

Lesson 13
ADJUDICATION AND APPEALS FOR CORPORATE PERSONS
Case Laws

| Sr. No. | Case laws | Topic | Takeaway |
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| 1 | M/s. Fortune Plastech v/s. M/s. Avni Energy Solutions Private Limited (NCLT) | AA for Corporate Persons | The application filed by OC for corporate insolvency process was dismissed by NCLT on the grounds that the petition was filed by the petitioner with the wrong bench of NCLT. |
| 2 | E S Krishnamurthy & Ors. Vs. M/s Bharath Hi Tech Builders Pvt. Ltd (SC) | AA for Corporate Persons | the AA must either admit the CIRP application or it must reject the same. It cannot compel a party to the proceedings before it to settle a dispute. |
| 3 | State Bank of India v/s. D.S Rajendra Kumar (NCLAT) | AA for Corporate Persons | <ol style="list-style-type: none"> 1. If CIRP has been initiated before NCLT, then CIRP of personal guarantor of the CD can be initiated before same NCLT instead before DRT. 2. Order of moratorium is applicable only to the proceedings against CD and the personal guarantor but not applicable for filing application for initiating CIRP against the guarantor or personal guarantor 3. CIRP/Liquidation/Bankruptcy proceeding of Corporate guarantor or personal guarantor pending in any court or tribunal shall be transferred to AA dealing with corporate insolvency resolution process or liquidation proceeding of such CD . |
| 4 | Sanjeev Shriya v/s. State Bank of India (HC) | AA for Corporate Persons | Two parallel proceeding against the CD and the personal guarantor cannot go simultaneously in two different jurisdictions. |
| 5 | Tata Consultancy Services Ltd. Vs. Vishal Ghisulal Jain, RP, SK Wheels Pvt. Ltd (SC) | AA for Corporate Persons | Residuary jurisdiction of the NCLT u/s 60(5)(c) of the code cannot be invoked if the termination of a contract is based on grounds unrelated to insolvency of CD. The NCLT and NCLAT have the authority to take action if a third party's action threatens to topple the CIRP. |
| 6 | New Delhi Municipal Council Vs. Minosha India Ltd (SC) | AA for Corporate Persons | Sec. 60(6) of the IBC does allow for the exclusion of the entire time the corporate debtor's moratorium was in effect from any application that is intended to be brought against it. This does not include an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 by the corporate debtor. Additionally, there is no explicit exclusion of the court's jurisdiction or authority to hear any such cases brought by the corporate debtor. |
| 7 | Steel Konnect (India) Private | Appeals and Appellate Authority | Upon admission of application under the IBC, 2016 and commencement of CIRP, for preferring an appeal before |

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| | Limited v/s. Hero Fincorp Ltd (NCLAT) | | NCLAT; the corporate debtor can appear through its Board of Directors or its officer or its authorized representative. |
| 8 | Uttam Galva Steels Limited v/s. Union of India (HC) | Appeals and Appellate Authority | HC provided interim protection to the petitioners to withdraw the petition with the liberty to petitioners to prefer appeal under Section 61 of the Code. Since the IRP has not appointed in the said case it directed not to appoint IRP from next two weeks allowing time to petitioners to prefer an appeal. |
| 9 | Gujarat Urja Vikas Nigam Ltd. Vs. Amit Gupta & Ors. (SC) | NCLT Benches & their Jurisdiction | NCLT has the jurisdiction to adjudicate disputes, which arise solely from or which relate to the insolvency of the CD; however, in doing so, the NCLT and NCLAT must ensure that they do not usurp the legitimate jurisdiction of other courts and tribunals. Further, SC guided that when NCLT/ NCLAT can exercise their jurisdiction and when it can not be invoked. |
| 10 | M/s. Unigreen Global Private limited v. Punjab National Bank and others (NCLAT) | Fraudulent or Malicious Initiation of Proceedings | An applicant does not require to disclose or plead any fact which is unrelated or beyond the requirement of the code or forms as prescribed and thus non-disclosure of such facts cannot be termed as suppression of facts by a corporate debtor. |
| 11 | Monotrone Leasing Pvt. Ltd. Vs. PM Cold Storage Pvt. Ltd | Fraudulent or Malicious Initiation of Proceedings | Section 65 provides for penal action against initiating CIRP with a fraudulent or malicious intent, the same cannot be construed to mean that if an application is filed under section 7, 9 or 10 of the Code without any malicious or fraudulent intent, then also such a petition can be rejected by the AA on the ground that the intent of the applicant was not resolution. |
| 12 | Amit Katyal Vs. Meera Ahuja & Ors. | Fraudulent or Malicious Initiation of Proceedings | NCLAT stated in case an allottee does not want to take possession of the flat, but wants to get back the monies already paid, by way of coercive measure, the use of section 65 is justified, as one allottee is misusing his position to stall the entire project. But it does not mean that an application satisfying the requirements of section 7 or 9 could be dismissed arbitrarily under the guise of section 65. |
| 13 | Axis Bank Ltd. vs. Anuj Jain (NCLAT) | Fraudulent or Malicious Initiation of Proceedings | NCLAT noted that the mortgages were made in favour of the banks and financial institutions by the CD in the ordinary course of business. Further, in absence of any contrary evidence to show that they were made to defraud the creditors of the CD or for any fraudulent purpose, it set aside the order of the AA. |
| 14 | Dena Bank (now Bank of Baroda) Vs. C. Shivakumar Reddy and Anr. (SC) | Application by financial creditor | Since a Financial Creditor is required to apply under Section 7 of the Code in Form 1, the Financial Creditor can only fill in particulars as specified in the various columns of the Form. An application cannot therefore, be compared with the plaint in a suit. |

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| 15 | JK Jute Mill Mazdoor Morcha vs. Juggilal Kamlapat Jute Mills Company Ltd. & Ors. (SC) | Application by operational creditor | The trade union collectively represents its members who are workers, to whom dues may be owed by the employer, which are debts owed for services rendered by each individual workman. If each workman files a separate cause of action, the fact that a joint petition could be filed under rule 6 of AA Rules would be ignored. |
| 16 | Lokhandwala Kataria Construction Pvt. Ltd. vs. Nisus Finance and Investment Managers LLP (SC) | Withdrawal of application | The SC upheld the views of NCLAT that after admission, inherent power under rule 11 of the NCLAT Rules, 2016 could not be utilised. However, by using its power under Article 142 of the Constitution, allowed the consent terms. |