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**IBC NEWSLETTER
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1. Supreme Court held that once financial debt and default are established under Section 7 of IBC, the NCLT must admit the petition and cannot refuse admission on the ground that the Corporate Debtor is a solvent or going concern company.¹

The Supreme Court of India allowed the appeals and held that the Adjudicating Authority (NCLT) is only required to determine the existence of a "financial debt" and a "default" when considering an application under Section 7 of the IBC. The Court clarified that once these two criteria are satisfied, the NCLT cannot refuse to admit the petition on the grounds that the Corporate Debtor is otherwise a "solvent company" or a "going concern."

The Appellant, Satinder Singh Bhasin (along with other financial creditors), challenged the orders of the NCLAT which had set aside the initiation of CIRP against the Corporate Debtor. The NCLAT had reasoned that because the Corporate Debtor was a profit-making entity with substantial assets and ongoing projects, it should be given a chance to pay the debt outside of the insolvency framework to avoid the "stigma" of CIRP.

The Supreme Court noted that the IBC shifted the legal focus from the "Ability to Pay" (Commercial Insolvency) test, which existed under the old Companies Act, to a "Default" test. The Court observed that the legislative intent of the IBC was to ensure a time-bound resolution process triggered by a single instance of default, regardless of the company's overall balance sheet or market value.

The Supreme Court held that Section 7 of the IBC is mandatory in nature. If the Financial Creditor proves that a debt of over ₹1 crore is due and has not been paid, the Adjudicating Authority "shall" admit the application. The Court emphasized that the NCLT does not have the discretion to examine the "solvency" of the debtor as a defense against admission. To allow such a defense would result in a trial-like delay, defeating the very purpose of the Code.

The Court further examined the role of the NCLT as a summary forum. It held that the "discretion" mentioned in earlier precedents (like the *Vidarbha Industries case*) is extremely limited and should not be used to bypass the statutory mandate of the Code. A company may be asset-rich, but if it fails to meet its current financial obligations, it has committed a "default" under the IBC.

The Supreme Court held that the NCLAT had fundamentally erred by applying the principles of the

winding-up regime to a CIRP application. It clarified that CIRP is a revival mechanism, not a penalty, and its initiation is governed strictly by the occurrence of a default.

The Supreme Court thus held that the Corporate Debtor's financial health or status as a going concern is irrelevant to the admission of a Section 7 petition, restored the NCLT's admission order, and set aside the judgment of the NCLAT.

2. NCLT held that statutory tax dues cannot be recovered outside the Resolution Plan once the plan is approved and implemented.²

The National Company Law Tribunal (NCLT), Guwahati Bench allowed the interlocutory application filed by the Corporate Debtor and held that any tax demands or recovery proceedings initiated by statutory authorities after the approval of a Resolution Plan are legally unsustainable. The Tribunal reaffirmed the "Clean Slate" doctrine, emphasizing that an approved resolution plan is binding on all stakeholders, including Government authorities.

The Applicant, Maxim Infrastructure & Real Estate Private Limited, challenged a demand notice issued by the Office of Superintendent of Taxes for unpaid Value Added Tax (VAT) and Central Sales Tax (CST) dues. The tax authorities sought to recover these dues for a period preceding the completion of the Corporate Insolvency Resolution Process (CIRP).

The Corporate Debtor had undergone CIRP, and a Resolution Plan was approved by the NCLT on 14th August 2021. The plan was subsequently implemented, and the management was handed over to the Successful Resolution Applicant. Years later, the Tax Department issued demand notices and moved to attach the company's accounts to recover pre-CIRP arrears.

The NCLT noted that the Tax Department had failed to file its claim before the Resolution Professional (RP) during the CIRP, despite the public announcement. The Tribunal observed that the "waterfall mechanism" under Section 53 of the IBC and the finality of the resolution process under Section 31 ensure that all "undisclosed" or "unclaimed" debts are extinguished once a plan is approved.

The NCLT held that a Resolution Plan acts as a statutory contract that binds the Central Government, State Governments, and local authorities. Once the plan is sanctioned, the Successful Resolution Applicant cannot be faced with "hydra-headed" monsters of undecided claims from the past. The Tribunal cited settled law that the Successful Resolution Applicant

1. Satinder Singh Bhasin v. Gautam Mullick, 2026 SCC OnLine SC 137

2. Maxim Infrastructure & Real Estate Private Limited v. Office of Superintendent of Taxes, 2026 SCC OnLine NCLT 850

must be allowed to start with a clean slate to ensure the viability of the revived business.

The Tribunal further examined the scope of Section 238 of the IBC, which gives the Code an overriding effect over other laws, including state tax statutes. It held that the tax authorities cannot utilize the provisions of the VAT Act to circumvent the discharge of debt effected by the NCLT's approval of the resolution plan.

The NCLT held that the demand notices were *ex-facie* illegal and contrary to the provisions of the IBC. It clarified that the State's right to recover taxes is subject to its participation in the insolvency process as an Operational Creditor.

The NCLT thus held that the impugned demand notices were null and void, set them aside, and directed the Tax Department to refrain from any further recovery actions for dues pertaining to the period prior to the plan's approval.

3. Supreme Court clarifies the priority of Secured Creditors over Statutory Dues under Section 26E of the SARFAESI Act and Section 31B of the RDDB Act.³

The Supreme Court of India allowed the appeals and held that the rights of secured creditors to realize their dues from the sale of secured assets take precedence over all other debts, including statutory dues like taxes, cesses, and rates. The Court clarified that once a security interest is registered with the Central Registry, the secured creditor obtains a priority that overrides the claims of the Government and other local authorities.

The Appellant, State Bank of India (along with other financial institutions in consolidated appeals), challenged various orders from High Courts that had prioritized state tax demands over the recovery actions initiated by banks. The central legal conflict involved the interpretation of Section 26E of the SARFAESI Act and Section 31B of the RDDB Act, both of which were introduced via amendments in 2016 to strengthen the position of secured creditors.

