

1. Citation should be as per Syllabus
2. Read First page and last Page of the judgement before going through the complete judgement
3. Right the Relevant Sections of the Code/ Bye Laws/Regulations and Other Acts to ascertain issues involved.

**WEBINAR ON IMPORTANT**  
**CASES FOR LIMITED**  
**INSOLVENCY EXAMINATION**  
**W.E.F 1<sup>ST</sup> JULY, 2019**

**SUPREME COURT**

**CASES**

<b>S.N O</b>	<b>CASE LAWS</b>	<b>Relevant Section of IBC and grounds of appeal</b>	<b>Gist of the case</b>
1.	Innoventive Industries Ltd. Vs. ICICI Bank and Anr. (Civil Appeal Nos. 8337-8338 of 2017)	Section 7. Innoventive Industries proposed for CDR which was duly admitted. The issue was whether MRU Act which provided relief from enforcement of certain liabilities will prevail over IBC due to non obstante clause. NCLT and NCLAT had admitted the application of the Financial Creditor.	Held NO, IBC being a Central and later legislation will prevail. Maharashtra Act can't stand in the way of corporate insolvency resolution process under the code.

<p>2.</p>	<p>MobiloxInnovations Private Limited Vs. KirusaSoftwarePrivate Limited(CivilAppeal No. 9405 of 2017)</p>	<p>Section 9 . Nach Baliye on Star TV. Non Disclosure agreement.Argumen t was breach of NDA is a claim for liquidated damages which does not crystallize until legal proceedings are filed. Violation by Kirusa.</p>	<p>Held there was existence of a dispute. It was not a patently feeble legal argument or an assertion of facts unsupported by evidence. Limitation for filing such proceedings has admittedly not elapsed.Dispute exists</p>
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<b>3.</b>	Surendra Trading Company Vs. JuggilalKamlapat Jute Mills Company Limited and Others (Civil Appeal No. 8400 of 2017)	Section 9. Whether time period of 7 days given to rectify the defects if any is mandatory or directory. NCLAT held that the period of 14 days for the adjudicating authority was directory whereas the period of 7 days available to the applicant to rectify the defects is mandatory.	Held not mandatory. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave justice would be occasioned if the time was not extended.
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4.	Alchemist Asset Reconstruction Company Ltd. Vs. M/s. Hotel Gaudavan Pvt. Ltd. & Ors (Civil Appeal No. 16929 of 2017)	Section 14. Whether arbitration proceedings can be initiated after the imposition of moratorium.	Held No
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5.	Arcelormittal India Private Limited Vs Satish Kumar Gupta & Ors. (Civil Appeal Nos. 9402-9405 of 2018)	Section 29A©	Resolution professional found both AMIPL and Numetal Ltd. both ineligible as resolution applicant. One opportunity was given to RAs to pay off the NPAs of their related corporate debtors within a period of two weeks from the date of receipt of this judgement. Even resolution plan submitted by Vedanta may be included. If no plan found worthy of acceptance, the company shall go into liquidation.
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<b>6.</b>	Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd. (Civil Appeal No. 15135of 2017)	Section 8 and 9. Macquire Bank was assignee of a debt originally due to Hamera International Private Limited. NCLT rejected petition on two grounds: Certificate was was not attached with application and dispute was raised by reply to statutory notice sent	Held- Certificate from Bank not essential. An Advocate can sign the petition. Assignee of a debt is a creditor.
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under section 433 and 434 of the Companies Act.

NCLAT agreed with NCLT and held that certificate was not attached and an advocate/lawyer can't issue a notice under Section 8.

7.	Shivam Water Treaters Pvt. Ltd. Vs. Union of India Secretary to Govt. Ministry of Corporate Affairs &Ors. (SLP (C) No. 174/2018)	Limitation on High Court	High court to address the relief to any action by the respondents or any order passed by NCLT. High court not to enter into debate pertaining to validity of the IBC or constitutional validity of NCLT.
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8.	B K Educational Services Pvt Ltd. Vs. Parag Gupta and Associates (Civil Appeal No. 23988/2017)	Section 238A	Whether Limitation Act applicable to applications under Section 7 and 9? If yes, since when. Held, Limitation Act shall apply since the inception of the code i.e. 1.12.2016.
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9.	Chitra Sharma vs. Union of India (WP No.744 of 2017)	Section 7 IDBI Vs JIL Whether inclusion of home buyers in the definition of Financial creditors will have commercial effect of borrowing? Counsel for JAL stated that only 8% home buyer were interested in seeking refund. Others were interested in taking possession.	Held Yes, They will constitute part of COC. Promoters ineligible to participate in CIRP.
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10.	Jaipur Metals & Electricals Employees Organization Through Gen sec. Vs. Jaipur Metals & Electricals Ltd. Through its MD & Sons { Civil Appeal No. 12023-2018}	Refusal of transfer of winding up proceedings by Rajasthan High Court setting aside NCLT judgement which admitted the petition of the FC Alchemist. Section 238 11 <sup>th</sup> Schedule containing amendments to	Held: Yes, Petitions to be transferred to NCLT History: Account of Jaipur Metals became NPA in 1997. On a reference made to BIFR, BIFR found in 2002 that the company be wound up. Alchemist Asset Reconstruction company acquired substantially all the financial debts of Jaipur Metals. Efforts for revival failed. Workers Union filed writ petition to the HC which
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Companies Act particularly Section 434. Rule 5 of the Companies (Transfer of pending Proceedings) Rules, 2016

