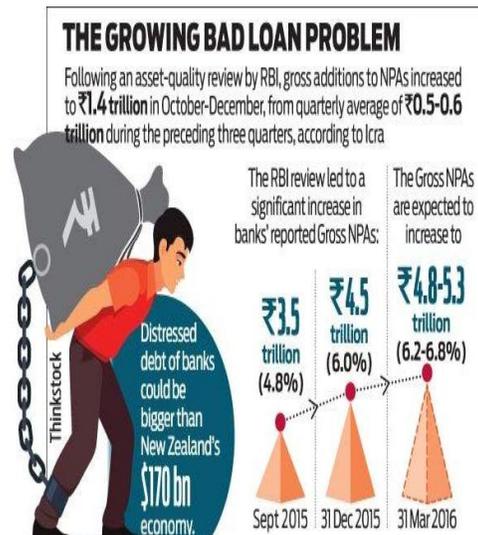


### SC: 7-day time limit for removing defects in insolvency application not 'mandatory'

SC holds that 7-day time limit prescribed under Insolvency & Bankruptcy Code, 2016 ('the Code') for removal of defects in insolvency application is directory in nature; Allowing appeal of operational creditor partially, SC quashes NCLAT order to the extent it held that while the period of 14 days for admitting / rejecting insolvency application by the Adjudicating Authority is directory, 7 days period for rectifying any defects therein, is 'mandatory'; Perusing the relevant provisions of the Code viz. Sections 7(5), 9(5) & 10(4), SC observes that period consumed by Registry of Adjudicating Authority for scrutinizing the application or for removal of defects before admitting the same, shall not be counted in the limit of 180 days u/s 12 for completion of insolvency resolution process; Notes that there are 3 stages involved in insolvency application : (i) filing, (ii) listing before Adjudicating Authority (decision to admit or reject the application), and (iii) commencement of insolvency resolution process after admission; Hence, "Applicant does not gain anything by not removing objections inasmuch as till objections are removed, such an application would not be entertained. Therefore, it is in the interest of the applicant to remove the defects as early as possible", remarks SC; However, notes that applicants may sometimes show laxity by not removing objections within prescribed time or the applications may be frivolous or oblique in nature and in this regard, states "If Objections are not removed within 7 days, the applicant while refiling the application after removing the objections, file an application in writing showing sufficient case as to why the applicant could not remove the objections within seven days"; In view thereof, directs Adjudicating Authority to decide whether sufficient cause has been shown in not removing the defects beyond the period of 7 days: SC

[\[LSI-1922-SC-2017-\(NDEL\)\]](#)



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Distressed debt of banks could be bigger than New Zealand's \$170 bn economy.

Sept 2015 31 Dec 2015 31 Mar 2016

₹35 trillion (4.8%) ₹45 trillion (6.0%) ₹48.53 trillion (6.2-6.8%)

### SC: Existence of dispute 'or' pending proceedings entail Operational Creditor's insolvency application dismissal

SC allows Mobilox Innovations Pvt. Ltd.'s ('Appellant' / 'Corporate Debtor') appeal against NCLAT order, holds that insolvency application filed by Kirusa Software Pvt Ltd. ('Operational Creditor' / 'Respondent') u/s 9 of Insolvency & Bankruptcy Code is liable to be dismissed owing to 'existence of dispute' between the parties; Notes that Appellant had sub-contracted its work to Respondent and also entered into a Non-disclosure Agreement ('NDA'), which was breached by Respondent; Consequently, Respondent issued notice to Appellant demanding Rs. 20.08 lakhs towards withheld payments in terms of Section 8 of the Code, to which the Appellant responded that there existed a serious and bona fide dispute between the parties; SC observes that NCLAT ('Adjudicating Authority') rejected Respondent's insolvency application on the ground that there exists a dispute between the parties, notice of which has been received by Operational Creditor and thus, his claim is hit by Sec. 9(5)(ii)(d) of the Code; SC further takes note of NCLAT's decision in Operational Creditor's appeal, whereby Adjudicating Authority's order was set aside on ground of mechanical rejection of application u/s. 9(5)(ii)(d) of the Code, without examining

