

Landmark Judgments by the Hon'ble NCLAT 1st to 15th November, 2022



1. SHUBH GAUTAM VS. ASNJANI TECHNOPLAST LIMITED (NCLAT – DELHI) [D.O.J. – 01.11.2022]

In the facts of the instant case, the Appellant herein had granted 2 loans to the Respondent vide loan agreement and since the Respondent was unable able to pay back the said loan amount, the Appellant was constrained to move to the Hon'ble Delhi High Court, where the Appellant obtained a Decree in its favour. In furtherance of the Decree, the Appellant preferred a Petition under Section 7 of the Code before the Hon'ble NCLT. However, the same was dismissed on the grounds that Decree Holder does not come within the definition of Financial Creditor and that the debt in question before the AA does not come under the purview of 'Financial Debt'. Aggrieved by the same, an Appeal was preferred before the Hon'ble Appellate Tribunal.

That the Hon'ble NCLAT held that from the features of the Loan agreement it is clear that the amounts advanced by the Appellant to the Respondent are in the nature of Financial Debt which carry time value of money. The Hon'ble NCLAT relied on "Dena Bank (Bank of Baroda) vs C. Shivakumar Reddy" wherein the Apex Court held that Judgement/Decree for money in favour of Financial Creditor passed by any Court would give rise to fresh cause of action for financial creditor to initiate proceedings under Section 7 and on "Kotak Mahindra Bank Limited vs A. Balakrishnan and Anr." wherein it was held that liability in respect of claim arising out of recovery certificate would be a 'Financial Debt' within the meaning of Section 5(8) of the Code. The NCLAT set aside the Order passed by the AA and directed admission of Section 7 Application.

Link: [Mr.+Shubh+Gautam+Vs.+Anjani+Technoplast+Ltd.+NCLAT+New+Delhi.pdf \(ibclaw.online\)](#)

2. Assam Tea Employees Provident Fund Organization Vs. Mr. Madhur Agarwal RP of Hail Tea Ltd.-NCLAT New Delhi [D.O.J-02.11.2022]

In the instant case the Appellant submitted its claim in Form- B for an amount of Rs. 2,10,13,797.92/- on account of default on part of the CD to deposit its Provident Fund Contribution, Provident Fund Administrative Cost, Interest for delay in deposit of the Provident Fund Dues, Interest for delay in deposit of Deposit Linked Insurance Dues and Provident Fund Contribution. The entire claim was accepted by the RP. The Resolution Plan came to be approved by AA and the Appellant was proposed an amount of only Rs. 1,07,21,592/-. Aggrieved by the same, an Appeal was preferred before the Hon'ble NCLAT.

The issue that arose consideration before the Hon'ble NCLAT was whether Provident Fund Dues were entitled to be paid in full. The Hon'ble NCLAT held that the provident fund dues are not the assets of the Corporate Debtor and they have to be paid in full. Hence, the Appellant was clearly entitled for payment of full provident fund dues i.e., an amount of Rs. 2,10,13,798. The Hon'ble NCLAT also relied upon "Regional P.F. Commissioner Vs Ashish Chhawchharia, Resolution Professional for Jet Airways (India) Ltd. & Anr."

Link: <https://cdn.ibclaw.online/insolvency/nclat/2022/Nov/>

3. SLB Welfare Association Vs. M/s PSA IMPEX Pvt. Ltd. (NCLAT-New Delhi) [D.O.J- 04.11.2022]

In the instant case, the Adjudicating Authority vide order dated 29.11.2021 permitted the OC to withdraw the Application, on the submission of the Counsel for the Operational Creditor that Application is hit by Section 10A of the Code. The Application was accordingly dismissed as withdrawn. Thereafter, within a week from the withdrawal of the aforesaid Application, a fresh notice under Section 8 of the Code was issued by the OC dated 06.12.2021 to the CD demanding payment of an unpaid operational debt Rs.5,39,60,674/- including interest. The date of default mentioned in the Application was 31.03.2020. and the date of Acknowledgment as 03.06.2021.

The Hon'ble NCLAT held that the reason given by Hon'ble NCLT for rejecting argument of Section 10A was based on alleged acknowledgement letter dated 03.06.2021 received from the Corporate Debtor. When the date of default given by Operational Creditor in Section 9 Application is 31.03.2020, the mere fact that acknowledgement has been given by Corporate Debtor on 03.06.2021 accepting the debt, shall not change the date of default. Hence, the Application filed under Section 9 was also liable to be rejected being hit by Section 10A, especially when on the same ground of date of default, i.e., 31.03.2020 earlier Application filed under Section 9 was dismissed as withdrawn one week before giving fresh Section 8 Notice.

Link: [SLB+Welfare+Association+Vs.+PSA+IMPEX+Pvt.+Ltd.+--+NCLAT+New+Delhi.pdf \(ibclaw.online\)](#)

4. Chipsan Aviation Pvt. Ltd. Vs. Punj Llyod Aviation Ltd. NCLAT-New Delhi [D.O.J-10.11.2022]

In the instant case the Hon'ble NCLT dismissed Section 9 Petition on the grounds that holding advance payment made by Operational Creditor to the Corporate Debtor does not fall within the four corners of the Operational Debt. Aggrieved by the same, the Operational Creditor preferred an appeal before the Hon'ble NCLAT.

The issue that arose for consideration before the Hon'ble NCLAT whether the advance paid for service even though there could be no contract between CD and OC will consider as operational debt?

The Hon'ble NCLAT held that expression 'in respect of' in Section 5(21) has to be interpreted in a broad and purposive manner. In the facts of the present case, the advance payment of Rs.60 lakhs was clearly an Operational Debt and the Adjudicating Authority committed error in rejecting Section 9 Application. The Hon'ble NCLAT relied upon Consolidated Construction Consortium Limited vs. Hitro Energy Solutions Private Limited.

Link: [Chipsan+Aviation+Pvt.+Ltd.+Vs.+Punj+Llyod+Aviation+Ltd.+--+NCLAT+New+Delhi.pdf \(ibclaw.online\)](#)



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