directed the official liquidator to do valuation of goods and material lying at the factory to pay the dues of the workmen. In the meantime Alchemist filed an application under Section 7 which admitted the application since no liquidation order had been passed. Labour unions filed writ petition in HC which stayed the order of NCLT. Supreme Court stayed the order of the HC.

11.	Swiss Ribbons Pvt. Ltd. & Anr. vs Union of India & Ors. [Writ Petition (Civil) No.99of 2018]	<p>Constitutional validity of various provisions of IBC was challenged.</p> <p>Mainly</p> <ol style="list-style-type: none"> <li>1.Appointment of members of NCLT and NCLAT</li> <li>2.Administrative support should be from Ministry of Law &amp; Justice. However it is coming from MCA.</li> <li>3.NCLAT should be in every state since no HC jurisdiction.</li> </ol>	<ol style="list-style-type: none"> <li>1. Held through selection committee. Need no interference.</li> <li>2. Needs to be rectified.</li> <li>3.Circuit branches to be established soon.</li> <li>4.Intelligible differentia</li> <li>5.Held Valid. Ineligibility u/s 29A may be due to some other reasons e.g.</li> </ol>
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		<p>4.No real difference between financial and operational creditor.</p> <p>5.Section 29A particularly Section 29A© talking of a blanket ban on all promoters and period of one year being arbitrary and 26A (j) barring relatives which may have no business connection</p>	<p>disqualification of directors. Experiment of IBC has been largely successful. Defaulters paradise has been lost. Flow of Financial resources to the commercial sector has increased exponentially. Various figures were given in the epilogue. Working of the code is being monitored by the Central Government through an expert committee set up in this behalf.</p>
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12.	Forech India Ltd Vs Edelweiss Assets Reconstruction Co Ltd [CA No.818/2018]	<p>Operational Creditor appealed that winding up proceedings should continue. Forech India was the operational creditor. Edelweiss was the corporate debtor which had not paid the dues of Forech. Edelweiss was saying winding up petition should not continue.</p> <p>Reference was made to Rule 26 and 27 of</p>	<p>Supreme Court held that Rule 26 and 27 refer to pre admission scenario and the view of BHC is correct.</p> <p>Initially only those winding up petitions where no notice under Rule 26 was served were to be transferred to NCLT. However on a reworking of the code, The Govt. realized that parallel proceedings in the HC</p>
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		<p>Companies(Court)Rules,1959 which talk of admission of winding up petition. There were two conflicting judgements. Bombay High Court opined that Rule 26s a pre-admission notice whereas Madras High Court held that Notice under Rule 26 is referable to a post admission position of winding up petition.</p>	<p>and NCLT would defeat the purpose of the code. Finally Section 434 was itself substituted in 2018 in which a proviso was added by which even in winding up petitions where notice has been served should be transferred to NCLT. Reversing the order of NCLAT, the Apex court held that Scope of section 11 is limited</p>
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		<p>Madras High Court opined that only those petitions where a winding up order has already been made can be retained. MHC relied upon Form 6 where the expression used is .."was admitted".</p>	<p>and only bars a corporate debtor from initiating a petition u/s 10 in respect of whom a liquidation order has been made. It does not debar an application u/s 7 or section 9</p>
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13.	Vijay Kumar Jain v Standard Chartered Bank & Ors. [Civil Appeal 8430-2018]	Appeal against NCLAT judgement rejecting the BOD prayer for directions to RP to provide documents to the members of suspended Board of Directors.Both NCLT and NCLAT were of the view that BOD can attend the meetings but they	Committee and participants are defined. Specific procedure to deal with Information Memorandum and resolution plan. As per regulation 38(1)(a) Sub clause 3(a),a resolution plan should demonstrate that it addresses the cause of the default.BOD can represent to the COC that default is not due to the erstwhile management but due to other factors beyond their control..
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denied the prayer of BOD to access certain documents particularly resolution plan.

Section 21(2) only bars related parties of the corporate Debtor who are also Financial creditors from participating or voting and not the directors simplicitor. Although BOD are not members of COC, still they have:

- right to participate in meetings
- right to discuss
- to be given copy of such plans as part of documents sent for agenda

14.	K. Sashidhar vs Indian Overseas Bank & Ors. [Civil Appeal 10673-2018]	<p>NCLT Mumbai rejected resolution plan. NCLT Hyderabad approved resolution plan. NCLAT reversed the decision of NCLT Hyderabad and remanded the proceedings to NCLT Hyderabad for initiation of liquidation.</p> <p>Point was calculation of 75%. Argument was that votes of financial creditors who chose not to participate should not</p>	<p>Whether the resolution plan which could not be approved by 75% and no alternative resolution plan was presented within statutory period of 270 days, liquidation was the only alternative.</p> <p>Retrospective application of 66% criterion was not allowed. Held Liquidation process should be initiated under Section 33 of the code.</p>
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be counted.

Another argument was that amendments brought into the code wef 23.11.2017 and in particular 6<sup>th</sup> June,2018 would have retrospective effect. Argument given was that amendment to Section 30(4) and Section 238A also applied to pending proceedings. Approval by majority of less than 75%

15.	Swaraj infrastructure Pvt. Ltd vs Kotak Mahindra bank Ltd [Civil Appeal no. 1291 of 2019]	Whether a secured creditor who has obtained an order from DRT and money receipt has been issued thereupon can file a winding up. Another question was whether the secured creditor should relinquish his security before filing winding up petition.	Held; Yes. A winding up petition can be filed. One has not lost one's right to a second helping because one has taken the first. Regarding the right of election whether or not to give up the security rises at the stage of proof of claims which comes only after winding up order has been passed.
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16.	K. Kishan Vs. Vijay Nirman Company Pvt. Ltd. (Civil Appeal Nos. 21824 & 21825-2017)	Arbitration Award had been passed in respect of an operational debt against the operational debtor which was not finally adjudicated upon. Section 34 petition was filed under the Arbitration & Conciliation Act challenging the award. NCLT	Held No .Petition under Section can't be admitted because dispute exists. Section 238 would not apply in this case since there is no consistency between the code and the Arbitration Act.
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		<p>admitted the petition under Section 9 taking cognizance of the Arbitration Award but ignoring the Section 34 petition. An appeal filed to NCLAT met with the same fate. Question was whether In this scenario, section 9 application can be filed.</p>	
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17.	Sunrise 14 A/S Denmark Vs Ravi Mahajan (Civil Appeal Nos. 21794- 21795 of 2017)	A foreign company initiated CIRP against corporate debtor in India. It failed to furnish the requirement of section 8(3) (a) which included the filling up of a statutory form and the application was made by an advocate. NCLT admitted the application under Section 7 but NCLAT set aside the judgement of NCLT.	Held: Petition maintainable as the Judgement in case of Macquire Bank would apply in case of Financial creditors as well.
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**HIGH COURT**

**CASES**

<b>S.NO</b>	<b>Case Laws</b>	<b>Relevant Section</b>	<b>Gist of Cases</b>
1.	SreeMetaliks Ltd. and Anr Vs. Union of India and Anr. (W.P. 7144 (W)-2017)  in High Court of Judicature at Calcutta	Section 7	Section 7 is ultravires as it does not afford an opportunity of hearing to the corporate debtor. Held: Section 424 of Companies Act,2013 requires NCLT and NCLAT to adhere to the principles of natural justice. Section 7(4) requires the NCLT to ascertain the default. This ascertainment implies examination and offering opportunity.

