court in the case of Tata Steel Ltd. v. Raj Kumar Banerjee & Ors.[1] examined whether the National Company Law Appellate Tribunal (NCLAT) had the jurisdiction to condone a delay in filing an appeal under Section 61(2) of the Insolvency and Bankruptcy Code, 2016 ("IBC"), beyond the statutorily prescribed outer limit of 45 days. The point of law revolved around the time framework imposed by the IBC and the extent to which the principles of the Limitation Act, 1963, especially Section 4, may be invoked when the limitation period expires on a court holiday.

In the present case, resolution plan of Appellant, Tata Steel for Rohit Ferro-Tech Ltd. ("Corporate Debtor") was approved by the Committee of Creditors ("CoC") and the National Company Law Tribunal (NCLT), Kolkata Bench, by order dated 07.04.2022. Respondent No. 1, an erstwhile minority shareholder of the Corporate Debtor, was aggrieved by the approval of this resolution plan and preferred an appeal under Section 61 of the IBC. However, the appeal was filed on e-filed on 23.05.2022 and 24.05.2022 (physically), after the expiry of the 30-day statutory limitation and the 15-day condonable grace period. Alongside, the Respondent No. 1 also filed an interlocutory application seeking condonation of delay, which the NCLAT allowed on the reasoning that the benefit of Section 4 of the Limitation Act was available, as 07.05.2022 (the last date for filing) was a Saturday.

The Appellant, Tata Steel Ltd., contended that the limitation period for filing the appeal expired on 07.05.2022, a Saturday which, though a non-working day for judges, was a working day for the NCLAT Registry. Therefore, Section 4 of the Limitation Act was inapplicable. They further submitted that even if Section 4 were invoked, the last condonable date would be 22.05.2022. Filing on 24.05.2022 rendered the appeal hopelessly barred. Relying on V. Nagarajan v. SKS Ispat, Kalpraj Dharamshi v. Kotak Investment Advisors, and Bhimashankar Sahakari v. Walchandnagar Industries, the Appellant argued that neither equity nor registry closures can extend a statutory maximum which is explicitly capped at 45 days. The appeal, therefore, had to be dismissed as non-maintainable.

The Respondent shareholder argued that the Resolution Plan's approval was disclosed to the public only on 08.04.2022 via intimation to stock exchanges. As he was not a party to the insolvency proceedings, he gained knowledge of the approval only through this disclosure. Hence, the limitation period should commence from 08.04.2022, not 07.04.2022. Since 08.05.2022 (30th day) was a Sunday, the limitation extended to 09.05.2022 under Section 4 of the Limitation Act. The Appeal was e-filed on 23.05.2022 and physically filed on 24.05.2022, falling within the additional 15-day grace period. The Respondent also argued that the NCLAT rightly exercised its discretion under the proviso to Section 61(2) in condoning the delay, citing that the delay arose from procedural challenges and non-compliance of mandatory disclosure norms by the Resolution Professional.

Relying on the framework of the Limitation Act, the Supreme Court held that the "prescribed period" under Section 4 refers only to the initial 30 days and not to the grace period that is already contingent upon judicial discretion. It also emphasized that the benefit of Section 4 applies only if the prescribed (original) limitation period expires on a court-closed day, and not to the condonable period. Furthermore, it reaffirmed V. Nagarajan, which clarified that limitation under Section 61(2) begins from the date of pronouncement, not from the date of knowledge or availability of the certified order unless the time taken to obtain the certified copy is duly excluded under Section 12(2) of the Limitation Act.

In its findings, the Supreme Court held that the NCLAT had no jurisdiction to condone delay beyond the total 45-day period under Section 61(2). The order of the NCLAT condoning the delay was declared ultra vires and was accordingly set aside. The Court stressed that even a

delay of a single day beyond the statutory limit is fatal unless expressly condonable under statute. It reiterated that appellate mechanisms under IBC are strictly time-bound and not susceptible to equitable extensions or leniencies, given the Code's overriding goal of time-bound insolvency resolution.