In the cases under review, banks had initiated recovery proceedings against defaulting borrowers by auctioning secured properties. However, various Government departments (such as Sales Tax, Excise, and Customs) intervened, claiming that their statutory charges over the same properties—often created under state laws—should be satisfied first.

The Supreme Court noted that before the 2016 amendments, there was significant ambiguity and conflicting judicial opinions regarding the "*first charge*" of the State versus the rights of a mortgagee. The Court observed that the legislative intent behind inserting Section 26E into the SARFAESI Act was to provide a "non-obstante" clause that explicitly gives priority to secured creditors, provided their security interest is duly registered with CERSAI (Central Registry of Securitisation Asset Reconstruction and Security Interest of India).

The Supreme Court held that the priority granted to a secured creditor under the SARFAESI Act is not just a right of first refusal but a substantive priority in payment. The Court emphasized that this federal legislation overrides any conflicting state laws that might claim a "first charge" for unpaid taxes. The only exception to this priority is when the Corporate Insolvency Resolution Process (CIRP) under the IBC is active, in which case the distribution follows the IBC's specific waterfall mechanism.

The Court further examined the requirement of registration. It held that the priority of the secured creditor is contingent upon the registration of the security interest. Once registered, the statutory dues of the Government—even if they were created earlier in time—must take a backseat to the claims of the secured creditor during the recovery process.

The Supreme Court held that the High Courts had erred in prioritizing state tax dues based on older precedents that had been rendered obsolete by the 2016 statutory amendments. It clarified that the secured creditor's right to sell the property and appropriate the proceeds remains unfettered by state-level tax attachments.

The Supreme Court thus held that the secured creditors have a clear legal priority over statutory dues, directed that the auction proceeds be released to the banks, and set aside the contrary judgments of the various High Courts.

4. Supreme Court holds that NCLT cannot evaluate the "Commercial Viability" of a debt to refuse admission under Section 7 IBC.⁴

The Supreme Court of India allowed the appeal and held that the Adjudicating Authority (NCLT) has no jurisdiction to reject a Section 7 application by assessing the commercial viability or the potential profitability of the Corporate Debtor. The Court

3. SBI v. Union of India, 2026 SCC OnLine SC 202

4. Power Trust (Promoter of Hiranmaye Energy Ltd.) v. Bhuvan Madan (Interim Resolution Professional of Hiranmaye Energy Ltd.) and Ors, 2026 SCC OnLine SC 248

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reiterated that the mandate of the IBC is strictly limited to verifying the existence of a "financial debt" and a "default," and once these are established, the initiation of the Corporate Insolvency Resolution Process (CIRP) is mandatory.

The Appellant, Power Trust (Promoter of Hiranmaye Energy Ltd.), challenged the order of the NCLAT which had upheld the admission of the Corporate Debtor into CIRP. The Corporate Debtor, Hiranmaye Energy Ltd., had defaulted on credit facilities provided by a consortium of lenders led by REC Limited and Power Finance Corporation.

The NCLT had admitted the Section 7 application after finding a clear default in repayment. However, the Appellant argued that the Corporate Debtor was a functional power plant providing essential services, was currently generating revenue, and that the default was due to external factors like non-payment of dues by State Discoms rather than financial mismanagement.

The Supreme Court noted that the NCLT and NCLAT are not required to act as "courts of equity" or business consultants. The Court observed that the legislative shift from the "inability to pay" regime to the "default-based" trigger was intended to ensure that insolvency proceedings are initiated the moment a contractually agreed-upon payment is missed, regardless of the reasons behind such a default.

The Supreme Court held that the "Commercial Wisdom" of the Committee of Creditors (CoC) only comes into play after the admission of the application. At the stage of Section 10 or Section 7 admission, the NCLT cannot substitute its own judgment regarding whether the company is "viable" or "profitable" to stall the CIRP. The Court emphasized that a "solvent" company in the accounting sense can still be "insolvent" in the IBC sense if it fails to clear its undisputed financial debts.

The Court further examined the distinction between Section 7 (Financial Debt) and Section 9 (Operational Debt). It held that while Section 9 allows for a "pre-existing dispute" defense, Section 7 is much more rigid. Unless the Corporate Debtor can prove that the debt is not due or that no default has occurred, the Adjudicating Authority is statutorily bound to admit the petition.

The Supreme Court held that allowing the NCLT to weigh the "pros and cons" of putting a functional company into CIRP would introduce subjectivity and delays that the IBC specifically sought to eliminate. It clarified that the "stigma" of insolvency is secondary to the objective of time-bound debt restructuring.

The Supreme Court thus held that the NCLT and NCLAT were correct in admitting the application once the debt and default were proven, and the commercial status of the power plant provided no legal ground for stay or dismissal. The appeal was accordingly dismissed.

5. Supreme Court held that the "Clean Slate" doctrine under IBC overrides Benami Property proceedings initiated against the Corporate Debtor.⁵

The Supreme Court of India allowed the appeals and held that once a Resolution Plan is approved by the Adjudicating Authority, the "Clean Slate" doctrine prevents the continuation or initiation of proceedings under the Benami Transactions (Prohibition) Act, 1988 against the Corporate Debtor for pre-CIRP actions. The Court clarified that all liabilities, including those arising from the attachment of benami properties, are extinguished to ensure the successful revival of the company.

The Appellant, S. Rajendran (the Resolution Professional of the Corporate Debtor), challenged the orders of the High Court which had permitted the Income Tax authorities to continue proceedings and maintain the attachment of properties under the Benami Transactions (Prohibition) Act. The Corporate Debtor was undergoing the Corporate Insolvency Resolution Process (CIRP), and a Resolution Plan was in the process of being finalized/approved.

The Income Tax Department (Benami Prohibition Wing) had provisionally attached certain properties of the Corporate Debtor, alleging that they were "benami" in nature. The department argued that since the Benami Act is a special law dealing with the forfeiture of properties involved in illegal transactions, the IBC—and specifically the moratorium or the approval of a resolution plan—should not be allowed to stall such "police power" actions of the State.

