

Lesson 1
INTRODUCTION TO INSOLVENCY AND BANKRUPTCY CODE
Case Laws

Sr. No.	Case laws	Topic	Takeaway
1.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (SC)	Claim	Claim gives rise to 'debt' only when it is due and 'default' occurs only when debt becomes due and payable and is not paid by the debtor.
2.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (SC)	Claim	'Claim' under section 3(6) of the Code means a right to payment, even if it is disputed.
3.	Hindustan Construction Company Ltd. & Anr. Vs. Union of India & Ors. (SC)	Corporate Person	NHAI is a statutory body which functions as an extended limb of the Central Government. The definition of 'corporate person' in section 3(7) of the Code does not include NHAI.
4.	Laxmi Pat Surana Vs. Union Bank of India & Anr. (SC)	Corporate Debtor	If a corporate person extends guarantee for the loan transaction concerning a principal borrower not being a corporate person, it would still be covered within the meaning of expression "corporate debtor" in section 3(8) of the Code.
5.	Digamber Bhondwe Vs. JM Financial Asset Reconstruction (NCLAT)	Creditor	Section 3 (10) definition of "Creditor" includes "financial creditor", "operational creditor" "decree-holder" etc. But Section 7 or Section 9 dealing with "Financial Creditor" and "operational creditor" do not include "decree-holder" to initiate CIRP in Part II."
6.	Sh. Sushil Ansal Vs. Ashok Tripathi and Ors (NCLAT)	Creditor	A decree holder is not permitted to incorporate any CIRP against any corporate debtor with the soul objective of executing a decree under it.
7.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (SC)	Default	'Default' is defined in section 3(12) of the Code in very wide terms as non-payment of a 'debt' once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount.
8.	B. K. Educational Services Pvt. Ltd. vs. Parag Gupta and Associates (SC)	Default	The context of section 3(12) of the Code is actual non-payment by the CD when a 'debt' has become due and payable.
9.	R.G. Steels Vs. Berrys Auto Ancillaries (P) Ltd. (NCLT)	Person	A sole proprietary concern, not being a 'person' under section 3(23) of the Code and also when there is a pre-existing dispute, cannot file application under section 9.

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10.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamalapat Jute Mills Company Ltd. & Ors. (SC)	Person	A 'trade union' is an entity established under a statute i.e. the Trade Unions Act, 1926 and is therefore, a 'person' under section 3(23) of the Code.
11.	Shri Shakti Dyeing Works Vs. Berawala Textiles Pvt. Ltd. (NCLT)	Person	A proprietorship concern does not fall within the purview of "person" as per section 3(23) for the purpose of filing an application under section 9 of the Code. Proprietorship concern cannot sue and be sued unless it is represented by a proprietor.
12.	Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. & Ors. (NCLAT)	Secured Creditor	The State Tax Officer does not come within the meaning of 'secured creditor' as defined under section 3(30) read with section 3(31) of the Code.
13.	Rainbow Papers Ltd. (SC)	Secured Creditor	The definition of secured creditor in the Code does not exclude any Governmental Authority. Therefore, the resolution plan ignores the statutory dues payable to any State Government or legal authority, the Adjudicating Authority is bound to reject the resolution plan.
14.	Indian Overseas Bank Vs. Arvind Kumar (NCLAT)	Security Interest	'Security Interest' does not include 'Performance Bank Guarantee' and it is not covered by section 14 of the Code.
15.	State Bank of India Vs. D. S. Rajender Kumar (NCLAT)	Corporate Guarantor	If CIRP has been initiated against the CD, the insolvency and bankruptcy process against the personal guarantor can be filed under section 60(2) before the same NCLT and not before the DRT
16.	Rai Bahadur Shree Ram and Company Pvt. Ltd. Vs. Rural Electrification Corporation Ltd. & Ors. (SC)	Corporate Guarantor	Without initiating CIRP against the principal borrower, it is open to the FC to initiate CIRP under section 7 against corporate guarantors as the creditor is also the FC qua corporate guarantor.
17.	State Bank of India Vs. Sungrowth Shares & Stocks Ltd. (NCLT)	Corporate Guarantor	The principal debtor (CD) is discharged under the Code not on the instance of a creditor but due to operation of law, i.e., approval of resolution plan. Hence, the guarantor is not discharged of its liability merely because the creditor consented to a resolution plan of the principal debtor.
18.	Export Import Bank of India Vs. CHL Ltd. (NCLAT)	Corporate Guarantor	The corporate guarantees given by the CD can be invoked only in the event of a default on the part of the borrower.