Thus, the appeal was allowed, and the order dated 14.12.2022 of the NCLAT in I.A. No. 1667 of 2022 in C.A. (AT) (Insolvency) No. 615 of 2022 was set aside, reaffirming that limitation under IBC is a jurisdictional bar, not a procedural one.

[1] Civil Appeal No. 408 of 2023

2. AFTER COMMENCEMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS (CIRP) ONCE MORATORIUM UNDER SECTION 14 OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 (IBC) KICKS IN, NO PERSON CAN UNILATERALLY RECOVER ANY AMOUNT FROM THE ACCOUNT OF THE CORPORATE DEBTOR- NCLAT, NEW DELHI

In the matter of Mr. Sunil Gutte v. Mr. Avil Menezes & Ors.[2], the National Company Law Appellate Tribunal, Principal Bench, was called upon to determine whether the Adjudicating Authority rightly set aside certain post-CIRP transactions undertaken by the erstwhile promoter and suspended management of M/s. Sunil Hitech Engineers Ltd., holding them to be in violation of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), and whether such transactions could be reversed by directions issued under a Miscellaneous Application filed by the Resolution Professional ("RP").

The Appeal arose from the NCLT Mumbai Bench's order dated 04.02.2025, whereby the Adjudicating Authority allowed MA No. 1833 of 2019 and declared that the Appellant and other respondents were jointly and severally liable to refund Rs.11.01 crore, transferred to vendors during the moratorium period. The NCLT had also recommended that the matter be referred to the Insolvency and Bankruptcy Board of India (IBBI) for initiation of appropriate proceedings under Section 74(1) of the IBC for breach of the moratorium. M/s. Sunil Hitech Engineers Ltd. had been admitted into CIRP on 07.09.2018 under Section 7 of the IBC, with the effective date of moratorium expressly stated as 10.09.2018 in the NCLT's order, which was delivered on 10.09.2018. Despite the moratorium, payments amounting to Rs.11.01 crore were transferred by the appellant (the promoter) and the Chief Financial Officer (Respondent No. 6) to vendors (Respondents Nos. 2 to 5).

The Appellant contended that the impugned transactions comprised routine payments made in the ordinary course of business. These were neither fraudulent nor executed with mala fide intent. Rather, they were essential for preserving the Corporate Debtor as a going concern. The vendors involved had ongoing service contracts with the Corporate Debtor, and failure to pay them at the relevant time would have disrupted the company's functioning. The Appellant submitted that the cheques issued to the vendors were dated prior to the commencement of the CIRP and were thus lawful, and that the IRP ought to have promptly instructed the banks to suspend or stop transactions upon admission of the CIRP. Further, it was submitted that the Appellant had fully cooperated with the IRP by sharing bank statements and issuing internal directions to prevent further payments post-14.09.2018.

The RP, opposing the appeal, submitted that all payments—whether by RTGS or cheques—were made post-commencement of CIRP and in breach of Section 14(1)(b) of the IBC, which prohibits the alienation or transfer of assets by the Corporate Debtor during moratorium. He relied on documentary records to show that the payments, although justified by the appellant as operational, were made without any authorisation by the IRP and from a bank account other than the one designated for CIRP activities. The RP clarified that his own communications to the CoC and the IRP confirmed that only payments approved by the CoC and disbursed through the designated UCO Bank account were legitimate. Since the payments in question were made from an HDFC Bank account without such authorisation, they were per se illegal.

Upon considering the submissions, the Tribunal clarified that the "insolvency commencement date," as per Section 5(12) of the IBC, is the date of admission of the insolvency petition. Simultaneously, Section 13(1)(a) mandates the declaration of moratorium on admission of the CIRP application, and Section 14(1)(b) prohibits the Corporate Debtor from transferring or disposing of any

of its assets. Once the CIRP is triggered, the suspended management is statutorily barred from accessing the company's financial resources, except under the supervision and approval of the IRP or RP. The Tribunal observed that even well-intentioned payments cannot be an exception to this statutory embargo.

The Tribunal ruled that mere dating of the cheques prior to CIRP commencement cannot justify post-moratorium encashment, particularly when Section 14(1)(b) squarely bars any such transaction. Citing its earlier decision in SREI Equipment Finance Ltd. v. Amit Gupta, the Tribunal reiterated that no person can encash a cheque post-moratorium, regardless of when it was issued. The judgment in Pratim Bayal v. Tata Motors Finance Solutions Ltd., relied upon by the Appellant to argue otherwise, was held to be inapplicable, as the Appellant had not provided any corroborative evidence that the cheques were physically handed over on the same date as recorded.

On the question of selective recovery, the Tribunal rejected the plea of discrimination. It held that even if other vendors were not pursued for refunds, no claim for parity in illegality or equal treatment in breach of moratorium could be entertained. Equity cannot be invoked to perpetuate statutory violations.

In its findings, the Tribunal rejected the appeal and concluded that the appellant and Respondents Nos. 2 to 6 had acted in violation of the moratorium declared under Section 14, by effecting post-CIRP transactions from the assets of the Corporate Debtor without approval. The referral of the matter to IBBI for possible action under Section 74(1) of the Code was also found to be justified.

[2] Company Appeal (AT) (Insolvency) No. 515 of 2025

3. REPLACEMENT OF A VOLUNTARY LIQUIDATOR DOES NOT REQUIRE THE APPROVAL OF THE NCLT- NCLAT, NEW DELHI

In Vinod Singh v. Chandra Prakash Jain & Ors.[3] The central issue in this judgment was whether the Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 ("IBC") has the jurisdiction to interfere in the removal and replacement of a voluntary liquidator during a voluntary liquidation process governed under Section 59 of the IBC and the IBBI (Voluntary Liquidation Process) Regulations, 2017. The appellate tribunal examined the legality of a status quo order passed by the NCLT with respect to a liquidator's continuance and addressed the procedural infirmities cited by the Adjudicating Authority to de-reserve a previously reserved order.

Transmissions International India Pvt. Ltd. ("TIIPL"), the Corporate Debtor, commenced voluntary liquidation under Section 59 of the IBC. Initially, Mr. Umesh Ved was appointed as liquidator and subsequently, Mr. Chandra Prakash Jain (Respondent No. 1) was appointed as liquidator by the shareholders. Dissatisfied with his conduct, the Board of Directors and shareholders passed resolutions on 28.02.2025 and 17.03.2025 respectively, replacing him with Mr. Arun Gupta (Respondent No. 6). Mr. Chandra Prakash Jain filed an application before the NCLT challenging his removal and obtained a status quo order on 28.03.2025. The Appellant, Mr. Vinod Singh, Director of the Corporate Debtor, challenged the order dated 28.03.2025 as well as the subsequent order dated 29.04.2025 by which the NCLT de-reserved its previously reserved judgment on the matter.

The Appellant contended that under Section 59 of the IBC read with Regulation 5 of the Voluntary Liquidation Regulations, the Corporate Debtor has complete authority to appoint or replace a voluntary liquidator through Board and shareholders' resolutions. The Adjudicating Authority, therefore, lacked jurisdiction to impose a status quo order that effectively reinstated a removed liquidator. Further, the order dated 29.04.2025 was challenged as being contrary to settled legal principles, particularly the continuity between reservation and pronouncement of judgment.

The Respondents argued that the replacement process of the liquidator was defective due to procedural lapses: the Appellant allegedly lacked authority to act on behalf of certain foreign shareholders, and the Power of Attorney and Letters of Authority were not duly stamped or apostilled. They justified the de-reservation of the order on the grounds that the NCLT needed to ensure procedural regularity.

The Appellate Tribunal carefully examined Section 59 of the IBC and Regulation 5 of the Voluntary Liquidation Regulations, which clearly stipulate that a liquidator can be appointed or replaced by a corporate person through

a simple resolution, without requiring judicial oversight or intervention. The Tribunal distinguished the voluntary liquidation regime from the compulsory liquidation regime under Sections 33–34 of the IBC. It was noted that in voluntary liquidation, the liquidator acts on behalf of solvent companies, and the authority to manage the process lies with the shareholders and directors—not with the Adjudicating Authority.