and discussing what constitutes 'dispute' so as to come to the conclusion that conditions of demand notice had not been fulfilled by the Operational Creditor; SC opines that definition of 'dispute' has become inclusive, while perusing Sec. 8(2)(a) to hold that the "...the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as "or"...""; SC also takes into consideration "the fact that long limitation periods are allowed as per the limitation law, where disputes may arise and do not reach an arbitral tribunal or a court for up to 3 years, such persons would be outside the purview of Section 8(2), leading to bankruptcy proceedings commencing against them. Such an anomaly cannot possibly have been intended by the legislature nor has it so been intended"; SC notes that that Sec. 255 r/w the Eleventh Schedule of the Code has amended Sec. 271 of the Companies Act, 2013 so that a company being unable to pay its debts is no longer a ground for winding up a company; SC also notes, "Insolvency and Bankruptcy Bill, 2015 that was annexed to the Bankruptcy Law Reforms Committee Report, Section 5(4) defined "dispute" as meaning a "bona fide suit or arbitration proceedings..." In its present avatar, Section 5(6) excludes the expression "bona fide", which is of significance. Therefore, it is difficult to import the expression "bona fide" into Section 8(2)(a) in order to judge whether a dispute exists or not."; SC therefore, concludes that Adjudicating Authority has the right to reject an application u/s. 9(5)(ii) where notice of dispute has been received or there is a record of dispute in the information utility; Hence, 'existence' of dispute or pending of a suit or arbitration proceeding relating to a dispute between the parties has to be brought to the notice of Operational Creditor, and all that Adjudicating Authority must see is whether there is a plausible contention which requires further investigation and that "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence; SC further remarks "However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application": SC

[\[LSI-1893-SC-2017-\(NDEL\)\]](#)

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### **SC: SICA merged with Insolvency Code, winding up does not foreclose proceedings under SICA**

SC upholds Delhi HC order declaring that order passed by Registrar/ Secretary/Chairman of the Board for Industrial and Financial Reconstruction ('BIFR' / 'the Board') exercising adjudicatory powers under Sick Industrial Companies Act, 1985 ('SICA') is non est in law; Zenith Infotech Ltd. ('Respondent') filed writ petition before the Delhi HC against the order of Registrar/ Secretary/Chairman of the Board on the ground that they did not have any power to adjudicate as to whether Respondent was industrial company or not, as the same vested with the Board/ BIFR and further sought to stay the liquidation proceedings commenced against it; SC affirms the HC's view that the authorities exceeded their powers in adjudicating that respondent company was not an industrial company while rejecting respondent's reference and accordingly held that the said orders were non est in law; Upholds HC's reliance on decision of SC in Real Value Appliances Ltd. Vs. Canara Bank and Others and Rishabh Agro Industries Ltd. Vs. P.N.B. Capital Services Ltd. that winding up order passed by company court does not foreclose the proceedings under the SICA; Accordingly, disposes off the appeal holding that it is still open to the respondent Company to seek its remedies under the provisions of Section 252 of the Insolvency and Bankruptcy Code, 2016 ('the Code') read with what Sections 13, 14, 20 and 25 as on repeal of SICA stand merged with the Code: SC

[\[LSI-1705-SC-2017-\(NDEL\)\]](#)

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**SC: Quashes NCLAT order exercising Art. 142 powers; Promotes mutual settlement despite statutory hurdles**

SC, exercising powers under Article 142 of Constitution of India, sets aside NCLAT order dismissing appeal for withdrawal of insolvency petition to settle matter based on consent terms agreed between the parties; Prima facie holds NCLAT order to be the correct position in law, but puts a quietus to the matter based on appellant's undertaking to abide by consent terms in toto; NCLAT, by its impugned order, was of the view that it could not exercise inherent powers recognized by Rule 11 of NCLAT Rules, 2016 for withdrawing insolvency application in contravention of Rule 8 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, as NCLAT rules were not applicable to insolvency matters and thus, did not allow compromise between the parties after admission of insolvency petition: SC

