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Changes in the Course of the Insolvency and Bankruptcy Code through Judicial Intervention

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SUPREME COURT OF INDIA

ISSUE	Case	Held	Observation
MORATORIUMS	State Bank of India v V. Ramakrishnan and Ors.	Scope of moratoriums under Section 14 excludes personal guarantors.	Effectively exposes guarantors to recovery proceedings. The Court employed literal interpretation and further relied on the observations of the Insolvency Law Committee.
ELIGIBILITY OF CORPORATE PERSON UNDER SECTION 29(A)	ArcelorMittal v Numetal (Pending)	The Supreme Court observed that owing to delays caused in the RP banks ought not to be made to suffer.	The Code aims for time-bound disposal of the resolution process meant to revive a company, but delays and several rounds of intervention by tribunals defeat the purpose.
OPERATIONAL DEBT	K. Kishan v. M/s Vijay Nirman Company Pvt. Ltd	An insolvency petition cannot proceed despite a record of an operational debt, if debt is disputed.	A pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, till the final adjudicatory process under Sections 34 & 37.
INCONSISTENCY BETWEEN IBC AND OTHER ACTS	Pr. Commissioner of Income Tax v. Monnet Ispat And Energy Ltd.	Section 238 of IBC gives primacy to the IBC over any other legislation.	The Code will override anything inconsistent contained in any other enactment, including the Income-Tax Act.
PROCEDURE UNDER SECTION 7(3)a	Sunrise 14 A/S Denmark v. Ravi Mahajan	A S. 7(3)a application filed by an advocate would be maintainable	A foreign company need not observe such requirements which are impossible of compliance.
HOMEBUYERS	Chitra Sharma v Union of India	Homebuyers are Financial Creditors and to be included in CoC	-Lack of unified approach towards resolution -Cumbersome voting process through the Insolvency Professional



JUDICIAL INTERVENTION



SUPREME COURT OF INDIA

Issue	Case	Held in Impugned Order	Observation
SERVING OF DEMAND NOTICE AS PER RULE 5 – MANDATORY OR DIRECTORY	M/s Nupower Renewables Pvt. Ltd. V M/s Cape Infrastructure Pvt. Ltd. (Pending)	When it is mandatory to deliver the demand notice prior to filing the application, the same cannot be violated.	FACTORS THAT DETERMINE THE INTERPRETATION OF STATUTES: INTENT AND PURPOSE INJUSTICES AND INCONVENIENCE ENABLING NATURE OF RULES NATURE AND DESIGN OF STATUTES

HIGH COURTS

ISSUE	Case	Held	Observation
BOMBAY HC: PRIMACY OF IBC OVER THE WINDING UP PROVISIONS OF COMPANIES ACT, 1956.	Jotun India Pvt. Ltd. v PSL Limited	An application under IBC (section 10 in the said case) may be made even in cases where a Winding-Up petition has been admitted by a Company Court, except where final order of Winding-Up has been passed.	Whereas in Innoventive Industries v. ICICI Bank the Supreme Court had noted that: “Entrenched managements are no longer allowed to continue in management if they cannot pay their debts”
ALLAHABAD HC: RBI CIRCULAR AGAINST POWER SECTOR	Independent Power Producers Association of India v Union of India	RBI is sufficiently empowered to deal with stressed assets and thereby courts ought to exercise judicial deference.	Union can advise the RBI on a particular industry and leave it up to the central bank to determine the requirement of any modulation.

NCLAT

ISSUE	Case	Held	Observation
ELIGIBILITY OF CORPORATE PERSON UNDER SECTION 29A(D)	Renaissance Steel India Pvt. Ltd. vs. Electrosteel Steels Ltd.	'Corporate Person' can be ineligible to submit a 'Resolution Plan' even though Section 29A(d) is not attracted directly to the 'corporate person'.	If a 'connected person' is not eligible under Section 29A(d), being a 'natural person' convicted for any offence punishable with imprisonment for two years or more, in such case also a 'Corporate Person' will become ineligible,.
APPLICATION UNDER SECTION 10 FILED BY THE BOARD OF DIRECTORS WAS NOT MAINTAINABLE	Gaja Trustee Company Private Limited and Ors. vs. Haldia Coke and Chemicals Private Limited	The argument that Section 59 of the 'I&B Code' is the only provision for liquidation, cannot be accepted as initiation of 'Corporate Insolvency Resolution Process' by the Company ('Corporate Debtor') against itself under Section 10 may result into its own liquidation.	If the 'Resolution Process' starts and ultimately fails because of non-approval of the 'Resolution Plan', at that stage provisions of 'Articles of Association' cannot be given effect nor the approval of the shareholders can be taken.
POWERS OF IBBI	Insolvency and Bankruptcy Board of India vs. Wig Associates Pvt. Ltd. and Ors.	Resolution Professional and not IBBI empowered to appeal against faulty interpretations of the provisions of the IBC.	It is the duty of the Resolution Professional to bring to notice faulty interpretation of the provisions of the Code by the Adjudicating Authority.



Interpretational Guidelines identified by the Supreme Court



Key observations from the Supreme Court's interpretation of IBC

- ❖ Employment of literal interpretation – subject to the scope and object of interpretation.
- ❖ Each provision of the IBC is to be interpreted in keeping with its object and purpose – Mobilox Innovations v. Kirusa Software.
- ❖ In Mobilox the Court held that in so far as the object of the Code could be achieved in order to initiate insolvency proceedings against the Code, by means other than statutorily specified as in the facts and stipulations of that matter, the proof of existence of a debt and a default in relation to such debt can be proved other than by documentary evidence, as specified in Section 9(3)(d) of the Code.
- ❖ Reference can be made to the Legislative Guide on Insolvency Law of UN Commission on International Trade Law.
- ❖ Although IBC is not a tool for recovery, it is to be interpreted to curb the mischief of evading liability to recover debts.