Further, the Tribunal rejected the procedural objections raised by the Respondents, noting that these alleged defects were already known to the Adjudicating Authority when it reserved its judgment on 02.04.2025. Therefore, it was held that the subsequent de-reservation of the judgment on 29.04.2025 was arbitrary and amounted to judicial inconsistency. The Tribunal emphasized that maintainability of Respondent No. 1's petition should have been decided on merit rather than sidestepping it on procedural grounds.

The NCLAT held that the Adjudicating Authority overstepped its jurisdiction by directing the status quo order dated 28.03.2025 and by de-reserving the judgment on 29.04.2025 without substantive justification. It reaffirmed the legal position that replacement of a voluntary liquidator does not require the approval of the NCLT. Accordingly, it allowed Appeal and vacated the status quo order.

[3] Company Appeal (AT) (Insolvency) Nos. 800 & 801 of 2025

4. SECTION 13(2) NOTICE EXPLICITLY DEMANDS PAYMENT FROM THE GUARANTOR IN TERMS OF THE GUARANTEE AGREEMENT, AND AMOUNTS TO AN INVOCATION OF THE PERSONAL GUARANTEE- NCLAT, NEW DELHI

The primary legal issue addressed in the case of Asha Basantilal Surana v. State Bank of India & Ors[4] this judgment is whether a personal guarantor is entitled to initiate an insolvency resolution process under Section 94(1) of the Insolvency and Bankruptcy Code, 2016 ("IBC") on the basis of a demand notice issued by a creditor under Section 13(2) of the SARFAESI Act, 2002. The NCLAT was called upon to determine if such notice constitutes valid invocation of the personal guarantee, thereby justifying a cause of action for initiating personal insolvency.

The Appellant, Asha Basantilal Surana, stood as a personal guarantor for loans availed by the principal borrower, M/s Surana Metacast (India) Pvt. Ltd., from the State Bank of India and other financial institutions. The appellant executed a deed of personal guarantee on 12.11.2021. The loan account of the principal borrower was classified as a non-performing asset on 01.05.2023. Subsequently, on 09.10.2023, a notice under Section 13(2) of the SARFAESI Act was issued to both the borrower and the appellant, demanding repayment of Rs.28.56 crore. The State Bank of India later obtained possession of the secured assets under Section 14 and issued a sale notice under Section 13(4). CIRP against the principal borrower commenced on 05.08.2024. In response, the appellant filed an application under Section 94(1) of the IBC seeking initiation of her personal insolvency. However, the NCLT rejected the application on the ground that it was premature and filed without any cause of action.

The Appellant argued that the notice dated 09.10.2023 under Section 13(2) of the SARFAESI Act amounted to a valid invocation of her personal guarantee, which was sufficient cause to seek initiation of insolvency proceedings under Section 94(1). It was submitted that the NCLT erred in dismissing the application without even appointing a Resolution Professional or obtaining a report under Section 99.

On the other hand, the Respondent bank contended that the notice under Section 13(2) was merely for enforcement of security interest and not an invocation of the personal guarantee. They submitted that the application under Section 94(1) was filed as a delay tactic to prevent enforcement under SARFAESI and that no independent legal action had been initiated by the bank against the personal guarantor, thereby rendering the application premature.

The Appellate Tribunal closely examined the language of the Section 13(2) notice, which was specifically addressed to the guarantor and called upon her to discharge the outstanding liability of Rs.28.56 crore within 60 days. The Tribunal observed that the guarantee deed itself did not prescribe any specific mode for invocation, and that a clear demand for payment was sufficient to constitute valid invocation. The Tribunal rejected the view of the Adjudicating Authority that the absence of further proceedings under SARFAESI made the Section 94 application premature.

The NCLAT held that the Section 13(2) notice dated 09.10.2023 constituted a valid demand and invocation of the personal guarantee in terms of the guarantee deed. Therefore, the appellant was legally entitled to seek

personal insolvency under Section 94(1) of the IBC. It found that the NCLT's view that the application lacked cause of action was erroneous. Consequently, the impugned order dated 04.12.2024 was set aside, and the original application under Section 94 was revived for further proceedings in accordance with law.

[4] Company Appeal (AT) (Insolvency) No. 84 of 2025

5. ONLY THE RESOLUTION PROFESSIONAL (RP) OR LIQUIDATOR IS AUTHORIZED TO FILE AN APPLICATION UNDER SECTION 43 FOR AVOIDANCE OF PREFERENTIAL TRANSACTIONS. A HOMEBUYER LACKS LOCUS STANDI TO INVOKE THIS PROVISION- NCLAT, NEW DELHI

In the matter of Ramprasad Vishwanath Gupta v. Mr. Dinesh Kumar Deora & Ors.[5], a batch of Company Appeals was filed by the Appellant, a single homebuyer, challenging three orders passed by the National Company Law Tribunal (NCLT), Mumbai Bench dated 24.01.2025, 28.01.2025, and 12.02.2025. The core legal questions involved were: (i) whether an individual homebuyer has locus standi to challenge a resolution plan approved by a majority of the Committee of Creditors (CoC), and (ii) whether such a homebuyer can initiate proceedings under Section 43 of the Insolvency and Bankruptcy Code, 2016 (IBC), concerning avoidance of preferential transactions. The National Company Law Appellate Tribunal (NCLAT), Principal Bench, New Delhi, adjudicated these issues and dismissed all three appeals, upholding the commercial wisdom of the CoC and reaffirming settled legal principles regarding class voting under the IBC.

Corporate Insolvency Resolution Process (CIRP) of Snehanjali and S.B. Developers Pvt. Ltd. commenced on 07.03.2024 on the application of 67 homebuyers. The CoC was formed, Resolution Professional (RP) and Authorized Representative (AR) were appointed, and Expressions of Interest (EOIs) were invited. Among the resolution plans received, the consortium of La Mer Developers Limited and Neel Builders & Developers secured CoC approval with 83.46% voting share. The RP filed for plan approval under Section 30(6), while the Appellant, Mr. Ramprasad Gupta, filed three separate applications before the NCLT: one under Section 43 alleging preferential transactions, another seeking rejection of the approved plan citing procedural impropriety and fraud, and a third seeking replacement of the RP and AR. All three applications were dismissed by the Adjudicating Authority, prompting the present appeals.

In support of his appeals, the Appellant contended that the RP acted in collusion with the Successful Resolution Applicant (SRA), that the plan violated the Request for Resolution Plan (RFRP) conditions, and that a homebuyer named Bipin Kabra influenced the CIRP process unduly. The Appellant challenged the legitimacy of the resolution plan and its approval, claiming procedural irregularities and seeking rejection of the plan. He also questioned the maintainability of the resolution process on grounds of lack of transparency and fairness. Regarding the Section 43 application, the Appellant maintained that certain transactions were preferential and deserved to be set aside.

The Respondents, appearing through counsel, argued that the Appellant, being a single homebuyer with 2.14% voting share, had no legal standing to challenge the collective decision of the CoC. They cited the Supreme Court judgment in Jaypee Kensington Boulevard Apartments Welfare Association v. NBCC (India) Ltd. (2022) 1 SCC 401, which held that individual homebuyers, as part of a class, are bound by majority decisions and cannot be treated as dissenting financial creditors. It was further contended that only a Resolution Professional or Liquidator can initiate proceedings under Section 43, and therefore, the Appellant's application was not maintainable. The resolution plan, having been approved by the CoC with the required majority, complied with Section 30(2) of the Code and hence warranted no interference.

The NCLAT, after considering the submissions, held that the Appellant had no independent locus standi to challenge the resolution plan. The Tribunal observed that the CoC, which includes homebuyers represented through an AR, had validly approved the plan with an overwhelming majority of 83.46%. Citing the Jaypee Kensington judgment, the Bench reiterated that individual homebuyers could not raise objections once a resolution plan is approved by the majority in the class. The Adjudicating Authority had correctly observed that entertaining such objections would derail the CIRP and defeat the legislative intent of collective decision-making

under the Code.

On the issue of the Section 43 application, the NCLAT agreed with the NCLT's view that such an application is maintainable only at the instance of the RP or Liquidator. The Appellant's invocation of Section 43 was held to be legally untenable, frivolous, and aimed at stalling the resolution process.

The Appellate Tribunal further noted that the approved resolution plan provided for settlement of claims by delivery of units to all 297 claimants and non-claimant unit holders, thus fulfilling the requirements of Section 30(2) of the Code. The plan, therefore, did not warrant judicial interference. Reaffirming the jurisprudence laid down in K. Sashidhar v. Indian Overseas Bank and Essar Steel India Ltd. v. Satish Kumar Gupta, the Tribunal emphasized that the Adjudicating Authority's role is limited to verifying compliance with Section 30(2) and not to assess the commercial soundness of the plan.

Accordingly, Company Appeal (AT) (Ins.) No. 442 of 2025 was dismissed with deletion of the cost imposed by the NCLT, and Company Appeal (AT) (Ins.) Nos. 474 and 559 of 2025 were dismissed in entirety. The NCLAT concluded that the collective commercial wisdom of the CoC, exercised through due process and legal compliance, cannot be unsettled at the instance of a lone dissenting homebuyer. The Tribunal thus reinforced the principle that individual dissent cannot override the collective will of the creditor class under the IBC framework.

[5] Company Appeals (AT) (Insolvency) Nos. 442, 474, and 559 of 2025

6. IF DEMAND NOTICE U/S 8 OF THE CODE IS NOT SENT TO THE CORRECT ADDRESS, IT DOES NOT MEET THE MANDATORY REQUIREMENTS OF LAW- NCLT, HYDERABAD

The NCLT Hyderabad, in the case of Anurada Chemicals v. Synaptics Labs Pvt. Ltd.[6] was faced with an issue as to whether the Operational Creditor, M/s. Anurada Chemicals, complied with the mandatory requirement of serving a valid demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 ("IBC") before initiating a petition under Section 9 for commencement of the Corporate Insolvency Resolution Process ("CIRP").

Anurada Chemicals supplied chemicals to Synaptics Labs Pvt. Ltd. pursuant to contractual obligations. For the unpaid dues, the Corporate Debtor issued two post-dated cheques totaling Rs.38,12,750, both of which were dishonoured upon presentation with the remark "Payment Stopped by Drawer." Thereafter, a Confirmation of Accounts was issued by the Corporate Debtor showing an outstanding balance of Rs.1.32 crore. The Operational Creditor issued a statutory demand notice under Section 8 dated 26.02.2024 via speed post and email, relying on delivery status and email acknowledgment. Subsequently, the CIRP petition was filed after the debtor failed to repay.

The Operational Creditor submitted that the Corporate Debtor partially acknowledged the outstanding liability on the NeSL portal (Rs.1.15 crore admitted) and had issued a written confirmation of the amount due. Despite receipt of the demand notice, no payment was made. The Corporate Debtor did not appear in the proceedings and was proceeded ex parte. The petitioner asserted that all procedural requirements under Section 8 and Rule 5 were fulfilled, and that the default was clearly established through invoices, ledger accounts, e-way bills, and acknowledgment of debt.

The Adjudicating Authority took note of the fact that the address to which the postal demand notice was sent contained an incorrect pincode and did not match the registered address of the Corporate Debtor on the MCA portal. The Tribunal emphasized that under Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, the notice must be delivered to the registered office or a key managerial person, and proof of service must be filed along with the petition. Citing rulings in Bijay Pratap Singh v. Laxmi Optoelectronics Pvt. Ltd. and Shailendra Sharma v. Ercon Composites, the Tribunal held that incorrect service or failure to show proper delivery is fatal to maintainability of a Section 9 petition. The Tribunal also noted that no signed copy of the delivered notice was filed with the petition, thereby violating Section 9(3)(a).