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19.	The Karur Vysya Bank Ltd. Vs. Maharaja Theme Parks and Resorts Pvt. Ltd. (NCLT)	Corporate Guarantor	It makes no difference as to whether the corporate person stood as guarantor to an individual or a corporate person, and as so long as the obligation in respect of a claim is due from a corporate person falling within the definition of 'financial debt', then it is obvious that the creditor can proceed under Section 7 of the Code against such corporate person.
20.	Insolvency and Bankruptcy Board of India Vs. Lalit Kumar Jain & Ors. (SC)	Corporate Guarantor	The Code is at a nascent stage and it is better that the interpretation of the provisions is taken up by the SC to avoid any confusion and to authoritatively settle the law. It directed that no further petitions involving the challenge to the notification dated November 15, 2019, having provisions relating to the personal guarantors to CDs, shall be entertained by any High Court
21.	Kiran Gupta Vs. State Bank of India & Anr. (HC)	Corporate Guarantor	The liability of the principal borrower and guarantor remain coextensive and a bank/financial institution is entitled to initiate proceedings against the personal guarantor under the SARFAESI Act during the continuation of the CIRP against the principal borrower.
22.	State Bank of India Vs. Athena Energy Ventures Pvt. Ltd. (NCLAT)	Corporate Guarantor	CIRP can be proceeded against the principal borrower as well as guarantor
23.	Yogendra Yasupal Vs. Jigsaw Solutions & Anr. (NCLAT)	Dispute	Any observations with regard to individual officer if made by a court of law or in any communication made by the operational creditor, the same cannot be treated to be an existence of dispute.
24.	Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd (SC)	Dispute	The test of existence of a dispute is: (a) whether the CD has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence.(b) whether the defence is not spurious, mere bluster, plainly frivolous or vexatious. (c) a dispute, if it truly exists in fact between the parties, which may or may not ultimately succeed.
25.	Simplex Infrastructures Ltd. Vs. Agrante Infra Ltd. (NCLT)	Dispute	The dispute should not be a mere eyewash and attempt to derail the OC's entitlement to initiate the proceedings under sections 8 and 9 of the Code.
26.	Chetan Sharma Vs. Jai Lakshmi Solvents (P) Ltd. & Anr (NCLAT)	Dispute	A unilateral transfer of liability does not constitute a 'dispute' within the meaning of section 5(6) and an inter-se dispute between two groups of shareholders of the CD does not constitute a 'dispute' in reference to OCs. The