[\[LSI-1751-SC-2017-\(NDEL\)\]](#)

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**SC: Upholds Financial Creditor's insolvency process claim; Bankruptcy Code prevails over State enactment**

SC upholds NCLAT and NCLAT orders accepting claim of ICICI Bank ('Financial Creditor' / 'Respondent') for appointment of insolvency resolution professional and initiation of corporate insolvency resolution process against Innoventive Industries Ltd ('Corporate Debtor' / 'Appellant'); Finding substance in Respondent's plea that appeal filed at the behest of erstwhile directors of Appellant is not maintainable, SC states, "...once an insolvency professional is appointed to manage the company, the erstwhile directors who are no longer in management, obviously cannot maintain an appeal on behalf of the company."; Nevertheless, Apex Court deems it necessary to deliver detailed judgment so that all Courts and Tribunals take notice of paradigm shift in the law; Notes that NCLAT, while admitting Financial Creditor's application u/s 7 of Insolvency & Bankruptcy Code ('IBC' / 'Code'), had rejected Corporate Debtor's plea that all its liabilities and remedies for enforcement thereof were temporarily suspended vide Notifications under Maharashtra Relief Undertakings (Special Provisions) Act ('Maharashtra Act') and held that IBC would prevail over the Maharashtra Act in view of non-obstante clause in Section 238 of Code; In appeal, though NCLAT held that the Code and Maharashtra Act operate in different fields and therefore, not repugnant to each other, it was observed that Appellant could not derive any advantage from State legislature to stall the insolvency process u/s 7 of IBC; Concurring with both Tribunal and Appellate Tribunal, SC refers to plethora of judicial pronouncements interpreting the doctrine of pith and substance and Article 254 of Constitution of India, and holds that Maharashtra Act cannot stand in the way of corporate insolvency resolution process under the Code; Observes, "It is settled law that a consolidating and amending act like the present Central enactment (IBC) forms a code complete in itself and is exhaustive of the matters dealt with therein."; According to SC, under the said State law, State Govt. may take over the management of relief undertaking, after which temporary moratorium takes place u/s 4 in much the same manner as that contained in Sections 13 and 14 of Code; Hence, "unless the Maharashtra Act is out of the way, the Parliamentary enactment will be hindered and obstructed in such a manner that it will not be possible to go ahead with the insolvency resolution process outlined in the Code.", states SC; Moreover, holds that non-obstante clause in Section 4 of Maharashtra Act cannot possibly be held to apply to Central enactment, inasmuch the later Central enactment being repugnant to earlier State enactment by virtue of Article 254 (1), would operate to render the Maharashtra Act void vis-à-vis action taken under IBC :SC

[\[LSI-1826-SC-2017-\(NDEL\)\]](#)

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**SC: Restores insolvency proceedings against Jaypee Infra, espouses cause of home buyers**

SC modifies its earlier order dated September 4, 2017, sets aside stay on insolvency proceedings and directs interim resolution professional ('IRP') to take over management of Jaypee Infratech Ltd.

(‘JIL’) for formulating and submitting interim resolution plan within 45 days before the court and to protect the interests of home buyers; Takes note of the Union of India’s (‘Applicant’) contention for setting aside/ modifying its order on stay of insolvency proceedings as because of stay, management of JIL would stand restored and that would affect rights of creditors and consumers; IDBI Bank Ltd. (‘Financial Creditor’) contends that under the statutory scheme, IRP has to take over, otherwise letter and spirit of the Insolvency and Bankruptcy Code, 2016 (‘the Code’) is likely to be affected; Observes contention of home buyers that they belong to lower and middle income group and have invested life savings with JIL and its holding company, Jai Prakash Associates Ltd.(“JAL”) and therefore their interests need to be protected, and if IRP is restored, there should be a representative from home buyers or this Court may appoint someone on the Committee of Creditors to espouse the interests of home buyers; Accordingly, appoints Mr. Shekhar Naphade and Ms. Shubhangi Tuli on Committee of Creditors to espouse the cause of home buyers and to protect their interests; Further directs managing director and directors of JIL and JAL (except nominee directors of lending institutions) not to leave India without prior permission of the Court,; Also directs JAL, which is not a party to the insolvency proceedings, to deposit Rs.2,000 crores before it on or before October 27, 2017; Directs stay on all suits and proceedings instituted against JIL in terms of S. 14(1)(a) of the Code: SC