The Supreme Court noted that the fundamental objective of the IBC is the time-bound reorganization and insolvency resolution of corporate persons for the maximization of the value of their assets. The Court observed that if properties belonging to the Corporate Debtor remain under attachment or are subject to forfeiture after the conclusion of CIRP, it would be impossible for any Resolution Applicant to take over the company and keep it as a "going concern."

The Supreme Court held that the "Clean Slate" doctrine is an integral part of the IBC framework. Relying on the landmark judgment in *Ghanshyam Mishra & Sons*, the Court emphasized that on the

5. S. Rajendran v. CIT, 2026 SCC OnLine SC 298

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date of approval of the Resolution Plan, all such claims and proceedings which were not part of the plan stand extinguished. The Court clarified that while the individuals responsible for the benami transaction may still face personal criminal liability, the Corporate Debtor itself must be handed over to the new management free of all "clogged" liabilities.

The Court further examined Section 32A of the IBC, which provides immunity to the Corporate Debtor and its assets from liability for offenses committed prior to the commencement of CIRP, provided there is a change in management. The Court held that the attachment under the Benami Act is a "liability" in respect of an offense, and therefore, the protection of Section 32A extends to such properties once the resolution plan is implemented.

The Supreme Court held that the High Court had erred in prioritizing the Benami Act over the IBC. It clarified that Section 238 of the IBC gives the Code an overriding effect over all other laws, including the Benami Transactions (Prohibition) Act, to the extent of any inconsistency regarding the treatment of the Corporate Debtor's assets.

The Supreme Court thus held that the Income Tax Department cannot proceed against the assets of the Corporate Debtor once the Resolution Plan is approved, set aside the High Court's judgment, and directed the release of the attached properties to the Successful Resolution Applicant.

6. Supreme Court held that the right to initiate CIRP is not barred by the pendency of a Scheme of Arrangement under Section 230 of the Companies Act.⁶

The Supreme Court of India allowed the appeal and held that the pendency of an application for a Scheme of Arrangement or Compromise under Section 230 of the Companies Act, 2013, does not act as a bar to the initiation of the Corporate Insolvency Resolution Process (CIRP) under Section 7 of the IBC. The Court emphasized that the IBC is a special statute with an overriding effect, and its time-bound proceedings cannot be stalled by elective corporate restructuring processes.

The Appellant, Omkara Assets Reconstruction Private Limited, challenged the order of the NCLAT which had set aside the initiation of CIRP against the Corporate Debtor. The NCLT had initially admitted the Section 7 application, but the NCLAT reversed this decision, holding that since a proposal for a scheme of arrangement was already being considered by the creditors and the tribunal under the Companies Act, the insolvency petition should be kept in abeyance to avoid conflicting outcomes.

The Supreme Court noted that the NCLAT had fundamentally misunderstood the relationship between the Companies Act and the IBC. The Court observed that while Section 230 of the Companies Act allows for voluntary restructuring, it does not provide an automatic "moratorium" or a legal shield against creditors who choose to exercise their statutory right to trigger insolvency due to a proven default.

The Supreme Court held that the IBC and the Companies Act operate in different fields, and in the event of any inconsistency, Section 238 of the IBC ensures that the provisions of the Code prevail. The Court clarified that a "Scheme of Arrangement" is a debtor-led process, whereas CIRP is a creditor-led process designed to address financial distress in a strictly regulated timeframe. To allow a pending scheme to stall a Section 7 petition would allow defaulting managements to indefinitely delay the resolution of debt.

The Court further examined the legislative intent behind the 2013 and 2016 Acts. It held that even if a compromise is being discussed, it can be incorporated within the IBC framework at the appropriate stage (such as during the invitation for resolution plans), but it cannot serve as a "pre-emptive strike" to prevent the admission of an insolvency application where debt and default are established.

The Supreme Court held that the NCLAT's decision to stay the CIRP was "unsustainable" and lacked legal basis. It clarified that once a financial creditor proves a default, the Adjudicating Authority is duty-bound to admit the application, and the management of the company must be handed over to the Interim Resolution Professional (IRP) without delay.

The Supreme Court thus held that the right of a financial creditor to initiate CIRP is independent of any pending corporate schemes, restored the NCLT's admission order, and vacated the interim stay on the company's management.

7. NCLAT held that Resolution Professional cannot challenge the commercial wisdom of CoC regarding the replacement of a Personal Guarantor's RP.⁷

The National Company Law Appellate Tribunal (NCLAT), New Delhi Bench dismissed the appeals filed by the Resolution Professional (RP) and held that under Section 98 of the IBC, the Committee of Creditors (CoC) possesses the absolute right to replace an RP. The Tribunal clarified that an RP has no "vested right" to continue in their role and cannot use the judicial process to challenge the commercial decision of the creditors to seek a replacement.

6. Omkara Assets Reconstruction Private Limited v. Amit Chaturvedi and Ors, 2026 SCC OnLine SC 299

7. Purusottam Behera (Resolution Professional for Mrs. Manisha S Patil) v. State Bank of India and Ors, 2026 SCC OnLine NCLAT 177

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The Appellant, Purusottam Behera, was the Resolution Professional appointed in the insolvency proceedings of several personal guarantors (including Manisha S Patil and others). The State Bank of India (SBI), acting as the lead financial creditor, moved an application before the NCLT to replace the Appellant with a new Resolution Professional.

The NCLT allowed the replacement, which the Appellant challenged before the NCLAT. The Appellant argued that the replacement was sought without providing specific reasons or attributing any professional misconduct, and that as an officer of the court, the RP should not be removed arbitrarily by the creditors.

The NCLAT noted that the relationship between the creditors and the Resolution Professional is built on trust and professional confidence. The Tribunal observed that Section 98 of the IBC provides a straightforward mechanism for the replacement of an RP in proceedings related to individuals and partnership firms, similar to the provisions for corporate debtors under Section 22 and Section 27.

The NCLAT held that the choice of who should function as the RP falls squarely within the "Commercial Wisdom" of the CoC. The law does not require the CoC to prove "misconduct" or provide a "show-cause notice" to the existing RP before seeking a replacement. The Tribunal emphasized that the RP is a facilitator of the process and works at the pleasure of the creditors who bear the financial burden of the insolvency proceedings.

The Tribunal further examined the scope of judicial review in such matters. It held that the Adjudicating Authority (NCLT) is only required to ensure that the replacement process follows the procedural requirements of the Code (such as obtaining a recommendation from the IBBI). It cannot sit in judgment over *why* the creditors want a new professional, as long as the decision is made by the requisite majority.

The NCLAT held that the Appellant's attempt to stay his own replacement was an abuse of the process of law. It clarified that an RP's role is that of a temporary appointee, and upon the creditors expressing a desire for change, the RP must facilitate a smooth transition rather than engage in litigation to retain the position. The NCLAT thus held that the NCLT's order for replacement was legally sound, dismissed the appeals, and directed the Appellant to hand over all records to the newly appointed Resolution Professional immediately.

8. Supreme Court rules on the interaction between Section 7 and Section 14 IBC regarding simultaneous CIRP against Debtor and Guarantor.⁸

The Supreme Court of India allowed the appeals and held that the moratorium under Section 14 of the IBC, which applies to a Corporate Debtor, does not prevent the initiation or continuation of Corporate Insolvency Resolution Process (CIRP) against its Corporate Guarantor. The Court clarified that the legal bar on proceedings against the debtor's assets does not extend to the independent contractual and statutory liability of a guarantor.

The Appellant, ICICI Bank Limited (along with other financial creditors in joined appeals), sought to initiate or proceed with Section 7 applications against various Corporate Guarantors. The primary legal hurdle was whether the insolvency proceedings against a principal borrower—and the resulting moratorium—precluded creditors from simultaneously pursuing the corporate guarantor.

In the underlying cases, such as the one involving Era Infrastructure (India) Limited, the NCLAT had previously stayed proceedings against guarantors, reasoning that once a moratorium is in place for the principal debtor, the debt is "in limbo" and cannot be enforced against the guarantor until the debtor's CIRP is concluded.

The Supreme Court noted that the IBC underwent a significant amendment in 2018, which specifically aimed to allow the simultaneous initiation of CIRP against both the principal borrower and the corporate guarantor. The Court observed that the objects of the IBC would be defeated if creditors were forced to wait for the completion of one process before starting another, especially given the co-extensive nature of such liabilities.

The Supreme Court held that Section 14(3)(b) of the IBC explicitly excludes a surety in a contract of guarantee to a corporate debtor from the protections of the moratorium. Consequently, the assets of a corporate guarantor are not protected by the moratorium applicable to the principal debtor. The Court emphasized that the guarantor's liability is independent and arises the moment the principal debtor defaults.

The Court further examined the "doctrine of election" and the "rule against double recovery." It held that while a creditor can proceed against both the debtor and the guarantor simultaneously, they cannot recover more than the total admitted claim. Any amount recovered in one proceeding must be adjusted in the other to ensure there is no unjust enrichment or double payment.

The Supreme Court held that the NCLAT had erred in staying the proceedings against the guarantors. It clarified that the "automatic stay" logic applied by the lower tribunal lacked statutory backing and contradicted the express provisions of the 2018 Amendment.

⁸ ICICI Bank Limited v Era Infrastructure (India) Limited, 2026 SCC OnLine SC 314

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The Supreme Court thus held that Section 7 applications against corporate guarantors are maintainable and can proceed notwithstanding the CIRP of the principal borrower, and set aside the contrary judgments of the NCLAT.

9.NCLT Kolkata dismisses Section 9 IBC application against Bridge & Roof Co. due to "Pre-existing Disputes" and "Non-completion of Work".⁹

The National Company Law Tribunal (NCLT), Kolkata Bench-II dismissed the application filed by the Operational Creditor and held that a Section 9 petition is not maintainable when there are documented disputes regarding the quality and completion of work prior to the issuance of the Demand Notice. The Tribunal clarified that the IBC cannot be used as a substitute for a debt recovery forum when the underlying claim is subject to contractual contestation.

The Applicant, Cross Marketing (a partnership firm), initiated the Corporate Insolvency Resolution Process (CIRP) against *Bridge & Roof Company (India) Ltd.* (the Corporate Debtor), a government-owned enterprise. The Applicant claimed an unpaid operational debt of approximately ₹1.95 crores arising from work orders related to fabrication and painting at a thermal power project in Odisha.

The Corporate Debtor opposed the admission, arguing that the Applicant had failed to complete the assigned work, leading to the engagement of third parties at the Applicant's risk and cost. They further contended that the "Provisional Completion Certificate" relied upon by the Applicant was issued only for credential purposes and did not signify the final acceptance of work or the discharge of contractual liabilities.

The NCLT noted that the correspondence between the parties—specifically emails and letters dated prior to the Section 8 Demand Notice—clearly indicated dissatisfaction with the Applicant's performance. The Tribunal observed that the Corporate Debtor had raised issues regarding "slow progress of work," "non-rectification of defects," and the "failure to submit final bills" for reconciliation in accordance with the General Conditions of Contract (GCC).

The NCLT held that the existence of a "pre-existing dispute" is a complete bar to the initiation of CIRP under Section 9 of the IBC. Relying on the principle established in *Mobilox Innovations*, the Tribunal stated that it is not required to examine whether the dispute is likely to succeed in a trial, but only whether the dispute is "real" and not a mere "moonshine" defense. In this case, the dispute over the Defect Liability Period and the non-issuance of a Final Completion Certificate constituted a substantial dispute.

The Tribunal further examined the nature of the claim. It held that the IBC is not intended for the adjudication of complex contractual disputes involving the reconciliation of accounts or the assessment of "risk and cost" damages. Such matters are properly within the jurisdiction of a Civil Court or an Arbitral Tribunal.

The NCLT held that the Operational Creditor had failed to prove an "undisputed debt." The Bench emphasized that the summary nature of IBC proceedings prevents the Tribunal from performing a detailed audit of running account bills when the Corporate Debtor has raised credible objections regarding the quality of the service provided.

The NCLT thus held that the application was hit by the proviso to Section 9(5)(ii) of the Code, dismissed the petition, and left it open for the Applicant to pursue other legal remedies for the recovery of its alleged dues.

10.Supreme Court held that pre-existing dispute is irrelevant once debt and default are proved; restores Section 7 IBC proceedings.¹⁰

The Supreme Court of India set aside the orders of the NCLT and NCLAT and held that an application under Section 7 of the IBC cannot be rejected on the basis of an unapproved restructuring proposal when the financial debt and default are clearly established. The Court emphasized that if the contractually prescribed mode for modifying a debt agreement is not followed, a mere proposal for restructuring cannot defeat the admission of a CIRP application.

The Appellant, Catalyst Trusteeship Ltd., acting as the Debenture Trustee, filed a Section 7 application against the Corporate Debtor, Ecstasy Realty (P) Ltd., following a default in the repayment of financial debt arising from a Debenture Trust Deed.

The NCLT and NCLAT had previously rejected the application, citing a "pre-existing dispute" regarding the restructuring of the loan facility. The lower tribunals concluded that because there were ongoing discussions and a proposed restructuring plan, the debt was not yet "due and payable" in a manner that would trigger a default under the IBC.

The Supreme Court noted that the lower tribunals had effectively rewritten the contract between the parties based on "surmises and conjectures." The Court observed that the Debenture Trust Deed specifically prescribed a formal mechanism for any modification or restructuring of the loan terms, which had not been complied with in this case.

9. Cross Marketing v. Bridge & Roof Company (India) Ltd., NCLT Kolkata Bench, Order dated 27 February 2026, C.P. (IB) No. 320/KB/2024
10. Catalyst Trusteeship Ltd. v. Ecstasy Realty (P) Ltd., 2026 SCC OnLine SC 300

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The Supreme Court held that the "pre-existing dispute" theory, which is a valid defense under Section 9 (Operational Debt), has no application to Section 7 (Financial Debt) proceedings. In a Section 7 application, the Adjudicating Authority is only required to determine two things: whether a financial debt exists and whether a default has occurred. Once these two elements are satisfied, the application must be admitted.

The Court further examined the alleged restructuring and held that a unilateral or unapproved proposal does not crystallize into a binding commitment. Since the original terms of the Debenture Trust Deed remained in force and the Corporate Debtor failed to meet its repayment obligations under those terms, the occurrence of a default was clearly established.

The Supreme Court held that the NCLT and NCLAT committed a "perversity" by looking beyond the established debt and default. It clarified that administrative delays or pending restructuring talks do not provide a legal shield against insolvency proceedings if the contractual default is proven.

The Supreme Court thus held that the Section 7 application was liable to be admitted, restored the matter to the NCLT for initiation of the CIRP, and set aside the previous orders.

MARCH

1. NCLT New Delhi grants liberty to CGST Department to file claims under the "Amended Resolution Plan" for AVJ Developers.¹

The National Company Law Tribunal (NCLT), New Delhi Bench-VI disposed of an interlocutory application filed by the CGST Department and held that while a Resolution Plan may have already been voted upon, the Applicant (CGST) is at liberty to approach the Resolution Applicant to consider its claims, provided such a provision exists within the "Amended Resolution Plan." The Tribunal emphasized the importance of following the specific timelines and mechanisms for claim submission as outlined in the approved restructuring documents.

The Applicant, Assistant Commissioner, CGST East Commissionerate, filed an application under Section 60(5) of the IBC in the ongoing insolvency proceedings of AVJ Developers (India) Pvt. Ltd. The Department sought the inclusion of its statutory dues and tax claims which had allegedly not been adequately accounted for in the earlier stages of the Corporate Insolvency Resolution Process (CIRP).

The Respondent (Resolution Professional/Management) contended that the process had reached an advanced stage and that any fresh inclusion of claims must strictly adhere to the terms of the Resolution Plan that was being finalized or had been amended by the Committee of Creditors (CoC).

The NCLT noted that the CIRP of AVJ Developers had seen multiple developments, including the submission of an "Amended Resolution Plan." The Tribunal observed that the plan specifically contained Clause 9.12, which provided a window for the consideration of certain claims subject to specific conditions and timelines.

The NCLT held that the judiciary should not generally interfere with the commercial aspects of a Resolution Plan that has been vetted by the CoC. However, it clarified that statutory authorities like the CGST Department must be given the opportunity to utilize the "recourse available" within the plan's own framework. In this case, the Amended Resolution Plan allowed for the filing of claims within 45 days from the date of its approval by the Adjudicating Authority.

The Tribunal further examined the status of the claims. It held that the Applicant's right to seek recovery is governed by the "Clean Slate" principle once a plan is approved, but since the current plan specifically anticipated such filings, the Department's grievances could be addressed by the Resolution Applicant (the new management) at the appropriate time.

The NCLT held that it would not pass a separate order for the payment of dues at this stage but would instead grant the Department "liberty" to file its claims with the Resolution Applicant in accordance with the 45-day window stipulated in the plan.

The NCLT thus held that the application be disposed of with the direction that the CGST Department may approach the Resolution Applicant for the consideration of its claims, subject to the final approval of the Amended Resolution Plan and the timelines mentioned therein.

2. Supreme Court clarifies that NCLAT cannot decide the "existence of default" for the first time in appeal if NCLT has not recorded a finding.²

The Supreme Court of India allowed the appeals and held that the National Company Law Appellate Tribunal (NCLAT) exceeds its jurisdiction when it records a finding on the "existence of default" for the first time in an appeal, especially when the Adjudicating Authority (NCLT) had dismissed the petition on other technical or maintainability grounds without examining the merits of the default. The Court emphasized that such a practice deprives the parties of their right to a full factual adjudication at the first instance.

The Appellants, Moniveda Consultants LLP and Another, challenged an order of the NCLAT which had not only set aside the NCLT's dismissal of their Section 7 application but had also proceeded to declare that a "default" had occurred and directed the NCLT to admit the petition. The Corporate Debtor, Shajas Developers Private Limited, contended that the NCLAT should have limited itself to correcting the legal error and remanded the matter for a factual determination of the debt.

The Supreme Court noted that the NCLT had initially dismissed the Section 7 application on the narrow ground of "limitation" and "maintainability," without inviting a detailed counter-affidavit on the merits of the financial debt or the occurrence of default. The Court observed that while the NCLAT was correct to overturn the technical dismissal, it overstepped by assuming the role of the trial court to decide the substantive merits of the insolvency trigger.

The Supreme Court held that the "Adjudicating Authority" under Section 7(4) of the IBC is the NCLT, which has the primary duty to verify the records and be satisfied that a default has occurred. The Appellate Tribunal's role is to review the legality of the NCLT's findings, not to act as a substitute for the NCLT's fact-finding process. By deciding the default itself, the

1. Vishal Fabrics and Ors v. AVJ Developers (India) Pvt. Ltd., 2026 SCC OnLine NCLT 933

2. Moniveda Consultants LLP and Anr v. Shajas Developers Private Limited and Ors, 2026 SCC OnLine SC 355

MARCH

the NCLAT prevented the Corporate Debtor from raising factual defenses (such as set-offs or disputes regarding the calculation of interest) before the primary forum.

The Court further examined the importance of the "Right to a Fair Hearing." It held that in a summary proceeding like Section 7, the Corporate Debtor must be given a meaningful opportunity to contest the allegation of default once the technical hurdles (like limitation) are cleared. A "leap-frog" adjudication by the NCLAT on the core issue of default undermines the hierarchical structure of the IBC.

The Supreme Court held that the NCLAT should have remanded the matter back to the NCLT Mumbai Bench to decide the question of default after allowing the parties to file their respective pleadings on merits. It clarified that appellate powers should be exercised to ensure justice, not to expedite a process at the cost of procedural fairness.

The Supreme Court thus held that the NCLAT's finding on the existence of default was premature and lacked jurisdiction. It set aside the NCLAT's direction to admit the petition and remanded the matter to the NCLT for a fresh decision on the merits of the Section 7 application within a period of two months.

3.NCLAT directs IRP to maintain hospital as a "Going Concern" and stay further CIRP steps pending Section 12A settlement talks. [Interim Order — matter listed for further hearing on 6th April 2026; does not represent a final ruling on any point of law.]³

The National Company Law Appellate Tribunal (NCLAT), New Delhi Bench issued an interim order staying further proceedings in the Corporate Insolvency Resolution Process (CIRP) to allow the parties to formalize a settlement. The Tribunal directed the Interim Resolution Professional (IRP) to ensure that the Corporate Debtor, a hospital, continues to function as a "going concern" with the assistance of the existing management and employees while settlement terms are being placed on record.

The Appellant, Dr. Amit Anant Wagh, challenged an order dated 29th January 2026 passed by the NCLT, which had admitted a Section 7 application filed by Canara Bank against the Corporate Debtor. The Appellant also filed an application for the condonation of an 11-day delay in filing the appeal, which the Tribunal allowed after finding sufficient cause.

The primary contention raised during the hearing was that the parties were in the process of reaching a settlement.

The Appellant expressed the intent to file an application under Section 12A of the IBC for the withdrawal of the CIRP, provided the financial creditor (Canara Bank) and other stakeholders agreed to the settlement terms.

The NCLAT noted the specialized nature of the Corporate Debtor's business as a hospital. The Tribunal observed that the immediate disruption of management or the escalation of insolvency steps could jeopardize the healthcare services provided to the public. It was further noted that the Appellant required a short window of time—approximately three weeks—to bring the finalized "Settlement Terms" on record for the Tribunal's consideration.

The NCLAT held that until a final decision is taken regarding the proposed Section 12A filing, the IRP should not take any further adversarial or preparatory steps toward liquidation or the invitation of resolution plans. However, to protect the value of the entity, the Tribunal emphasized that the IRP must remain in control but allow the hospital to operate smoothly as a going concern.

The Tribunal further examined the procedural requirements for the appeal. It directed that formal notice be issued to the Respondents (Canara Bank and the IRP) through speed post and email, and mandated the Appellant to furnish the necessary mobile numbers and requisites to the Registry within three days to ensure all parties are joined in the settlement discussions.

The NCLAT held that the balance of convenience lay in preserving the operational status of the hospital while the settlement is being ironed out. It clarified that the cooperation of the Appellant and the hospital's officers is essential for the IRP to maintain the facility during this interim period.

The NCLAT thus held that the CIRP steps shall remain stayed until the next date of hearing, and listed the matter for 6th April 2026 to review the progress of the settlement terms.

4.Supreme Court bars appropriation of Security Deposits for pre-CIRP dues; affirms Moratorium under Section 14 IBC.⁴

The Supreme Court of India dismissed the appeals filed by Central Transmission Utility of India Limited (CTUIL) and held that an Operational Creditor cannot unilaterally appropriate or set off a security deposit against dues that arose prior to the Corporate Insolvency Resolution Process (CIRP). The Court emphasized that such funds remain the property of the

3.Amit Anant Wagh (Dr) v. Canara Bank, 2026 SCC OnLine NCLAT 261

4.Central Transmission Utility of India Ltd. v. Sumit Binani, 2026 SCC OnLine SC 461

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Corporate Debtor (CD) and are protected by the statutory moratorium imposed under Section 14 of the Insolvency and Bankruptcy Code (IBC).

The Appellant, CTUIL, provides transmission systems to power generation units, including KSK Mahanadi Power Company Limited (KMPCL). KMPCL had deposited ₹108.44 crores in cash as a Payment Security Mechanism (PSM) in lieu of a Letter of Credit (LoC) prior to its insolvency. After CIRP was initiated on 03.10.2019, CTUIL invoked the PSM and appropriated the deposit to satisfy bills, including ₹85.13 crores relating to pre-CIRP defaults.

The Resolution Professional (RP) challenged this appropriation before the NCLT, arguing it violated the moratorium. Both the NCLT and NCLAT ruled against CTUIL, directing that the security amount be adjusted only toward post-CIRP dues to keep the CD as a going concern, while pre-CIRP dues must be claimed through the standard insolvency process.

The Supreme Court noted that the "Insolvency Commencement Date" triggers a legal freeze under Section 14. The Court observed that the cash deposit remained the asset of the CD until a valid adjustment was made. Since the adjustment for the ₹85.13 crores occurred after the moratorium kicked in, it constituted a prohibited "recovery" of a pre-existing debt outside the resolution framework.

The Court held that the principle of "Insolvency Set-off" (where mutual debts are balanced) is generally not applicable during the CIRP phase, distinguishing it from the liquidation phase. Relying on its previous ruling in *Bharti Airtel Ltd. v. Aircel Ltd.*, the Court clarified that a creditor cannot mitigate its own losses by grabbing assets of the CD that are meant to be distributed equitably among all creditors.

The Court further examined the nature of the security. It held that even if the deposit was "in lieu of an LoC," it did not grant the appellant a right to bypass the IBC. Once the CIRP begins, the "Clean Slate" and "Pari Passu" (equal footing) principles ensure that no single operational creditor can jump the queue by self-appropriating deposits held as security.

The Supreme Court held that the appellant's status is that of an Operational Creditor. If the appellant were allowed to keep the appropriated funds, it would result in "illegal enrichment" at the cost of other creditors and the success of the Resolution Plan, which had already reckoned the deposit as an asset of the CD.

The Supreme Court thus held that the orders of the NCLT and NCLAT were correct.

It affirmed that the ₹85.13 crores must be treated as part of the CD's estate, and the appellant must settle its pre-CIRP claims through the distribution mechanism provided in the approved Resolution Plan.

5.NCLT Hyderabad sets aside CGST 'Order-in-Original' passed during Moratorium as a violation of Section 14 IBC.⁵

The National Company Law Tribunal (NCLT), Hyderabad Bench allowed the interlocutory application and held that any assessment order or "Order-in-Original" passed by statutory authorities against a Corporate Debtor during the subsistence of a moratorium is legally unenforceable. The Tribunal emphasized that Section 14 of the IBC creates a complete bar on the continuation of any proceedings, including quasi-judicial tax assessments, to preserve the asset value of the debtor during the resolution process.

The Applicant, Maligi Madhusudhana Reddy (Resolution Professional of Naoline Infrastructure Pvt. Ltd.), challenged an Order-in-Original dated 3rd February 2025 issued by the Joint Commissioner, Central Goods and Services Tax (CGST). The order had been passed while the Corporate Debtor was already under the Corporate Insolvency Resolution Process (CIRP), which commenced on 20th September 2023.

The CGST Department had proceeded to adjudicate tax liabilities and issue a demand order despite the fact that a moratorium was in effect. The Resolution Professional argued that such an order was a direct contravention of the statutory stay imposed under the IBC and hindered the resolution process by creating fresh, unverified liabilities.

The NCLT noted that the language of Section 14 is "mandatory and wide." The Tribunal observed that the moratorium is intended to protect the Corporate Debtor from a "free-for-all" by creditors and to ensure that the Resolution Professional can manage the company's affairs without the distraction of ongoing litigation or new tax demands.

The NCLT held that the adjudication of tax dues by a statutory authority qualifies as the "continuation of a proceeding" against the Corporate Debtor. While tax authorities are permitted to verify claims and participate in the CIRP by filing Form B with the Resolution Professional, they cannot independently pass a final assessment order that quantifies liability and creates a demand during the moratorium period.

The Tribunal further examined the overriding effect of the IBC.

5.Maligi Madhusudhana Reddy v. Joint Commissioner, Central Goods and Services Tax, 2026 SCC OnLine NCLT 946

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It held that Section 238 of the Code ensures that the moratorium provisions prevail over the Central Goods and Services Tax Act. Any order passed in violation of this stay is *void ab initio* (invalid from the beginning) and cannot be enforced against the assets of the company or the Successful Resolution Applicant.

The NCLT held that the CGST Department should have stayed its own hand once informed of the CIRP and instead submitted its claims to the Resolution Professional for collation. Passing a formal order during this period was an administrative error that ignored the statutory bar contained in the Code.

The NCLT thus held that the Order-in-Original dated 3rd February 2025 was not enforceable, allowed the application, and directed the tax authorities to comply with the discipline of the IBC framework.

6. Supreme Court held that the right of set-off cannot be exercised after the approval of a Resolution Plan unless specifically provided for.⁶

The Supreme Court of India partly allowed the appeal and held that once a Resolution Plan has been approved by the Committee of Creditors (CoC) and the Adjudicating Authority, it becomes a binding statutory contract that extinguishes all prior claims and rights of set-off not specifically preserved in the plan. The Court emphasized that allowing a creditor to exercise a right of set-off post-approval would disrupt the financial equilibrium of the plan and violate the "Clean Slate" doctrine.

The Appellant, Ujaas Energy Ltd., a Corporate Debtor, challenged a judgment of the Calcutta High Court which had allowed the West Bengal Power Development Corporation Ltd. (WBPDC) to set off certain dues against the Corporate Debtor's pre-existing claims. The dispute arose during the implementation of the Resolution Plan for Ujaas Energy Ltd.

WBPDC had certain contractual claims against the Corporate Debtor and sought to adjust these amounts against the payments due to the Corporate Debtor under separate contracts. The High Court had initially permitted this set-off, reasoning that the right of set-off is a common law and equitable right that survives the initiation of insolvency proceedings unless expressly barred.

The Supreme Court noted that while the right of set-off may be available during the CIRP period to determine the "net claim" of a creditor (as per the principles in *Swiss Ribbons and Bharti Airtel*), this right does not remain unfettered once a Resolution Plan is finalized.