2.	Cushman and Wakefield India Private Limited vs UOI [W.P.(C) 9883/2018, CM No. 38508/2018]	criterion for Companies to qualify as a valuer	A company is not eligible to be a registered valuer if it is a subsidiary, joint venture or associate of another company or body corporate. This restriction impairs the right to carry on trade and business. Held: Rule has been made to introduce higher standards of professionalism in valuation industry. It obviates the possibility of conflict of interest on account of diverging interests of constituent/associate entities. It is based on intelligible differentia as a separate class has been carved out.
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3.	Liberty House Group Ltd. vs State Bank of India & ors. [cs(comm) 1246/2018 &no.16056/2018 & 16060/2018]	Encashment of Bank Guarantee. Whether High Court has jurisdiction?	Held No
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4.	AkshayJhunjhunwala&Anr. Vs. Union of India through the MinistryofCorporate Affairs & Ors. (W P No. 672-2017), in High Court of Judicature at Calcutta	Classification of creditors into financial and operational creditors-Whether on reasonable differentia?	Held yes. Based on intelligible differentia
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5.	Power Grid Corporation of India Ltd. Vs. Jyoti Structure Ltd. (O.M.P (COMM) 397/2016), in High Court of Judicature at New Delhi	Section 14. Whether continuation of insolvency proceedings would cause harm to the party's right to seek determination under Section 34 of the Arbitration and Conciliation Act.	Section 14 does not apply to the proceedings which are for the benefit of the corporate debtor.  Once the moratorium is declared, decision to continue with objections need to to be taken by RP only.
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6.	Jotun India Pvt. Ltd. Vs. PSL Ltd. (CA No. 572 of 2017 in CP No. 434 of 2015),in High Court of Judicature at Bombay	Whether company court while dealing with winding up petitions shall have jurisdiction to stay proceedings before NCLT?	Held, No. First let NCLT handle. If NCLT fails to revive or successfully implement the resolution plan, Company Judge can take over.
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7.	Dr. Vidya Sagar Garg Vs. Insolvency and Bankruptcy Board of India (W.P. (C)9520/ 2017, CM Appl. 38726-38727/2017), in High Court of Judicature at New Delhi	Fit and Proper Person	FIR was lodged against the IP. Court said Come to us again after the discharge application is disposed of by the concerned trial court.
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8.	Leo Edibles & Fats Ltd. Vs. The Tax Recovery Officer (Central), Income Tax Dept., (Hyderabad)and others (W.P. No. 8560 of 2018), in High Court of  Judicature at Hyderabad	Attachment order issued by Income Tax Department prior to initiation of liquidation proceedings. Whethe Income Tax Department can claim any priority in payment over secured creditors.	Held No. Section 36(3)(b) talks of liquidation estate assets which may or may not be in possession of the corporate debtor, including but not limited to encumbered assets. As per Section 53(1),the claim of secured creditors gets priority.
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**NATIONAL COMPANY LAW**  
**APPELLATE TRIBUNAL (NCLAT)**  
**CASES**

S.N.O	CASE LAWS	Relevant Section	Gist of Cases
1.	Edelweiss Asset Reconstruction Co. Ltd. Vs. Synergies Dooray AutomotiveLtd. & Ors. [CA (AT) (Insolvency) No. 169 to 170-2017]	NCLT approved the resolution plan.Challenging the assignment of debt Challenging merger and amalgamation. These assignments are compulsorily registerable instruments but were unregistered. The appellant alleged that COc itself was illegal.	The order dated 2 <sup>nd</sup> August, 2017 of the AA approving resolution plan was challenged on two major grounds: First Ground:It was argued that on the eve of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 coming into force on 1 <sup>st</sup> December, 2016, Synergies Casting Ltd., a related party of the CD, assigned its debt (accounting for 78% of voting power) to a NBFC, Millennium Finance Limited on 24 <sup>th</sup> November, 2016, with the ulterior motive of reducing the voting share of the appellant and such assignment was illegal. The NCLAT held:

			<p>“The Appellant doesn’t have any locus standi to question those documents in the insolvency proceedings initiated under 'I&amp;B Code' on a farfetched argument that they are going to be effected if the rights of 'Synergies Castings Limited' and 'Millennium Finance Limited' are recognized basing on the Assignment Agreements in question and the Appellant cannot assume jurisdiction to question the documents in question basing on baseless allegations. apprehension etc. . . . In the result. we hereby declare that both 'Synergies Castings Limited 'and 'Millennium Finance Limited were eligible to execute the assignment agreements in</p>
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			<p>question and all rights flow those agreements to 'Millennium Finance Limited. "</p> <p>Second Ground:</p> <p>It was argued that resolution plan provided for merger and amalgamation, which is not permissible being violative of section 30 (2)(e) of the Code. It was noted that a resolution plan may provide for merger or consolidation of the CD with one or more persons in terms of regulation 37(1)(c) of the CIRP Regulations. The NCLAT held: "The 'I&amp;B Code' is a code by itself and Section 238 provides overriding effect of it over the provisions of the other Acts. if any of the provisions of an Act is in conflict with the</p>
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			<p>provisions of the 'I&amp;B Code. Section 230 and Section 232 of the Companies Act, 2013 relates to compromises, mergers and amalgamation. The question of filing an application before NCLT under Section 230-232 does not arise at the stage of filing resolution plan. Once a plan is approved, one may argue that in terms of provisions of the Companies Act, a formal order of amalgamation is required. No such argument can be advanced at the time of approval of the resolution plan which merely proposes merger.</p>
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2.	Consolidated Engineering Co. & Anr. Vs. Golden Jubilee Hotels Pvt. Ltd. [CA (AT) (Insolvency) No. 501-2018]	Calculation of 10% in case of operational creditors	10% claim of OC's for the purpose of participation in the meetings of CoC has to be determined on the basis of amount assessed and finally determined by Resolution Professional and not on the basis of claim submitted. In such a case if claim is less than 10%, OC's can only watch the proceedings but they cannot participate or object in the proceedings. Operational creditors may obtain the name of the representative who may watch the proceedings. This order can't be cited as precedence in any other case.
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3.	SKS Power Generation Chattisgarh Ltd. Vs. V Nagarajan (in the matter of M/s Cethar Ltd. & Ors.) [CA (AT) (Insolvency) No. 206-2018]	Cethar Ltd had paid Rs.228.60 cr to SKS Power Generation.RP of Cethat Ltd.approached NCLT to direct SKS Power Generation to refund the amount.Case of Preferential/ Undervalued transactions	NCLT by way of interim order directed SKS power Generation to repay Rs.158 crores the amount which was paid to it by Cethar Ltd. without deciding the question of maintainability of application under Section 43 and Section 45 of the code. NCLAT reversed the order and remitted it back to the NCLT
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4.	Export Import Bank of India & Anr Vs Astonfield Solar (Gujarat) Pvt Ltd & Anr [CA (AT) (Insolvency) No. 754 of 2018]	Section 10	In this case the issue was whether the shareholders who had pledged their shares in terms of a deed of pledge of securities have any right to approve or disprove the decision of the corporate debtor. NCLAT held that shareholders have a right of voting on the resolution for moving application under section 10 even if they have pledged their shares. Pledge of shares does not curtail their right of voting.
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5.	<p>Rajendra K. Bhuta Resolution Professional (For Guruashish Construction Private Limited) Vs Maharashtra Housing and Area Development Authority</p> <p>[CA (AT) No. 119 of 2018]</p>	Moratorium- Section14	<p>Tripartite agreement between Society, Developer Guruashish and MHADA for developing a land which had two components-Rehab component and free sale component. MHADA revoked the order followed by stop work notice. CD defaulted and application filed u/s 7 by Union Bank of India. MHADA demanded back the land. RP informed MHADA it is under moratorium. NCLT refused to apply moratorium on the plea that land was never handed over to the developer.. In the meantime 270 days period elapsed and the question became academic. Appeal of RP dismissed by NCLAT.</p>
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6.	Gammon India Limited v/s Neelkanth Mansions and Infrastructure Pvt. Ltd.  [Company Appeal (AT) (Insolvency) No. 698 of 2018]	Whether Section 9 application can be moved against a partnership firm of which a company is a partner	Held No. Gammon India filed petition under Section 433 and 434 against Neelkanth for winding up due to default. When IBC came into force, the case was transferred to NCLT pursuant to rule 5 which relates to transfer of proceedings. A partnership was entered into between Gammon India Ltd and Neelkanth Mansions and Infrastructure Ltd. Which was named as Gammon Neelkanth Realty Corporation? Gammon India Ltd. Filed application under section 9. NCLT rejected the application on the plea that application was not maintainable against a partnership firm.