[\[LSI-1863-SC-2017-\(NDEL\)\]](#)

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#### **NCLAT: Power of Attorney holder not an ‘Authorised Representative’ to initiate Insolvency**

NCLAT holds ‘Authorised Representative’ and not ‘Power of Attorney’ (‘POA’) holder entitled to file an application u/s. 7 of the Insolvency and Bankruptcy Code, 2016 (‘the Code’), but affirms NCLT’s order admitting insolvency petition filed by ICICI Bank Ltd. (‘Financial Creditor’) against Palogix Infrastructure Pvt. Ltd. (‘Corporate Debtor’); NCLT held that for initiation of insolvency process, specific authorisation to POA holder was required, but later admitted the insolvency application on rectification of defects, against which Corporate Debtor appealed; NCLAT rejects Corporate Debtor’s objection to removal of defects on basis of S. 7(5) of the Code, and also held that 7 days’ time limit for rectification of defects (as per Entries 5 & 6 (Part I) of Form-1 of NCLT Rules) had to be counted not from date NCLT passed the order, but from date of receipt of notice from NCLT to rectify the defects in the application, excluding Saturdays, Sundays and other Tribunal holidays; Relies on SC decision in T C Mathai’s case, holding that S.2 of the POA Act, 1882 cannot override specific provisions of a statute requiring that a particular act should be done by a party-in-person, and hence a POA holder is not a competent person to file an application on behalf of ‘Financial Creditor’, ‘Operational Creditor’ or ‘Corporate Applicant’; Holds however that as a juristic person can only act through ‘Authorised Representatives’, if any juristic entity generally authorises its officers to do the needful in legal proceedings, the mere use of words, ‘Power of Attorney’ while delegating such power will not take away the officer’s authority, because a ‘Corporate Debtor’ cannot plead that an officer has power to sanction a loan but has no power to take steps to recover dues or to initiate Insolvency Resolution Process in spite of debt default, and in such cases, officer’s application u/s. 7 cannot be rejected merely due to absence of separate specific authorisation letter issued by ‘Financial Creditor’ in his favour: New Delhi NCLAT

[\[LSI-1914-NCLAT-2017-\(NDEL\)\]](#)

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#### **NCLAT: ‘Moratorium’ under IBC cannot affect pending writ & appellate proceedings before HC / SC**

NCLAT disposes appeal filed by Canara Bank Ltd. (‘Financial Creditor’/ ‘Appellant’) against Deccan Chronicle Holdings Ltd. (Respondent, ‘Corporate Debtor’) under Insolvency & Bankruptcy Code, 2016 (‘the Code’), while clarifying the scope of applicability of ‘Moratorium’ fixed u/s 14 of the Code; Notes

that Financial Creditor had challenged order passed by Adjudicating Authority (NCLT, Hyderabad Bench), whereby Adjudicating Authority while admitting application preferred by Financial Creditor u/s. 7 of the Code, had passed an order for moratorium; Notes Financial Creditor's submission that Adjudicating Authority cannot exclude any Court from purview of moratorium for the purpose of recovery of amount or execution of any judgement or decree, including the proceeding, if any, pending before High Courts and Supreme Court against Corporate Debtor; Perusing Sec. 14 of the Code, NCLAT opines, "It is clear that institution of suits or continuation of pending suits or proceedings against Corporate Debtor including execution of any judgment, decree or order by any court of law, tribunal, arbitration panel or other authority come within the purview of 'moratorium'. The said provision specifically does not exclude any Court, including the Hon'ble High Courts or Hon'ble Supreme Court of India"; Appellate Tribunal observes that there is no provision to file any money suit or suit for recovery before the SC except under Article 131 of the Constitution of India ('the Constitution'), where dispute between Govt. of India and one or more States, or between the Govt. of India and any State(s) on one side and one or two or more States on the other, is filed; However, observes that "Hon'ble Supreme Court has power under Article 32 of the Constitution and Hon'ble High Court under Article 226 of the Constitution of India, which power cannot be curtailed by any provision of an Act or a Court"; NCLAT concludes that "Moratorium will not affect any suit or case pending before Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction, which is a money suit or suit for recovery against the 'corporate debtor', such suit cannot proceed after declaration of 'moratorium' under Section 14 of the I&B Code":New Delhi NCLAT