The Court observed that the Resolution Plan is the result of intense negotiations based on the "as-is" financial state of the debtor at the time of the insolvency commencement date.

The Supreme Court held that the approval of the Resolution Plan results in a "statutory discharge" of all liabilities and claims that are not specifically dealt with in the plan. If a creditor did not assert its right of set-off before the Resolution Professional or during the CoC's deliberations, it cannot later attempt to "rectify" its position by adjusting dues after the company has been handed over to the Successful Resolution Applicant. Such an action would essentially be an attempt to recover more than what was allotted to the creditor in the plan.

The Court further examined the "Clean Slate" doctrine, reiterating that the Successful Resolution Applicant must be able to calculate the future cash flows and liabilities of the Corporate Debtor with certainty. Allowing "hidden" or "delayed" set-offs would introduce an element of unpredictability that could jeopardize the entire resolution process and the revival of the corporate debtor.

The Supreme Court held that the High Court had failed to consider the binding nature of the Resolution Plan under Section 31 of the IBC. It clarified that any set-off claimed after the approval of the plan is impermissible unless the plan itself explicitly allows for such adjustments between the parties.

The Supreme Court thus held that the right of set-off was extinguished upon the approval of the Resolution Plan, set aside the High Court's order to that extent, and directed that the implementation of the plan proceed in its original terms without any unauthorized adjustments.

7. Supreme Court held that Special Leave Petitions cannot be used to indirectly challenge NCLT orders by seeking stay on separate civil suits.⁷

The Supreme Court of India dismissed the miscellaneous applications and held that a party cannot seek to indirectly interfere with insolvency proceedings or the orders of the NCLT by filing applications in a Special Leave Petition (SLP) that originated from a separate civil suit. The Court emphasized that the IBC provides a specific, self-contained appellate mechanism and that the "discretionary jurisdiction" of the Supreme Court under Article 136 cannot be used to bypass the statutory remedies available under the Code.

6. Ujaas Energy Ltd. v. W.B. Power Development Corporation Ltd., 2026 SCC OnLine SC 453

7. Lamba Exports Pvt. Ltd. v. Dhir Global Industries Pvt. Ltd. and Ors, 2026 SCC OnLine SC 459

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The Petitioner, Lamba Exports Pvt. Ltd., filed miscellaneous applications within a pending SLP seeking a stay on a civil suit (Civil Suit No. 1248 of 2022) and challenging the implications of an order passed by the NCLT on 14th May 2025. The underlying dispute involved Dhir Global Industries Pvt. Ltd. and others, centered around commercial transactions that had branched into both civil litigation and insolvency proceedings.

The Petitioner sought ad-interim relief to prevent certain actions arising from the NCLT's order, arguing that the ongoing civil suit and the insolvency process were intertwined in a manner that required the Supreme Court's immediate intervention to prevent "irreparable loss" and conflicting judicial findings.

The Supreme Court noted that the SLP in which these applications were filed arose specifically from an interlocutory order in a civil suit, not from the insolvency proceedings themselves. The Court observed that the Petitioner was effectively attempting to obtain a stay on NCLT-led processes—which are governed by the IBC—through the "backdoor" of a civil appeal.

The Supreme Court held that the IBC is a complete code in itself. Any person aggrieved by an order of the NCLT has a statutory right to appeal to the NCLAT under Section 61, and subsequently to the Supreme Court under Section 62. The Court clarified that it would not entertain applications that seek to circumvent this hierarchy. Allowing such applications would lead to procedural irregularities where insolvency timelines are disrupted by collateral litigation in civil courts.

The Court further examined the principle of judicial restraint. It held that while the Supreme Court has expansive powers under the Constitution, these powers should not be exercised to adjudicate upon the merits of NCLT orders that have not yet been tested by the appropriate appellate tribunal (NCLAT). The Court maintained a clear distinction between the "Civil Suit" track and the "Insolvency" track.

The Supreme Court held that it would express no opinion on the merits of the NCLT order dated 14th May 2025 or the pending civil suit. It clarified that all rights and contentions of the parties remain open, but they must be urged before the "competent forum" in accordance with the law—meaning the NCLAT for insolvency matters and the trial court for the civil suit.

The Supreme Court thus held that the miscellaneous applications for ad-interim relief and stay were not maintainable in the present SLP and dismissed them, directing the parties to pursue their remedies through the proper legal channels.

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Sonali Mishra - Partner
(Media & Entertainment)

We are delighted to welcome Ms. Sonali Mishra as a Partner in our Media & Entertainment Practice at ANM Global's Hyderabad office.

New office. New Partner.

ANM Global continues its growth in Hyderabad with Ms. Sonali Mishra joining the Media & Entertainment Practice as Partner.

ANM Global advised Applause Entertainment on its Master Agreement with StoryTV App (By Eloelo group), a leading microdrama platform in India, marking an exclusive collaboration to create a curated slate of premium microdramas and push the boundaries of short-form storytelling.



Applause Entertainment & Story TV
to pioneer a new microdrama
revolution in India

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ANM Global is pleased to have represented Tumbaga Media Private Limited (Studio9), successfully advising in relation to all production and exploitation related agreements in relation to the audio-visual content.

ANM Global is pleased to have represented RKD Studios (RK Duggal Studios Private Limited), successfully advising for the acquisition and exploitation of dubbing rights of the film in Hindi and other global languages (excluding South Indian languages).



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ANM Global is pleased to have represented Turtle Adverts (AK Enterprises), providing legal support in drafting, negotiating, and executing agreements with the film's producers for in-film brand integrations.

ANM Global is proud to have successfully represented Applause Entertainment Private Limited, providing comprehensive legal advisory for the Film as well as end-to-end legal support towards drafting, reviewing and negotiation of all production related agreements and exploitation agreement.



ANM Global is proud to have successfully represented Pocket Aces Pictures Private Limited (Clout), providing legal advisory towards negotiating and executing the agreements for influencer Mr. Ravish Shetty for his participation in the reality show.

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