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7.	S. C. Sekaran Vs Amit Gupta & Ors. [CA(AT) (Insolvency)495 & 496-2018]	Section 40	NCLT recommended liquidation since there was no RA and the RA had withdrawn their offer. Without interfering in the decision of the NCLT,NCLAT held that while liquidating the liquidator shall take steps under Section 230 of the Companies Act Section 230 is a mechanism to ensure institutional settlement of disputes between creditors and the <b>company</b> . It ensures that the <b>company</b> has a chance to save itself from insolvency or liquidation by doing a deal with members or creditors of the Companies.
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8.	M/s Era Infra Engineering Ltd. Vs. Prideco Commercial Projects Pvt.Ltd.(Company Appeals (AT) (Ins) No. 31 of 2017)	Section 8 and 9	The issue in this case was whether before submitting application under section 9, giving notice under section 8 is essential and whether application can be rejected on this ground. Operational creditor admitted that before submitting application, he did not give notice under section 8. Although he said that he had given notice under Section 271 of the Companies Act. NCLAT held that giving notice under section 8 is essential.
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9.	Ferro Alloys Corporation Ltd.Vs. Rural Electrification Corporation Ltd.[CA (AT) (Insolvency) No. 92 of 2017]	Whether CIRP can be initiated against the corporate guarantor, without initiating the process against the principal debtor	NCLAT observed that this appeal is not maintainable since BOD have no powers. Still they entertained the appeal since it is the very first application moved under the code. NCLAT held yes. It observed that the provisions of the Indian Contract Act, 1872 will govern inter—se rights, obligations and liabilities of a guarantor qua FC, in absence of any express provision providing for the same in the Code. It held that it is not necessary to initiate CIRP against the principal borrower before initiating CIRP against the corporate guarantors. Without initiating CIRP against the principal borrower, it is always open to the FC to initiate CIRP under section 7 against the corporate guarantors, as the creditor is also the FC qua corporate guarantor.
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10.	Dr. Vishnu Kumar Agarwal Vs. M/s Piramal Enterprises Ltd.[CA(AT)(Insolvency) 346/2018]	Piramal Enterprises was FC. Whether CIRP can be initiated against a corporate Guarantor if the principal borrower is not a corporate Debtor or corporate Person. Principal Borrower was a society. whether CIRP can be initiated against two corporate guarantors simultaneously for the same set of debt and default	The NCLAT noted that an FC cannot file claim for the same debt in two separate CIRPs and therefore two applications cannot be admitted against the same default. It held that there is no bar in the Code for filing simultaneously two applications under section 7 against the principal borrower as well as the corporate guarantor or against two guarantors. However, once an application is filed under section 7 is admitted against either principal borrower or corporate guarantor, the second application by the same applicant for the same set of claim and default cannot be admitted against the other. Further, though there is a provision to file joint application under section 7 by FCs, no application can be filed by them against two or more CDs on the ground of joint liability.
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11.	Ashok B. Jiwrajka, Director of Alok Infrastructure Ltd. Vs. Axis BankLtd.[Company Appeal (AT) (Insolvency) No. 683 of 2018]	Whether CIRP can be initiated against both the holding and subsidiary company?	Held Yes. CIPR already going on against Alok Industries Ltd. Another insolvency application against Alok Infrastructure Ltd challenged by Directors. NCLAT ordered “we make it clear that we have not stayed the Corporate Insolvency Resolution Process initiated against ‘Alok Infrastructure Ltd.’ and the Resolution Professional, the Committee of Creditors and the Adjudicating Authority will continue with the same in accordance with law within the time specified in the law” .
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12	Export Import Bank V. CHL Limited [CA(AT) (Insolvency) No. 51 of 2018]	Whether Banker can proceed against the guarantor directly without first approaching the borrower?	Held no.Reconciliation was pending with the borrower.Without reconciling the amount and interest with the borrower,the Banker invoked the Bank Guarantee of the guarantor.