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			'dispute' under section 5(6) of the Code must be between the CD and the OCs.
27.	Anuj Khanna Vs. Wishwa Naveen Traders & Anr (NCLAT)	Dispute	On the 'existence of a dispute', it was observed that section 5(6) is an inclusive provision and does not confine the AA from considering the existence of a dispute from a broader angle. Therefore, dispute in terms of section 8(2)(a) of the Code shall not be limited to instances specified in the definition under section 5(6).
28.	B.V.S. Lakshmi Vs. Geometrix Laser Solutions Pvt. Ltd. (NCLAT)	Financial Creditor	Essential criteria for being an FC: (i) A person to whom a financial debt is owed and includes a person whom such debt has been legally assigned or transferred to (ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one or more mode of disbursed as mentioned in clause (a) to (i) of sub-section (8) of Section 5.
29.	Pioneer Urban Land and Infrastructure Ltd. & Anr. Vs. Union of India & Ors. (SC)	Financial Creditor	The allottees/home buyers were included in the main provision, i.e., section 5(8)(f) with effect from the inception of the Code. The Explanation was added in 2018 merely to clarify doubts that had arisen. The deeming fiction that is used by the Explanation is to put beyond doubt the fact that allottees are to be regarded as financial creditors within section 5(8)(f) of the Code.
30.	Vipul Limited Vs. Solitaire Buildmart Pvt. Ltd. (NCLAT)	Financial Debt	The Joint Development Agreement entered, is a contract of reciprocal rights and obligations, both parties are admittedly Joint Development Partners, who entered into a consortium of sorts for developing an Integrated Township and for any breach of terms of contract, Section 7 Application is not maintainable as the amount cannot be construed as financial debt as defined under section 5(8) of the Code.
31.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (SC)	Financial Debt	A financial debt is a debt together with interest, if any, which is disbursed against the consideration for time value of money.
32.	Phoenix Arc Pvt. Ltd. Vs. Spade Financial Services Ltd. & Ors.	Financial Debt	Supreme Court Held that – a) Collusive commercial arrangements between FC's and the CD would not constitute a 'Financial Debt'. b) The purpose of excluding a related party of a CD from the CoC is to obviate conflicts of interest; c) Exclusion under the first proviso to section 21(2) is related not to the debt itself but to the relationship existing between a related party FC and the CD. d) The FC who in praesenti is not related party, would not be debarred from being a member of CoC.
33.	Magicon Impex Pvt. Ltd (NCLT)	Financial Debt	Advance amount paid as Security Deposit bearing interest is Financial Debt.

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34.	Dakshin Gujarat VJ Company Ltd. Vs. ABG Shipyard Ltd. & Anr. (NCLAT)	Insolvency Resolution Process Costs	Cost incurred towards supply of essential services during the period of moratorium, it may be accounted towards the insolvency resolution process costs.
35.	Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. (NCLAT)	Insolvency Resolution Process Period	It is always open to the NCLT/NCLAT to exclude certain period for the purpose of counting the total period of 270 days. The grounds include the following: i) If the CIRP is stayed by a court of law or the NCLT/NCLAT/ Supreme Court. ii) If no RP is functioning for one or other reason during the CIRP. iii) The period between the date of order of admission/moratorium is passed and the actual date on which the RP takes charge for completing the CIRP. iv) On hearing a case, if order is reserved by the NCLT/NCLAT/Supreme Court and finally pass order enabling the RP to complete the CIRP. v) If the CIRP is set aside by the NCLAT or order of the NCLAT is reversed by the Supreme Court and CIRP is restored. vi) Any other circumstances which justifies exclusion of certain period.
36.	Cooperative Rabobank U.A. Singapore Branch Vs. Shailendra Ajmera (NCLAT)	Operational Creditor	It is clear that an OC who has assigned or legally transferred any operational debt to an FC, the assignee or transferee shall be considered as an OC to the extent of such assignment or legal transfer.
37.	Suresh Narayan Singh Vs. Tayo Rolls Ltd. (NCLAT)	Operational Creditor	The workmen of a Company come within the meaning of an OC in terms of section 5(20) r/w section 5(21) of the Code.
38.	Innoventive Industries Ltd. Vs. ICICI Bank & Anr. (SC)	Operational Creditor	An OC means a person to whom an operational debt is owed, and an operational debt under section 5(21) means a claim in respect of provision of goods or services.
39.	JK Jute Mill Mazdoor Morcha Vs. Juggilal Kamalapat Jute Mills Co. Ltd. (NCLAT)	Operational Creditor	A Trade Union or Association of workmen/employee does not come within the meaning of OC as no services is rendered by the Workmen's Association/Trade Union to the CD to claim any dues which can be termed to be debt as defined in sub-section (11) of section 3.
40.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (SC)	Operational Debt	Operational debt would include a claim in respect of the provision of goods or services, including employment, or a debt in respect of payment of dues arising under any law and payable to the Government or any local authority.
41.	Kolkata Municipal Corporation and Anr. Vs. Union of India and Ors. (HC)	Operational Debt	The property seized by Kolkata Municipal Corporation (KMC) towards recovery of municipal tax dues from CD, can be the subject matter of the CIRP under the Code as the claim of KMC had attained finality and fastened a