While the existence of operational debt and default was not disputed on merits, the Tribunal held that non-compliance with Section 8(1) and Rule 5(2) vitiated the petition. The demand notice was not shown to have been duly served to the correct address or any authorized person of the Corporate Debtor, and the required proof of such service was not filed. As a result, the CIRP

application was held to be non-maintainable and was accordingly dismissed.

[6] CP (IB) No. 10/ND/2024

7. PAYMENT OF LEASE RENT AND RELATED CHARGES UNDER A REGISTERED LEASE DEED CAN CONSTITUTE AN "OPERATIONAL DEBT" WITHIN THE MEANING OF SECTION 5(21) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 ("IBC")- NCLT NEW DELHI

In the case of Unified Credit Solutions Pvt. Ltd. v. D S Home Construction Pvt. Ltd[7] the Tribunal was to decide whether default in payment of lease rent and related charges under a registered lease deed can constitute an "operational debt" within the meaning of Section 5(21) of the Insolvency and Bankruptcy Code, 2016 ("IBC") and thereby justify admission of an application under Section 9 of the IBC for initiation of Corporate Insolvency Resolution Process ("CIRP").

The Operational Creditor, Unified Credit Solutions Pvt. Ltd., leased out certain premises to the Corporate Debtor, D S Home Construction Pvt. Ltd., through a registered lease deed dated 01.10.2020 for office use. The Corporate Debtor took possession of the premises from 01.11.2020 but began defaulting on rent payments from January to June 2022 and completely defaulted from July 2022 onwards. Despite multiple notices, including a termination notice dated 02.02.2023, the Corporate Debtor neither vacated the premises nor cleared the outstanding dues. Allegedly, it concocted false stories of HRERA's bank account attachment and fire-related electricity disconnection to delay payments. Even after part payments of Rs.12,96,000 in April–May 2023, a substantial sum remained unpaid. The Operational Creditor issued a demand notice under Section 8 of the IBC on 30.11.2023 for the outstanding debt of Rs.1,84,47,567, including unpaid lease rent, maintenance dues, and TDS amounts.

Only the Operational Creditor appeared in the proceedings. The Corporate Debtor, though served via email and post, failed to appear, and was accordingly proceeded ex parte. The Operational Creditor submitted that the debt arose from continuous default in lease rent payments and maintenance charges, which amounted to provision of services under the lease agreement, thereby qualifying as an operational debt under Section 5(21) of the IBC. It was further submitted that there was no prior dispute or pending litigation before issuance of the demand notice. True copies of lease deed, invoices, ledger statements, and Section 65B certificates were placed on record to substantiate the debt.

The Tribunal referred to the Supreme Court's judgment in Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353, which mandates the Adjudicating Authority to ascertain (a) whether there is an operational debt exceeding the threshold, (b) whether documentary evidence supports such debt as being due and unpaid, and (c) whether there exists any prior dispute regarding the debt. Upon analysis, the Tribunal found that the debt, arising from continuous usage of the leased premises and default in lease rent, squarely fell under the ambit of "operational debt" under Section 5(21), as it related to provision of services. The Tribunal also noted the absence of any pre-existing dispute, litigation, or arbitration, and held that the Corporate Debtor, despite acknowledging liability, had persistently defaulted.

The Adjudicating Authority concluded that the Corporate Debtor was in default of an operational debt exceeding Rs.1 crore and that the conditions under Section 9 of the IBC were duly satisfied. Accordingly, CIRP was initiated against D S Home Construction Pvt. Ltd and the petition was admitted.

[7] CP (IB) 70/ND/2024

AWARDS

ANM GLOBAL RECOGNIZED FOR MEDIA AND ENTERTAINMENT

ANM Global has been named the **Winner in the Media & Entertainment category** at the India Business Law Journal **Law Firm Awards 2025**.