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13.	Canara Bank Vs. Deccan Chronicle Holdings Limited (Company Appeal (AT)(Insolvency) No. 147 of 2017)	Section 14	Issue in this case was whether a suit can be filed in HC or SC after declaration of moratorium. NCLT held that HC and SC are outside the purview of moratorium. NCLAT opined that even HC and SC are covered. Only writ petitions under Article 32 or Article 226 which can be filed directly before SC or HC are outside the purview of moratorium. Except these two writs, no suit can be filed even in SC or HC. If a money suit or suit for recovery has been filed before declaration of moratorium, even that would be stayed during moratorium.
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14.	JKJuteMillsCompanyLimitedVs.M/sSurendraTradingCompany(CompanyAppeal(AT) No. 09/2017)	How to count the Time period of 14 days- Section 7,9 and 10	Issue in this case was how to calculate the period available with NCLT to either accept or reject the application-Whether it will be counted from the date of filing or date of receipt of application. Whenever any application is submitted before NCLT, the registry of the court checks whether the application is complete in all respects or not. For instance affidavit, court fees, authorization etc have been attached/affixed. Once the registry is satisfied as to its completeness, only then it is presented before the Bench. NCLAT held that the period of 14 days shall be counted from the date of presentation before adjudicating authority and not from the date of receipt of application.
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15.	Committee of Creditors of Essar Steel (India) Ltd. Through State Bank of India Vs Satish Kumar Gupta & Ors. [CA(AT) (Insolvency) No. 03 of 2019	Section 30	<p>The matter was finally decided by the Hon'ble Supreme Court in "<b><i>Arcelormittal India Private Limited v. Satish Kumar Gupta &amp; Ors.– Civil Appeal Nos. 9402-9405 of 2018</i></b>" by its judgment dated 4th October, 2018.</p> <p>The 'Committee of Creditors' thereafter passed order in terms of sub-section (4) of Section 30 of the 'Insolvency and Bankruptcy Code, 2016' and the 'Resolution Professional' placed the matter before the Adjudicating Authority (National Company Law Tribunal) on 26th October, 2018 for passing order in terms of Section 31 of the 'I&amp;B Code'. NCLAT stated: It is not clear as to why after the decision of the Hon'ble Supreme Court and the approval of the 'Committee of Creditors' and placement of the 'Resolution Plan', the Adjudicating Authority, Ahmedabad Bench,</p>
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			<p>has adjourned the twice.</p> <p>NCLAT said we are not making any observation with regard to non-disposal of the matter on an early date in spite of the Judgement of the Hon'ble Supreme Court. We hope and trust that the Adjudicating Authority will pass final order in one or other way in terms of Section 31 of the 'I&amp;B Code' taking into consideration the decision of the Hon'ble Supreme Court in "<b>Arcelormittal India Private Limited</b>" (Supra). In case the Adjudicating Authority do not pass any order in accordance with law on an early date, it will be open to the Appellant to bring this fact before this Appellate Tribunal. Appeal dismissed</p>
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16.	M/s Prasad Gempex v/s Star Agro Marine Exports Pvt. Ltd. & Ors.[CA(AT)(Insolvency) 291 of 2018]	whether the RP has jurisdiction to decide claim of a creditor after expiry of moratorium	NCLAT noted that it is open to a person to file a suit or an application against the CD after expiry of moratorium. It held: "We allow the appellant to file claim in terms of sub-section (6) of section 60 of the Code before the appropriate court of law or may file appropriate application against the corporate debtor, if the resolution plan is approved and do not take proper care of the applicant. In case the resolution plan is not approved and the order of liquidation is passed. In such case, it will be open to the appellant to file claim before the liquidator in accordance with the provisions as referred to above and the liquidator will decide the claim under section 40 of the I& B Code. "
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17.	TATA STEEL LIMITED VS LIBERTY HOUSE GROUP PTE LTD. & ORS. [CA(AT)(INSOLVENCY) 198-2018]		<p>The COC gave equal opportunity to all three RAs to submit improved financial offer. Instead of filing an improved financial offer. The appellant filed an IA before the NCLAT for restraining the RP and the COC from considering improved financial offer. The NCLAT noted that the process document does not curtail the powers of the CoC to maximize value and as per the process document. theCoC has absolute discretion. but without being under any obligation. It observed: “Therefore. Granting more opportunity to all the eligible Resolution Applicants to revise its financial offers, even by giving more opportunity, is permissible in law. However, all such process should be complete within the time frame. ”The NCLAT observed that the CoC is entitled to approve or reject a resolution plan, only after considering its feasibility and viability. Therefore, the voting shares of members of the CoC, who are not present in the meeting either directly or through video conferencing and thereby not considered its feasibility and viability, shall not be counted.</p>
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**NATIONAL COMPANY LAW**  
**TRIBUNAL (NCLT) CASES**

