

S.No	Crux	Legal Provision	Case Law	Ratio	Contraversy Anamoly Past Law/Case	Remarks
1	Plausible Contentions giving rise to further investigation qualifies as Dispute		Mobilox Innovations Pvt Ltd Vs. Kirusa Software Pvt Ltd	<p>The Apex Court observed that the ‘dispute’ raised must be bona fide and truly exist in fact.</p> <p>It further observed that the definition of dispute is inclusive and not exhaustive.</p> <p>It finally concluded that contentions which give rise to further investigation constitutes a dispute and rejected the applicatio.</p>	What is Dispute under the IBC?	

The Corporate Debtor had sub-contracted his work to the Operational Creditor and a Non-Disclosure Agreement (NDA) was also executed between the parties. The Corporate Debtor withheld the payments to the Operational Creditor contending that there was a breach of the Non-Disclosure Agreement. The Operational Creditor filed a demand notice which was replied to by the Corporate Debtor stating that there exists a bon fide dispute between the parties regarding the breach of the NDA. The Operational Creditor filed an application under section 9 of the Code. The NCLT Mumbai Bench held that since the default of payment was disputed by the Corporate Debtor, the petition is rejected. The Operational Creditor appealed the decision of the NCLAT.

On appeal, the NCLAT held the following observation:

The term dispute as defined in sub-section (6) of Section 5 cannot be limited to proceedings within the limited ambit of a suit or arbitration and the term “includes” ought to be read as “means and includes” and therefore the definition is inclusive. The definition of dispute must relate to the specified nature in clause (a), (b) and (c) of Sub-section (6) of section 5 but such dispute is not capable of being discerned only in the form of suit or arbitration.

The NCLAT held that the Adjudicating Authority acted mechanically by rejecting the application and the dispute raised by the Corporate Debtor in the present case was vague and allowed the appeal.

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2	Repugnancy arises when the State Law interferes with operation of the Central Law		Innoventive Industries Ltd And ICICI Bank & Anr	The Maharashtra Relief Undertakings (Special Provisions) Act is repugnant to IBC due to the fact that the State Law allows the State Government to take over the management of the company which will interfere with the operation of IBC.	Supremacy of IBC	

The Maharashtra Relief Undertakings (Special Provisions) Act is repugnant to IBC due to the fact that the State Law allows the State Government to take over the management of the company which will interfere with the operation of IBC. The Corporate Debtor appealed against the order of the NCLAT holding that IBC will prevail over the State Act.

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3	Compliance with Seven Day Time Period for Rectification of Defects is Directory and not Mandatory		Surendra Trading Company V. Juggilal Kamlapat Jute Mills Company Limited and Others	<p>The Apex Court set aside a particular portion of the NCLAT order by declaring the 7 days' rectification period prescribed under IBC to be directory in nature.</p> <p>However, reasonable justification was mandated as to the delay in correcting of such defects within the given period.</p>		

The Operational Creditor applied before the NCLT subsequent to the commencement of IBC. The Creditor had sent a Demand Notice seeking payment of the outstanding dues. Upon failure to do the same, it applied before NCLT (Allahabad). The registry of the adjudicating authority pointed out some procedural defects in the application and the adjudicating authority granted time for removal of such defects.

After removal of the procedural defects, the appellant sought for some time for filing the formal memo by proving/furnishing the latest order passed by the BIFR before the Code came into effect. Meanwhile, one, JK Jute Mill Mazdoor Morcha Kanpur, moved an application seeking intervention in the matter. The Adjudicating Authority passed an interim order directing the Corporate Debtor to maintain status quo in respect of its immovable property until further orders.

The interim order of the Adjudicating Authority was challenged by the Corporate Debtor before the NCLAT contending that the Adjudicating Authority becomes “functus officio” after the time specified under Sec: 9 of the Code and it has no power to grant the stay of the sale of assets or status quo in regard to any assets. The NCLAT held that the period of fourteen days prescribed for the Adjudicating Authority to pass an order is directory in nature and whereas the period of seven days given to the Creditor for rectifying the defects is mandatory in nature. For the aforesaid reasons, the NCLAT directed the rejection of the application by the operational creditor for not rectifying the defects in the application within the seven-day period. The decision of the NCLAT was challenged by the operational creditor before the Supreme Court. Similar submissions were made before the Supreme Court as well. The question before the Supreme Court is whether the period of seven days for rectifying the defects is mandatory or director

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4	Limitation Act is not applicable to IBC proceedings		Neelkanth Township And Construction Pvt Ltd Vs. Urban Infrastructure Trustees Ltd	The Hon'ble Supreme court dismissed appeal. It was held that the there was absolutely no necessity to interfere with NCLAT's order. However, the question of whether the Limitation Act would apply was dismissed. Therefore, the appeal was rejected and order of NCLAT was upheld.		

The financial creditor was an investor and a debenture holder of 'Optionally Convertible Debenture Bond' payable on maturity which was issued by the corporate debtor. The zero interest OCD bonds amounted to 1.27 crores, 1.24 crores and 48 crores each and matured as of 25.12.2012, 14.02.2013 and 30.04.2011. The liability to redeem the debentures on maturity along with a redemption premium lay on the debtor which was not made. In addition, 98% of the debtor company's funding were through these bonds. Thus, principal amount claimed totaled to 51 crores.

Initially, a CIRP application was filed by the financial creditor which was dismissed by the adjudicating authority on the grounds that 'default amount' and 'claim amount' are the same and not to be segregated.

Therefore, the present application has been filed by the creditor afresh rectifying the defects against the debtor before NCLT Mumbai. NCLT admitted the application declaring moratorium. Aggrieved by the order, debtor appealed to NCLAT only to get further dismissal.

Contentions by Corporate Debtor (BEFORE NCLT AND NCLAT)

1. The application petition is incomplete since it has not complied with the requirements u/s 7(3) of IB Code 2016 and record of evidence of default is not as specified under the Board Regulations under Section 240 of IBC,2016
2. Deficiency of stamp duty under S.35 of Indian Stamp Act 1899 will invalidate the debenture certificates.
3. The 3-year limitation period for seeking remedy for the debenture certificates is expired since the date of its maturity.
4. The creditor does not have a capacity to file the petition since they do not come under the meaning of 'financial creditor' and only an investor-cum-shareholder in the company.
5. The application under Section 7 of IBC 2016 is time-barred as the debt related to years 2011,2012 and 2013.
6. The 'debenture certificate' does not come within the term 'financial debt'.

NCLT vide its order dated 25.04.2017 put forth the following explanations for the arguments of the debtor while admitting the application petition:

- The debenture certificates and the balance sheets containing the transaction details itself is enough and ascertains the overdue on part of the debtor company.
- The Rule 8 OF IBBI (Insolvency for Corporate Persons) Rules 2016 is clear in its words to mean that either one of the following requirements is enough – financial contract having debt claims, financial certificate or annual report evidencing the default of debt or any court order adjudicating the same debt claim. Subject to that, the financial statement and annual report of the debentures produced by the creditor is enough to ascertain the debt.
- Since debtor company is a private limited company and for these OCDs cannot be transferred like in a public company. And further a non-payment on its maturity takes away its marketable nature and does not require a stamp duty under the Stamp Act 1899.
- Question of time-barred debts is 'ex-facie' and therefore such argument is baseless. It need not be profoundly said that admission appearing in the financial statement is an acknowledgement covered by S.18 of Limitations Act. It is 'in-rem' in nature and construed as existence of debt. The Limitation Act does not apply to IB code proceedings.
- Pendency of arbitration proceedings will not have a bearing in this case. There is no legal bar to be against the financial creditor and deprive of his right to file a claim. More funding being made, he is competent to file CIRP proceedings as a shareholder and a financial creditor

NCLAT dismissed the appeal on the following grounds:

- A procedural provision cannot override or affect the substantive obligation of the adjudicating authority to deal with applications under Section 7 merely on the ground that Board has not stipulated or framed any regulations with regard to Section 7(3)(a).
- Board has framed 'Insolvency Resolution Process for Corporate Persons, Regulations, 2016' where 'Form-c' attached to the regulations relates to proof of claim and under serial no.10, financial creditor is supposed to submit the list of documents as given under R.11(2) of the same regulations. Therefore, the stand that there are no regulations made by the board in case of Section 7(3) (a) cannot be accepted.
- There is nothing on record that Limitation Act 1963 is applicable to IB Code 2016 and debtor failed to lay hand as to what provision which suggests such applicability. IB code does not is not an Act for recovery of claims but relates to CIRP proceedings. If there is a debt including interest and is in continuing course of action, the argument that it is time-barred by limitation is baseless.
- The arguments relating to 'locus-standi' of financial creditor is invalidated by the terms of 'financial creditor' under Section.7. Being a debenture-holder and shareholder of the company does make the creditor entitled to claim debt amount.

- With the debenture payable, as on the maturity date with interest, it was disbursed against consideration for the time value of the money. Thus, it cannot be said that debentures on maturity do not come under that purview of Section 5(8)(c).
- There is a liability to redeeming the debenture amount of 51 crores on part of the corporate debtor by the provisions of Section 7, Section 5 and Section 3(11) & 3(12) and above grounds.

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5	Section 9 (3)(c) of the Code is only directory and Demand Notice issued by an Advocate is legally permissible		Macquaire Bank Limited V. Shilpi Cable Technologies	The Supreme Court held that certificate from a financial institution as defined under Section 3 (14) to confirm the unpaid operational debt is only directory and the harmonious construction of the Code and Advocates Act 1961 results in allowing advocates also to deliver the demand notice.		

The Supreme Court dealt with three appeals together and the facts contained in the three appeals were also similar. The Supreme Court proceeded with the facts of CIVIL APPEAL No. 15481 of 2017

The Operational Creditor entered into an agreement with one Hamera International Private Limited and purchased the original supplier rights, title and interest in the supply agreement in favour of the Corporate Debtor. Due to default in payment by the Corporate Debtor, the Operational Creditor issued a notice under Sections 433 and 434 of the Companies Act 1956, the Corporate Debtor replied to the notices denying any outstanding amount.

Subsequently, after enactment of the Code, the Operational Creditor issued a demand notice which was replied to by the Corporate Debtor stating that no such amount was owed by him and he also questioned the validity of the purchase agreement by which the Operational Creditor purchased the supplier rights. The Operational Creditor initiated insolvency proceedings under Section 9, the NCLT Principal Bench rejected the application on the ground that no certificate as required under Section 9 (3) (c) had accompanied the application and also there exists a dispute in relation to the operation debt with reference to the reply furnished by the Corporate Debtor to notices under Companies Act 1956 as mentioned above. The NCLAT on appeal concurred with the finding of the NCLT holding that compliance with Section 9 (3) (c) is mandatory and also since the demand notice was issued through an advocate who did not hold any position with or in relation to the Operational Creditor, the same cannot be considered as a valid demand notice.

On appeal before the Supreme Court, the following are the contentions of the Appellant and the Respondent.

The Appellant contended that Section 9 (3) (c) is only directory and not mandatory and the term shall should be read as may, also since it is a procedural section it is not a condition precedent for filing the application. The Appellant also contended that the reading of Section 9 (5) further states that the application is not liable to be rejected for failure to furnish bank certificate. Moreover, in Annexure III of Form 5 which states what is to be accompanied with the application, mentions the copies of the relevant accounts of the Operational Creditor from banks and financial institutions confirming the unpaid operational debt to be stated only “if available”. Also, the term “confirming” in Section 9 (3) (c) restates that the certificate from financial institutions are only one among the other documents to be relied upon by the Adjudicating Authority to prove the existence of the operational debt.

The Appellant further stated that Form 5 which states “person authorized to act on or behalf of the operational creditor” includes a lawyer who is authorized by the Operational Creditor. Also, by referring to Section 30 of the Advocates Act 1961 and judgements interpreting the term “practice”, the appellant held that an advocate can very well fall within the expression “position with or in relation to the Operational Creditor”.

Furthermore, the Appellant also referred to the definition of person under the Code which includes persons resident outside India and therefore the Appellant a foreign bank would also come under the definition of an operational creditor. Also, if the certificate from the financial institution only as defined under Section 3 (14) are to be accepted, this would make it difficult for non-resident banks like the Appellant in the present case to obtain the same and would operate to non-suit the Appellant.

The Respondent contended that the Code is an extremely draconian legislation and therefore it must be followed strictly making Section 9 (3) (c) a mandatory provision. The Respondent further stated Section 9 (3) (c) is a jurisdictional condition precedent and cited the case of Taylor v. Taylor wherein it was held that if a statute requires a particular thing to be done in a particular manner it has to be done in such manner or not at all. The Respondent further stated the definition of the term “financial institution” as contained in Section 3 (14) of the Code includes certain foreign banks within the expression of scheduled banks and according to Section 3 (14) (d) the Central Government has the power to specify other foreign banks as financial institution, only when operational creditors have dealing with banks as defined in Section 3 (14) can they be eligible to initiate insolvency proceedings against the Corporate Debtor. The Respondent further submitted that a lawyer is not eligible to issue a demand notice and can be issued only by an “insider” of the Operational Creditor who is authorized and holding a position with or in relation to the Operational Creditor.

The Respondent also cited provisions in Companies Act 1956 and Recovery of Debts due to Bank and Financial Institutions Act 1993 which contain express provisions enabling a lawyer to do things on behalf of a party unlike the Code.