[\[LSI-1886-NCLAT-2017-\(NDEL\)\]](#)

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**NCLAT: Operational Creditors' joint application not maintainable; Dismisses insolvency application against Uttam Galva Steels**

NCLAT allows appeal of Uttam Galva Steels Ltd. ('Appellant' / 'Corporate Debtor') against DF Deutsche Forfait AG and Misr Bank ('Operational Creditors' / 'Respondents') thereby setting aside the order passed by Adjudicating Authority, Mumbai Bench; Declares the said order w.r.t. appointment of Interim Resolution Professional, declaring moratorium, freezing of accounts and publication of newspaper advertisement as 'illegal', and allows the Appellant to function independently through its Board of Directors; Following questions were raised in the appeal - (i) Whether joint application by two or more Operational Creditors u/s 9 of the Insolvency & Bankruptcy Code ('IBC' / 'Code') is maintainable, (ii) Whether it is mandatory to file 'Certificate of recognized financial institution' along with the application u/s 9 of the Code, (iii) Whether Demand Notice with invoice u/s 8 of the Code can be issued by any lawyer on behalf of an Operational Creditor; Perusing the provisions of Secs. 7, 8 & 9 of the IBC, NCLAT notes that an insolvency resolution process by Financial Creditor can be initiated either by itself or jointly with other Financial Creditors, however joint application u/s 9 by one or more Operational Creditors is not maintainable; Observes that the Certificate (as contemplated under IBC) has been issued by 'Misr Bank' - a Foreign Bank that is not a 'notified Financial Institution' under the Code, and accordingly, holds the application u/s 9 of the Code as not maintainable; As regards issuance of Demand Notice by lawyer, NCLAT peruses the Code and Adjudicating Authority Rules and accordingly states, "An Advocate / Lawyer or Chartered Accountant or Company Secretary in absence of any authority of the Board of Directors, and holding no position with or in relation to Operational Creditor cannot issue any notice u/s 8 of the Code"; In present case, the Advocate/Lawyer has given notice and there is nothing on record to suggest that lawyer was authorized by the Board of Directors, resultantly opines that the Notice cannot be treated as a 'Notice' u/s 8; W.r.t. the issue of existence of debt, notes that Notice of winding up was issued by the Respondents and the claim was disputed by Appellant much prior to the notice u/s 8 (issued by Lawyer) and the suit between the parties was pending; NCLAT refers its own ruling in Kirusa Software Pvt. Ltd. vs Mobilox Innovations Pvt. Ltd. to state that since there is an existence of dispute, petition u/s 9 would not be maintainable: New Delhi NCLAT

[\[LSI-1865-NCLAT-2017-\(NDEL\)\]](#)

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**NCLAT: Quashes NCLT's ex-parte order declaring moratorium & Bank A/c seizure, remits matter**

NCLAT allows appeal filed by Mindtree Exports Pvt. Ltd. ('Corporate Debtor' / Appellant), sets aside NCLT's order that declared moratorium, seizure of all bank accounts, payment to Interim Resolution Professional and other rigorous orders passed against Corporate Debtor; Notes that Ashmita Multitrade Pvt. Ltd. (Creditor / Respondent) initially claimed to be an 'Operational Creditor' and preferred an application u/s 9 of IBC, 2016, however the application was withdrawn and separate application was made u/s. 7 of the Code as 'Financial Creditor'; Further notes that the Adjudicating Authority (NCLT) passed an ex-parte order without issuing notice to the Corporate Debtor, also notes that no notice under Rule 4(3) of the Adjudicating Authority Rules was served after filing of application u/s. 7 of the Code; Further remarks that the Adjudicating Authority also failed to consider whether the respondent falls within the definition of financial creditor or not as it earlier claimed to be operational creditor; Remits the matter to Adjudicating Authority (NCLT, Mumbai Bench) to decide the questions raised and noticed before it:New Delhi NCLAT