<b>S.NO</b>	<b>CASE LAWS</b>	<b>Relevant Section</b>	<b>Gist of the Cases</b>
1.	Amtek Auto Limited [CA.Nos. 567/2018 & 601/2018 in CP (IB) No. 42/Chd/Hry/2017]	Section 60(5) and Section 74(3)	<p>Two resolution applicants qualified LHG and DVI. DVI only backtracked because there was some better amount of bid offered by LHG. Since LHG did not comply with the conditions of resolution plan. NCLT allowed COC to discuss the resolution plan submitted by DVI only by exclusion of certain time while calculating 270 day. No fresh applications to be considered.</p> <p>Financial creditor or RP can complain to IBBI or Central Govt. against the conduct of LHG.</p>

2.	Sterling SEZ and Infrastructure Limited [M.A 1280/2018 in CP 405/ 2018]	Section 14,Section 63 Whether ED,PMLA can be directed to release the provisional attachment or final if confirmed attachment on all the assets and properties of the company and hand over the charge to the RP.	Held;Handover to RP.Attachment order is a nullity and non –est in law.
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3.	State Bank of India Vs. ARGL State Bank of India Vs. ARGL [(IB)-531-(PB)-2017]	Section 7	Whether on the facts of the case, CIRP can be started. Held Yes. The Corporate Debtor first sought time but did not file any reply. Later the Counsel for Corporate Debtor appeared and he said he would not file any reply and the matter be heard on the basis of averments made in the petition itself.
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4.	EssarSteelAsia Holding Ltd. Vs Satish Kumar Gupta [IA No. 430/NCLT/AHM/2018 in CP (IB)39/7/NCLT/AHM/2017] Order dated January 29, 2019	70% Shareholders offering settlement once resolution plan has been submitted and is under consideration	The matter was already with the Apex court through intervention application. The SC had allowed both the resolution applicants to pay off the NPAs of their related corporate Debtors within a period of two weeks from the date of receipt of the judgement. If such payment is made both the parties ArcelorMittal and Numametal and third party Vedanta can resubmit their resolution plans. If no plan found acceptable. The company will go into liquidation. NCLT refused to interfere in this and asked the applicant to seek directions from the apex court regarding this proposal.
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5.	Asset Reconstruction Company (India) Limited vs Viceroy Hotels Ltd. [CP(IB)219/7/HDB/2018]	Section 21	Percentage of voting required:66%-Changes in the appointment/ terms of contract of statutory auditors or internal auditors 51%-For conducting Forensic Audit
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6.	M/s. Edelweiss Asset Reconstruction Co. Ltd. Vs AML Steel & Power Ltd  [MA/630/2018 in CP/632/IB/2017]	Seeking exclusion of time period from the CIRP period as the RP could not carry out his duties during the CIRP period as the company was located in Naxalite Prone area.	Company 's registered office was in Tamil Nadu and factory was in Jharkhand. Promoters did not cooperate. NCLT excluded 90 days from CIRP period.
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7.	M/s Belthangady Taluk rubber Grower's Marketing & Processing Co-operative Society Limited vs Falcon Tyres Ltd. [CP (IB) NO.01/BB/2017]	Section 9	Corporate Debtor neither appeared nor filed reply to notice under section 8.  NCLT admitted the case.
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8.	State Bank of India vs Coastal Projects Ltd [CP (IB) No.593 /KB/2017]	Section 7	SBI filed application through its duly authorized AGM. Advocate of the corporate Debtor submitted that the respondent has no objection if the application of the financial creditor is admitted. NCLT admitted the case.
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9.	Merchem Limited (Ms Nitrex Chemicals India Limited Vs Ravindra Beleyur and Ors) [MA /523/2018 in CP/ 689/(IB)/CB/2017]	Case between RA and RP	<p>Rp sent mail for meeting to be held on 11.09.2018 and subsequently changed the date of coc meeting to 12.09.2018 which did not suit the RA due to religious reasons. RP proceeded without RA. RA sought copies of minutes of COC meeting which RP denied.</p> <p>NCLT held that reasonable opportunity of being heard was not given to the RA. RP directed to consider the plan afresh submitted by the RA.</p>
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10.	Affinity Finance Services Pvt Ltd Vs Kiev Finance Limited [IA No. 905/KB/2018  in CP (IB) No. 110/KB/2018]	Section 12(2) and Section 60(2)	Liquidator filed the application that one resolution applicant has shown interest to submit a resolution plan.  Held order passed by the NCLT can't be reviewed or revoked.  RP can sell the company as a going concern
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11.	M/S. Nag Yang Shoes Pvt. Ltd. [MA/661/2018 in TCP/431/2017]	Application by RP to liquidate the corporate Debtor u/s 33(2)	RP filed an application to liquidate the company as no resolution plan was received. Held: Liquidation order passed
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12.	M/s JHV Distilleries and Sugar Mills Limited and another [CP/IB/221/KB/2018]	Section 7. COC did not cooperate with IRP. IRP removed. Another RP appointed. Non cooperation from directors, DM of Kushinagar .	NCLT passed order for liquidation
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13.	Avinash Raj Constructions Private Ltd. [CP (IB) 994/KB/2018]	Section 7	<p>Corporate Debtor denied they had taken any loan. They said it was fee to act as middleman for a disputed property. The corporate debtor had given three cheques of Rs. 10-40-50 lakhs. Ultimately it was settled for Rs. 5 lakh which was paid.</p> <p>NCLT held: Cheque amount is too high. It can't be towards repayment of loan. No financial debt and hence no default.</p>
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14.	M/s Karpagam Spinners Private Ltd and Anr [MA/99/2018 in TCP/225 (IB)/2017]	Section 238	<p>Non obstante clause under Section 238 to prevail. Loss caused to machineries attached by EPFO to be adjusted against the claim of EPFO.</p> <p>Claims received after the liquidation commencement date and submitted after the last date for receipt of claims are not eligible for consideration.</p>
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15.	Small industries Development Bank of India Vs Tirupati Jute industries Limited [CP(IB) 508/KB/18]	Section 7	Application admitted based on recall notice, documents executed by Corporate Debtor, reminders for payment amount, notice under SARFAESI etc.
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16.	Asset Reconstruction Company (India) Pvt. Ltd. Vs Shivam Water Treaters Pvt. Ltd.[CP(IB)-1882/MB/2018]	Section 70 and Section 238	Municipal Corporation sealed the corporate office/Registered office of the Corporate Debtor. The son of the Ex-Director /Business head did not cooperate and the union leader along-with the workers created nuisance. Municipal Corporation directed to open the seal. Ex- Director and his son asked to file affidavit regarding non cooperation. RP is court officer.
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17.	Edelweiss Asset Reconstruction Company Ltd. Vs Bharati Defence and Infrastructure Ltd. [CP 292/I&B/NCLT/MAH/2017]	RP sought approval of resolution plan approved by 94.3% majority.	Various unsuccessful bidders and BOD raised various objections like - Defects in process of calling for resolution plans. -RP was colluding with RA. -Mortgagee was the RA and a man cannot sell to himself. NCLT put aside all the objections. But keeping in mind the importance attached to the product line, directed the liquidator to sell the corporate debtor as a going concern. Given the conflict of interest of the RP, a new liquidator was appointed.
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**THANK YOU**

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