This recognition marks a year of strong momentum for the firm driven by strategic growth, key lateral hires, and high-impact work for clients across media, entertainment, and intellectual property.

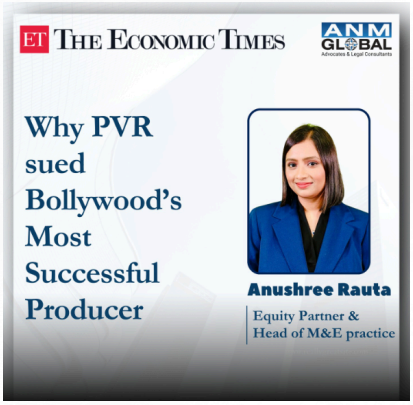
FIRM HIGHLIGHTS

ANM Global has been recognised by Benchmark Litigation in its latest rankings. The firm has been ranked as a **Recommended Firm in Mumbai**, and the **Intellectual Property** practice has also been recognised. Further, **Mr.** Rahul Dhote, Head of **Intellectual Property**, has been named a **Future Star** in **Intellectual Property**. **Benchmark Litigation** in its review has commended **ANM Global** for its growth in **contentious IP law**, especially following its merger with **Literati Juris** in 2022.

ANM Global **is proud to be recognised in the 2025 Intellectual Property Rankings by** Asian Legal Business (**ALB**), **featured in their May issue**. This recognition underscores the strength of our IP practice and the dedication of our team to delivering strategic, innovative, and client-focused solutions across the intellectual property landscape.

FIRM HIGHLIGHTS

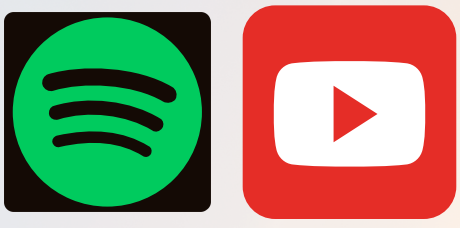
Ms. Anushree Rauta, Equity Partner and Head of the Media & Entertainment Practice at ANM Global, was invited to speak at the prestigious World Intellectual Property Organization – WIPO-National Law University, Delhi- IPO Joint Masters/LL.M. in Intellectual Property Law and Management Programme for a special session on "Licensing in Bollywood"



Anushree Rauta, Equity Partner and Head of the Media and Entertainment Practice at ANM Global, joined Anirban Chowdhury and Rajesh N Naidu to offer nuanced insights into the legal framework surrounding such disputes and what this means for the broader film industry

Thrilled to announce the promotion of Deepank Singhal to principal associate at ANM Global! Deepank has been a vital part of our journey, consistently showcasing sharp legal insight, dedication, and a client-first approach

Rahul Dhote, Head of Intellectual Property at ANM Global, was featured in The The Economic Times for his expert views on the trademark race surrounding 'Operation Sindoor', following India's recent cross-border military action



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contact@anmglobal.net

ANM Global

+91 22 2287 3499; +91 22 4971 1084

OFFICES

MUMBAI

1. 7, floor 2nd, Nagin Mahal, Plot-82, Veer Nariman Road, Churchgate, Mumbai 400020. Ph: 022-2287 3499

2. 411/413, Dilkap Chambers, Off. Veera Desai Road, Fun Republic Lane, Andheri West,Mumbai - 400053 Ph: 022-4971 1084

NEW DELHI

Awfis L29 - L34, 1st Floor, Connaught Place New Delhi, 110001

BENGALURU

21/2, 1st Main Road,Opp Indian Overseas Bank,Gandhinagar, Bengaluru - 560009 Ph: 080-2350 9909

CHENNAI

715-A, 7th Floor,Spencer Plaza Suit No.1056,Mount Road, Anna Salai, Chennai - 600002

RECOMMENDED FIRM FOR MEDIA AND ENTERTAINMENT BY **ASIALAW PROFILES**