[\[LSI-1844-NCLAT-2017-\(NDEL\)\]](#)

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**NCLAT: Terms NCLT's Moratorium Order as 'illegal' for violating principles of Natural Justice**

NCLAT disposes appeals filed by Kaliber Associates Pvt. Ltd. (Appellant, Corporate Debtor), terms the order passed by Adjudicating Authority (NCLT) as 'illegal' w.r.t. appointment of Interim Resolution Professional ('IRP'), order declaring moratorium, freezing of account and any action taken by IRP

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(including publication of newspaper advertisement); Directs Appellant to function independently through its board of directors with immediate effect; Notes Appellant's submission that the order was passed by Adjudicating Authority in violation of principle of natural justice i.e. without giving any notice to the Corporate Debtor prior to admission of Application; Relies on its own ruling in Innoventive Industries Ltd. Vs ICICI Bank, wherein it was held that following the principles of rules of Natural Justice while passing an order under IBC, 2016 is mandatory: New Delhi NCLAT

[\[LSI-1843-NCLAT-2017-\(NDEL\)\]](#)

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**NCLAT: Bankruptcy Code's objective is not 'debt-recovery' but initiating insolvency resolution process, Limitation Act not applicable**

NCLAT dismisses appeal filed by Neelkanth Township and Construction Pvt. Ltd. (Appellant, 'Corporate Debtor') against order passed by Adjudicating Authority (NCLT, Mumbai Bench) that admitted application filed by Urban Infrastructure Trustees Ltd. (Respondent, 'Financial Creditor') u/s. 7 of Insolvency and Bankruptcy Code, 2016 ('Code'), ordered moratorium, appointed Insolvency Resolution Professional; Notes Corporate Debtor's grounds of appeal: (i) Application filed by Financial Creditor is incomplete as it was not accompanied by requisite documents, (ii) Application filed by Financial Creditor is time barred, as the debt claimed related to 2011, 2012 and 2013 (iii) 'Default of debt' has not been admitted by the Corporate Debtor, (iv) Respondent is investor and not 'Financial Creditor'; Notes facts w.r.t. initiation of Corporate Insolvency Resolution Process by Financial Creditor, peruses provisions of Code, applies principles of interpretation of statutes, states that "Procedural provision cannot override substantive obligation of the Adjudicating Authority to deal with applications u/s. 7 merely on the ground that the Board has not stipulated or framed Regulations w.r.t. Sec. 7(3)(a)"; Notes that in absence of Regulations framed by the Board relating to record of the default with information utility, the 'documents', 'record', 'evidence of default' prescribed under Adjudicatory Rules, 2016 will hold good to decide the default of debt for the purposes of Sec. 7 of Code; Rejects Corporate Debtor's contention that the claim is barred by limitation, as debentures matured between years 2011-2013, holds that "There is nothing on record that the Limitation Act is applicable to the Code... the Code is not an act for recovery of money claim, it relates to initiation of Corporate Insolvency Resolution Process. If there is debt which includes interest and there is default of debt and there is continuous course of action, the argument cannot be accepted"; Peruses definition of 'financial creditor' and 'debt', observes that debentures are within the meaning of 'financial debt', opines that "Amount of debt and interest was to be disbursed against consideration for time value of money. Therefore, it cannot be stated that debentures on maturity do not come within the purview of amount payable against the consideration for the time value of money" :New Delhi NCLAT

[\[LSI-1824-NCLAT-2017-\(NDEL\)\]](#)

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**NCLT: Allows SBI's application for sale of Gujarat NRE's windmill, avoids economic loss**