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			liability upon the CD, thus constituting an 'operational debt' under section 5(21) of the Code.
42.	Chipsan Aviation Pvt. Ltd. Vs. Punj Llyod Aviation Ltd. (NCLAT)	Operational Debt	On an assurance from the CD, a sum was advanced for aviation related services. There was no contract between the parties for providing aviation services. The NCLAT observed that the expression 'in respect of' in section 5(21) of the Code has to be interpreted in a broad and purposive manner and held that the advance payment for aviation related services was clearly an operational debt.
43.	Pioneer Urban Land and Infrastructure Ltd. v. Union of India (SC)	Operational Debt	"a debt which arises out of advance payment made to a corporate debtor for supply of goods or services would be considered as an operational debt".
44.	Swiss Ribbons Pvt. Ltd. & Another Vs. Union of India & Others (SC)	Related Party	A) categories of persons who are collectively mentioned as a "relative" need to have a connection with the business activity of the resolution applicant. B) The expressions "related party" and "relative" contained in the definition sections must be read noscitur a sociis (the meaning of an unclear word or phrase should be interpreted within the context it is being used) with the categories of persons mentioned.
45.	Kundan Care Products Ltd. Vs. Amit Gupta and Ors. (NCLAT)	Resolution Applicant	A resolution applicant whose resolution plan stands approved by CoC, cannot be permitted to alter his position to the detriment of various stake holders after pushing out all potential rivals during the bidding process, and the same fraught with disastrous consequences for the CD which may be pushed into liquidation, as the CIRP period may by then be over thereby setting at naught all possibilities of insolvency resolution and protection of a CD, more so, when it is a going concern.
46.	Seroco Lighting Industries Pvt. Ltd. Vs. Ravi Kapoor, RP for Arya Filaments Pvt. Ltd. & Ors (NCLAT)	Resolution Applicant	A successful resolution applicant cannot be permitted to withdraw the approved resolution plan, coupled with the fact in the instant case being the sole RA in the CIRP, which is an MSME and having knowledge of the financial health of the CD as a promoter or as a connected person cannot be permitted to seek revision of the approved plan, on the ground which would not be a material irregularity within the ambit of section 61(3) of the Code.
47.	Innoventive Industries Ltd. v. ICICI Bank (SC)	Overriding effect of IBC	The non-obstante clause of the IBC will prevail over the non-obstante clause in the MRUA. On account of the non-obstante clause in the IBC, any right of the CD under any other law cannot come in the way of the IBC.

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48.	Pr. Commissioner of Income Tax Vs. Monnet Ispat And Energy Ltd. (SC)	Overriding effect of IBC	IBC would override anything inconsistent contained in any other enactment, including the Income Tax Act, 1961.
49.	Arun Kumar Jagatramka vs. Jindal Steel and Power Ltd (SC)	Objectives of IBC	Enactment of the IBC has marked a quantum change in corporate governance and the rule of law. The IBC is a legislation aimed at re-organization and resolution of insolvencies. Liquidation is a matter of last resort.
50.	Gujarat Urja Vikas Nigam Limited Vs. Mr. Amit Gupta & Ors. (SC)	timelines	The primary focus of the IBC is to ensure the revival and continuation of the corporate debtor.
51.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors. (SC)	Objectives of IBC	The foremost and primary objective of the IBC is the reorganization and insolvency resolution of the Corporate Debtor (CD) in a time bound manner. liquidation, only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern.