

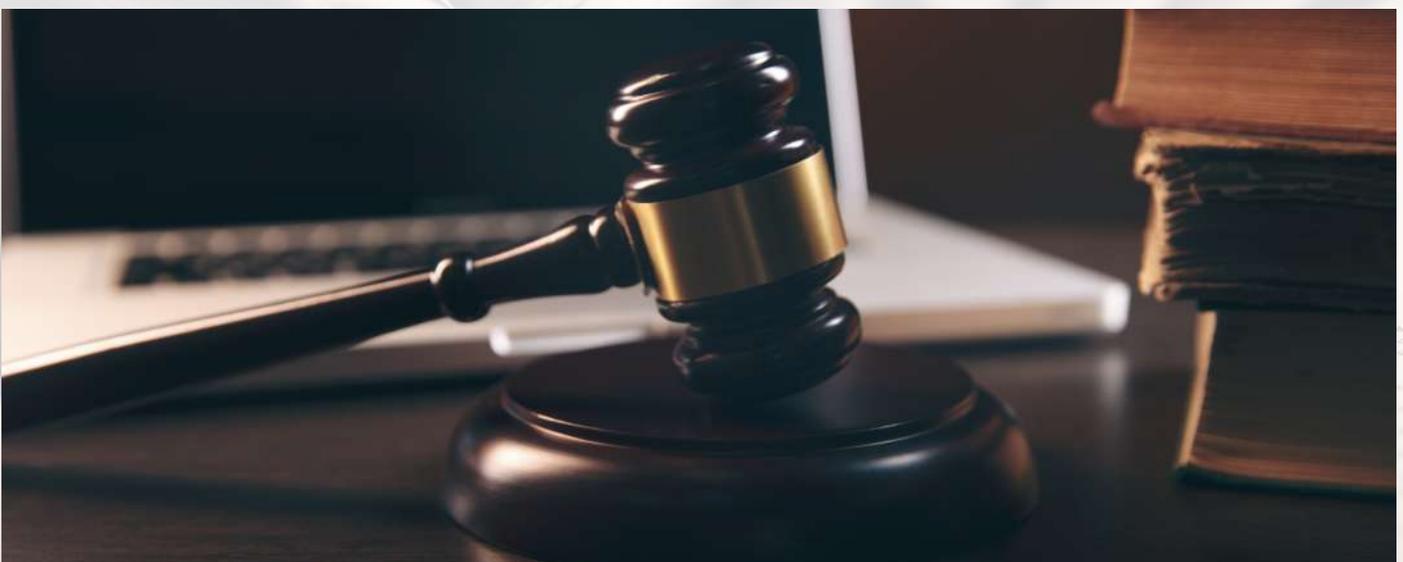
## GUEST POST

### SECTION 7 REQUIREMENTS UNDER THE INSOLVENCY & BANKRUPTCY CODE (IBC)

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The Insolvency & Bankruptcy Code, 2016 (further amended in 2019) was introduced with the motive of concluding insolvency proceedings in a time-bound and efficient manner. The IBC allows multiple parties (i.e. corporate debtors, financial creditors, operational creditors) to initiate an insolvency resolution process on account of a default related to the debt. The procedure under Section 7, however, is specifically meant for financial creditors, who may file an application to initiate Corporate Insolvency Resolution Process either by themselves or jointly with other creditors before the National Company Law Tribunal, under clause (1) of the provision. To that extent, Section 7 of the IBC vests a right in financial creditors to initiate corporate insolvency resolution process against corporate debtors. In this article, the requirements under Section 7, IBC have been outlined.

**To read more, visit:** <https://www.jusip.in/section-7-requirements-under-the-insolvency-bankruptcy-code-ibc/>



# TRIVIA

The table outlines important decisions concerning Insolvency and Bankruptcy Law between the years 2019-2021.



Case name	Date decided	Holding
<b>2019</b>		
<b>Vijay Kumar Jain Vs. Standard Chartered Bank &amp;Ors</b>	31.01.2019	Members of a Suspended Board of Directors of the corporate debtor have the right to receive insolvency resolution plans to effectively participate in the meetings of committee of creditors.
<b>Swiss Ribbon Pvt Ltd &amp; Anr Vs. Union of India &amp;Ors</b>	25.01.2019	Constitutionality of the IBC was upheld in its 'entirety'. It was observed that the Code for reorganization and insolvency resolution of corporate debtors.
<b>Excel Metal Processors Ltd. Vs. Benteler Trading International GMBH</b>	21.08.2019	That NCLT has the jurisdiction to entertain application under the IBC and not courts outside India under Section 9 of the code. Thus, the parties cannot override the statutory provisions of the IBC.

## 2020

<b>M. Ravindranath Reddy Vs. G. Kishan &amp; Ors.</b>	17.01.2020	The lease of immovable property cannot be considered as supply of goods or rendering any services and therefore the due amount cannot fall within the definition of operational debt under the IBC.
<b>Anshul Vashishtha Vs. Jayhind Steel Traders and Anr.</b>	13.03.2020	The object of the IBC is to bring the corporate debtor out of insolvency and not recovery of money. IBC cannot be used as a recovery forum
<b>E. C. John Vs. Jitender Kumar Jain</b>	01.09.2020	Where a suit is barred under section 33(5) of IBC, it is not the NCLT which would quash the concerned suit filed in the civil court. The liquidator should move the Civil Court for quashing.

## 2021

<b>M R Logistics India Pvt Ltd Vs. AGA Publications Ltd</b>	01.02.2021	When there is a record of dispute existing between the parties prior to the issuance of Demand Notice and prior to filing of Section 9 Application, the same cannot be entertained by either Adjudicating Authority or the Appellate Tribunal in Summary
<b>Adish Jain Vs. Sumit Bansal</b>	03.02.2021	Tribunal has no express provision to 'review' its own order unless such powers are conferred by law.
<b>Ghanashyam Mishra And Sons Private Limited Vs. Edelweiss Asset Reconstruction Company Limited</b>	13.04.2021	The Supreme Court held that any creditor including Central or State government or Local authorities are bound by Resolution Plan as approved by the Adjudicating authority under Section 31(1). Further the 2019 amendment to section 31 is retrospective in nature.

# INTELLECTUAL PROPERTY RIGHTS



## Using domain names identical to “BAJAJ Finserv” or “BAJAJ Finance” would lead to infringement: Delhi HC

The Delhi High Court in *Bajaj Finance Ltd. v. Registrant of WWW.BAJAJ-FIN-SERVE.ORG* held that domain names deceptively similar or identical to “BAJAJ Finance” or “BAJAJ Finserv” are infringing while passing an order against a domain name holder of “WWW.BAJAJ-FIN-SERVE.ORG”. The plaintiffs had filed a case to restrain the defendants who were alleged to have been using marks deceptively similar to “Bajaj Finance” or “Bajaj Finserv”. It was argued on the behalf of the plaintiffs that they are the true owners of the trademarks “Bajaj Finance” and have the exclusive license for the trade mark of “Bajaj

Finserv”. The Court accepted the contentions of the plaintiffs and restrained the defendants from using domain names which were deceiving and identical to the trademarks which belongs to Bajaj Finance Ltd and directed the defendants who were domain registrars to take down domain names such as “WWW. Bajaj-Fin-serve.ORG”.

## Delhi High Court grants interim injunction against social media platforms for illegally circulating Times of India e-newspaper

The Delhi High Court in *Bennett Coleman v. WhatsApp Inc* granted an ex parte interim injunction against the unauthorized transmission and dissemination of the plaintiff’s Times of India e-newspapers by the defendant on platforms such as

WhatsApp and Telegram. The plaintiff submitted that the newspaper articles are their original literary works and therefore they deserve copyright protection under Section 14 of the Indian Copyright Act. Consequently, only the plaintiff has the right to disseminate the work amongst the public. The newspaper, was circulated on multiple domains, WhatsApp groups and telegram channels free of charge, whereas the plaintiff has a subscription-based system on its website for accessing them. The Delhi High Court found merit in the submissions made by the plaintiff. It was therefore held that the plaintiff is the exclusive copyright holder of the said literary work and the defendants are acting in contravention to the rights of the copyright holder.

## Delhi High Court puts restrain on using “Good Year” as a mark, rules in favour of Goodyear Tire Company.

The Delhi High Court in *The Goodyear Tire & Rubber Company & Anr. Vs. Devanand Sukhia*, upon satisfaction of a prima facie case in favour of the plaintiffs, restrained the defendant, from using the mark/name 'GOODYEAR'/ or any other mark which is identical or deceptively in any manner whatsoever, till further orders. Goodyear Tire and Rubber Co. had filed an

application with the Delhi High Court for an injunction against the defendants to restrain them from using the mark “Good Year” or any such mark which is identical or deceptively similar mark. The plaintiffs submitted that they are the true owners of the trademark “GOODYEAR” since 1920. The plaintiffs came across the mark of the defendant who was using the mark “GOOD YEAR” to market his own break and gear oil etc. The Defendant submitted that his mark is in use since 1997 and was registered in 2002. The Court took

zance of the fact that the plaintiff is the world's largest tyre manufacturing company and has presence in around 21 jurisdictions around the world. Also looking at the enormous turnover and net income of the plaintiff, the High Court held that there is an appreciable amount of reputation and goodwill connected with the trademark “GOOD-YEAR”. Therefore, it was held that the defendant's use of such a trademark for his own benefit amount to an infringement of the plaintiff's rights.

## INSOLVENCY & BANKRUPTCY



## NCLAT : Balance and Security Confirmation Letter sufficient acknowledgement of Debt for proceedings under Section 7, IBC

The National Company Law Appellate Tribunal in *Lakshmi Narayan Sharma Vs Punjab National Bank*,

dismissed an appeal filed by the Corporate Debtor Saptarishi Hotels P Ltd for initiation of Corporate Insolvency Resolution Process against them. The Corporate Debtor submitted that the NCLT, Hyderabad, made an error admitting the application for reason that the same was barred

by limitation as described under Section 7, IBC. The PNB in this regard submitted the “Balance and Security Confirmation Letter” by the Corporate Debtor. The Court held that the sole reason that the Corporate Debtor executed a Balance and Security Confirmation Letter after making part

payment to the bank shows that proof of acknowledgment of debt as per Sections 18 and 19 of the Limitation Act, 1963.

### **Supreme Court: Personal Guarantors are liable under the IBC, 2016 to the Corporate Debtors**

The Supreme Court in *Lalit Kumar Jain V. Union of India* upheld the liability of the personal guarantors to the Corporate Debtors. The matter arose after the Ministry of Corporate Affairs in 2019 issued a Notification through which personal guarantors were brought under the scope of insolvency proceedings as per the IBC. The court was faced to resolve whether the said Notification was

valid since it was submitted that the executive unilaterally and arbitrarily placed certain sub-category of individuals under the some of the provisions of the Code. The Court held that firstly, the executive adopted the said approach as they wished to fulfill the objectives envisioned under the IBC. Secondly, the Court held that the 2018 Amendment too has the similar purport in order to strengthen the insolvency mechanism. Thirdly, the Notification would enable courts to consider the entire picture and facilitate realistic resolution plans. Fourthly, the Court held that the sanction of a resolution plan and its' finality owing to Section 31 of the IBC did not per se operate

as a discharge of the guarantor's liability. Thus, the Court concluded that the Notification legal and valid.

### **IBC Trumps over State Laws**

The Karnataka High Court in *Dreamz Infra India Limited v. Competent Authority* has stated that the IBC will prevail over state legislations. This comes after the Karnataka Government had initiated parallel proceedings against Dream Infra India even after an order was passed by the NCLT and the moratorium period had commenced. The Karnataka High Court held that when a matter has already been ceased before the NCLAT, no further proceedings can be initiated.

## COMPETITION LAW



### **CCI orders probe against Tata Motors for alleged anti-competitive behavior**

The Competition Commission of India (CCI) has directed the Director General to investi-

gate the allegations raised against Tata Motors by two auto dealers. It is alleged by

the informants that the Tata Motors is abusing its dominant position in the market to impose unfair terms and conditions in the dealership agreements. Before initiating the proceedings, the CCI passed a prima facie order marking the relevant market as the "market for manufacture and sale of commercial vehicles in India". The CCI in its order also opined that there is a prima facie case of anti-competitive practice as it seems Tata Motors is acting in contravention of Sections 3(4) and 4 of the Competition Act. The Dealership agreement clause that raised the eyebrows of the CCI prohibits the dealer from entering into

any new business venture even if it's not related to automobiles. Tata motors submitted that it is not a blanket restriction, and a dealer can apply for an NOC. It was also submitted that the dispute arises out of a commercial and a contractual relationship which does not affect the competition in the market, therefore the CCI has no jurisdictions. The argument of Tata Motors was rejected by the CCI before ordering the investigation.

### **ACC and Ambuja Cement come under the radar of CCI for Anti-Competitive behavior**

The Competition Commission of India (CCI) initiated investigations against cement market leaders, ACC and Ambuja Cement. It is alleged that the cement manufacturers are indulged in the practice of price cartelization and exchange sensitive information with each other related to prices. ACC has submitted that they were in consonance with the competition laws at all times. Ambuja Cement also released a regulatory filing suggesting that they were never in contravention of the Competition regulations and are pro fair-trade practices as evident from their code of conduct.

## ARBITRATION



### **Delhi Court imposes costs on SAIL for protracting litigation**

In the case of *Steel Authority of India Ltd v M/S Jaldhi*

*Overseas PTE Ltd (JOPT)*, the petitioner (SAIL) filed a case under Section 34 of the Arbitration and Conciliation Act, 1996 seeking to impugn an

arbitral award in favor JOPT delivered by Delhi International Arbitration Centre and in accordance with its Rules. The dispute arose when

JOPL, a maritime logistics company issued an invoice of \$528,634.64 being the balance freight plus demurrages incurred at the load port and the discharge ports, payable by SAIL. The SAIL revised the figure to \$ 515,739.88 to which JOPL agreed but SAIL withheld the amount citing a claim with respect to another contract. The arbitral Tribunal dismissed SAIL's arguments and held that SAIL is liable to pay the amount plus 12% interest compounded on quarterly rests to JOPT. The Delhi High court affirmed the Tribunal's ruling and noted that scope of interference with an arbitral award on patent illegality under Section 34 (2A) of the A&C Act is limited; moreover this ground cannot be invoked in international commercial arbitrations seated in India. The High court while relying on Supreme Court's ruling in

**Associate Builders v. Delhi Development Authority:** stating that recovery of compound interest would not violate the Indian law and the same can be awarded by the arbitrators. The case was dismissed with costs of 50000 rupees to be paid to JOPT's counsel after SAIL refused to accept an offer of lowered interest rate of 6% on the principal amount.

### **Arbitration clause does not debar a court from entertaining a writ petition**

A special leave petition under Art 136 of the Constitution entertained by the Supreme Court in the case of **Uttar Pradesh Power Transmission Corporation Ltd. And Anr. V CG Power And Industrial Solutions Limited And Anr.** The petitioner challenged directions issued by Executive Engineer of the power transmission corpora-

tion of U.P to remit labour cess. This was an appeal made in response to the High Court order in favour CG Power. The respondent's, UPPTCL contention in the case was as there is an arbitration clause to resolve any disputes arising out of the contract between the two parties, and thus the court is barred from taking cognizance of the The court noted that even though contract between the parties contained arbitration clause, there is no mention of any arbitration agreement, References were made to **Whirlpool Corporation v Registrar of Trade Marks, Mumbai & Ors., and Harbanslal Sahnia and Ors. Vs. Indian Oil Corporation Ltd.** Thus, the court held that UPPTCL has no power and authority and or jurisdiction to realize labour cess under the Cess Act.

## COMPANY LAW



**NCLT directs MGVCCL not to take coercive action against corporate defaulter Sterling Biotech**

In September of 2020 a special court declared the 4 promoters of the Gujarat-based pharma firm, Sterling Biotech Ltd (SBL),

fugitive economic offenders in an Rs 8,100-crore bank fraud case. Major corporate defaulter which is undergoing liquidation pro-

ceedings initiated in 2019 under Section 7 of the IBC, approached NCLT to plea restrain Madhya Gujrat Vij company LTD (MGVCL) from cutting its electricity connections since they are trying to sell the Company as a going concern. The liquidator sought intervention of tribunal to restrict coercive action against the company and the NCLT obliged to their plea and directed the power distribution company in Gujarat not to take any coercive action against Sterling Biotech

Ltd. until further order.

### **NCLT orders Liquidator for expeditious winding up of Deva Multimedia**

In the case of Antrix corporation v Devas Multimedia, the NCLT in Bengaluru ordered forcible liquidation of Devas multimedia after allowing petition filed by ISRO's commercial arm Antrix Corporation. The tribunal noted that incorporation of Devas was carried out in a "fraudulent manner for unlawful purposes to collude and connive with

Antrix Officials to misuse/abuse process of law, to bring money into India and to divert it under dubious methods to foreign Countries" and that financial position of Devas as per Balance Sheets wasn't in any business for the years 2015-19 and its fixed assets were negligible hence Antrix's petition satisfied the requisite conditions under S. 271 (e) of the Companies Act conjointly read with 272 and 273 to pass winding up orders of the Company.

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