NCLT (Kolkata Bench) allows application filed by State Bank of India ('Applicant' or 'Financial Creditor') for sale of windmill assets of Gujrat NRE Coke Ltd. ('Corporate Debtor'), directs Resolution Professional to complete the proposed sale transaction; Notes that the total sale consideration is Rs. 180 crores, which is less than 10% of total claims admitted by the Resolution Professional, further observes that such consideration from the sale of non-core windmill assets belongs to Corporate Debtor; Observes that the sale was proposed by the Resolution Professional with an object to reduce the debt burden and to avoid depreciation of the value of windmill asset, opines that "Denial of approval may cause economic loss in connection to Creditors, Corporate Debtors and Prospective buyers"; Notes that total amount of claims as admitted by the Resolution Professional was Rs. 4,600 crores (approx.), 3 meetings of the Committee of Creditors with Corporate Debtors were convened and the Committee of Creditors

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has unanimously decided to sell the windmill assets of the Corporate Debtor; States that approval process initiated by the Resolution Professional would be beneficial even if the moratorium was declared by the NCLT; However, rejects Applicant's prayer for appropriation and distribution of sale proceeds amongst creditors, holds that "Corporate Insolvency Resolution Process is in progress and not yet finalized, it is not fair and just allow the said prayer of the applicant at this stage":Kolkatta NCLT

[\[LSI-1927-NCLT-2017-\(KOL\)\]](#)

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**NCLT: Admits insolvency petition complete in all respects, despite contradictory plea by debtor before DRT**

NCLT admits petition u/s. 10 of Insolvency and Bankruptcy Code, 2016 ('the Code') ) for initiating insolvency resolution process against Diamond Power Transformers Ltd. ('Applicant'/'Petitioner'), despite noting that petitioner had taken contradictory plea before Debt Recovery Tribunal ('DRT') regarding default committed w.r.t. payment of debt due to SICOM Ltd.; NCLT observes that petitioner owes and has defaulted on loans to the extent of Rs. 46.98 Crores, Rs. 35.86 Crores and Rs. 31 Crores to Indian Overseas Bank, UCO Bank and SICOM Ltd. ('SICOM') respectively ('financial creditors'/'respondents'); Rejects SICOM's objection to admission of the petition on the ground that a contradictory stand had been taken by petitioner before DRT that it did not commit any default in payment of its debt to SICOM, with the intent of stalling proceedings under the Securitization Act; NCLT opines that in a petition u/s. 10 of the Code, Adjudicating Authority has to see whether the corporate debtor had committed default, and observes that though petitioner took a contradictory stand before the DRT, but now, both, the petitioner and SICOM are making the same plea of default, concludes that SICOM has committed default in making payment of debt legally due to SICOM; Further opines that if insolvency petition is not admitted, there is no chance of having resolution plan to revive the company, and the company would lose the benefit of provisions of the Code; further holds that in case the resolution process fails, then winding up process would start and then creditors, including SICOM would have a right to share in the assets of the company along with other creditors: Ahmedabad NCLT

[\[LSI-1877-NCLT-2017-\(AHM\)\]](#)

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**NCLT: Offers Police protection to IRP in 'stressful' circumstances; Directs creditors' & auditors' cooperation**

NCLT (Chandigarh Bench) disposes application filed by Interim Resolution Professional (Mr. Anil Kumar, 'IRP' / 'Applicant') u/s 19(2) and 19(3) of Insolvency and Bankruptcy Code, 2016 ('Code') against Rolex Cycles Pvt. Ltd. and Directors ('Corporate Debtor' / 'Interveners'); Seeks explanation from Statutory Auditor and Co. Directors for their inaction with regard to handing over statutory records and not complying with IRP's instructions respectively, while directing Police Commissioner to provide police protection / assistance to IRP in performing his functions; Notes that IRP visited Corporate Debtor's site to take over the control of management, however, the Interveners refused to extend cooperation and advised IRP to visit on some other day; Notes that in the next visit, IRP could not find any plant and machinery, spare parts, tool kit, raw material, work in progress, finished goods, books of accounts, records or any computer system at the office of Corporate Debtor; On issue whether the Applicant as an IRP can function after the expiry of original term of appointment for 30 days, NCLT peruses the provisions of Sec. 16(5) of the Code and refers to SC ruling in Commissioner of Income Tax, Mumbai vs

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Anjum M.H. Ghaswal wherein it was held that inherent powers in Settlement Commission cannot be exercised contrary to express provisions of Income Tax Act; Applying said principle to present case, NCLT rules that “....consequences of non-appointment of Resolution Professional before the expiry of 30 days period of IRP have not been provided in the Code. The proceedings before the IRP or the Resolution Professional, as the case may be, cannot be left in the lurch as there is a specific period for completion of insolvency process as provided in Section 12 of the Code....”; As to whether provisions in the Code w.r.t. fixing the term of IRP are mandatory or directory, NCLT peruses IBBI (CIRP) Regulations, 2016 whereby in terms of Regulation 17(1), IRP is required to file the report certifying constitution of Committee of Creditors (‘COC’) on or before 30 days from date of his appointment; Hence, in light thereof as also the facts of present case, NCLT observes, “Facts are self-explanatory reflecting as to under what stressful and difficult circumstances the Applicant is working and facing an uphill task.... Looking at the circumstances and the dilly dallying tactics of the Financial Creditors, necessary directions apart from the directions to the responsible officers of the Bank needs to be issued”; Rules that the Applicant appointed as IRP would continue as Resolution Professional, while stating that “IRP does not become functus officio to stall the resolution process in the petition which has already been admitted..”: Chandigarh NCLT

[\[LSI-1870-NCLT-2017-\(CHD\)\]](#)

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**NCLT: Admits Corporate Debtor’s Application against payment default, Rejects Arbitration clause defense**

NCLT (Principal Bench) admits application filed by Macquarie Bank Ltd. (‘Applicant’) against Shilpi cable Technologies Ltd. (‘Corporate Debtor’) against a default in payment of operational debt of Rs. 19.55 crores, declares moratorium u/s 13 of the Insolvency and bankruptcy Code, 2016, appoints Interim Insolvency Professional; Notes that the debt originated from a transaction of supply of copper rods by the Supplier and the Corporate Debtor offered to purchase the Copper Rods on credit basis, however the Corporate Debtor was not able to pay to its debt in accordance with the terms and conditions of agreement; NCLT observes that there was compliance of Sec. 4 read with Sec. 5(20) and Sec. 5(21) of the Code and that all legal documents as required u/s 8 and 9 of the Code had been placed on record; Rejects Corporate Debtor’s submission that the Applicant is not an Operational Creditor as neither any goods have been supplied nor any services have been rendered, peruses Sec. 5(20) of Code, opines that Operational Creditor is a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned/transferred; Rejects Corporate Debtor’s submission that the arbitration proceedings have been triggered in terms of the Agreement, rules that “Sec. 8(1)(2)(a) is absolutely clear and does not admit any doubt that the dispute in form of a civil suit / arbitration proceedings is required to be pending before the receipt of demand notice / invoice in relation to such dispute”:NCLT Principal Bench

[\[LSI-1866-NCLT-2017-\(NDEL\)\]](#)

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**NCLT: Admits SBI’s insolvency petition against Alok Industries, decodes maintainability of petition under IBC**

NCLT admits insolvency petition filed by State Bank of India (‘Financial Creditor’) against Alok Industries Ltd. (‘Corporate Debtor’) u/s. 7 of Insolvency and Bankruptcy Code, 2016 (‘Code’); Notes that winding up proceedings filed by the Financial Creditor against Corporate Debtor were pending

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before the Bombay High Court, but no winding-up order was passed; Refers to Sec. 238 of the Code read with Sec. 446 of Cos. Act, 1956 and Rule 5 of Cos. (Transfer of Pending Proceedings) Rules, 2016, states that petitions shall be transferred to NCLT Benches if the winding-up petitions in which Notices have not been served on the Respondents; On the question whether there is sufficient material on record to satisfy that a default had occurred in payment of financial debt, NCLT observes that financial creditor has placed on record the sanction letters by SBI, Terms Loan Agreements between parties, guarantee facility agreement; Appoints Interim Resolution Professional, orders moratorium and publication of newspaper notice: Ahmedabad NCLT

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