Summary of Supreme Court Judgements on IBC

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(https://ibbi.gov.in/orders/supreme-court)
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Subject	Details	Key *Ratio Decendi*
NCLT and NCLAT cannot sit in an appeal over the commercial wisdom of the committee of creditors	*Vallal RCK v. M/s. Siva Industries and Holdings Ltd. and Ors.* Civil Appeal Nos. 1811-1812 of 2022 [Dated: 03.06.2022]	1. The promoter of the Corporate Debtor, appellant in the given case, filed a settlement application before NCLT, thereby showing his willingness for an OTS, after the resolution plan was rejected by CoC. 2. Since the said settlement plan was approved by 94.23% majority of the CoC, RP filed an application before NCLT seeking withdrawal of initiation of CIRP against the CD. 3. NCLT rejected the application for withdrawal of CIRP and approval of settlement plan on the grounds that the said Settlement Plan was not a settlement simpliciter under Section 12A of the IBC but a "Business Restructuring Plan" and directed for initiation of liquidation process of CD. 4. An appeal preferred before NCLAT against the order was NCLT was also dismissed on the similar ground. **Issue:** Can the adjudicating authority or the appellate authority sit in an appeal over the commercial wisdom of the committee of creditors? **Decision:** Emphasising the need of minimal judicial interference by NCLT and NCLAT, the Supreme Court held that when 90% or more of the creditors in their commercial wisdom after due deliberations, find it in interest of all the stakeholders to approve the settlement plan and allow the withdrawal of CIRP, the adjudicating authority or the appellate authority cannot sit in judgment reviewing or questioning the decision of the creditors' body, except when the said authorities find the decision of the CoC to be wholly capricious, arbitrary, irrational and *de hors* the provisions of the statute or the Rules.

Recovery Certificate issued by the Debt Recovery Tribunal is equivalent to "financial debt".	*Kotak Mahindra Bank Ltd v. A. Balakrishnan & Anr.* Civil Appeal No. 689 of 2021 [Dated: 30.05.2022]	1. The present appeal was filed challenging the order passed by NCLAT for setting aside the CIRP initiation order passed by the NCLT on the grounds that recovery certificate issued by the Debt Recovery tribunal does not give rise to fresh cause of action and timeline for the purpose of initiation of CIRP. 2. The respondent in the present appeal also alleged the order passed by the Supreme Court in the matter of *Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy* as "*per incurium*" and claimed that the recovery certificate cannot be treated as "financial debt" for the purpose of initiation of CIRP. **Issues:** a. Whether the recovery certificate issued by the Debt Recovery Tribunal is a "financial debt" as per Section 5(8) of IBC, 2016 and accordingly whether the recovery certificate holder is a "financial creditor" as per Section 5(7) of IBC, 2016? b. Does the issue of recovery certificate by the Debt Recovery Tribunal give rise to fresh cause of action and timeline for the purpose of initiation of CIRP? **Decision:** The Hon'ble Supreme Court held that from the plain and simple interpretation of Section 19(22A) of the Debt Recovery Act, it is very much clear that recovery certificate issued by the Debt Recovery Tribunal shall be a decree or order of the Court for the purpose of initiation of winding up proceedings of a Company etc. Further, there is nothing mentioned in the said section that would restrict the use of recovery certificates only for the purpose of initiation of winding up. Therefore, a liability in respect of a claim arising out of a Recovery Certificate would be a "financial debt" within the meaning of clause (8) of Section 5 of the IBC and a holder of the recovery certificate would be a "financial creditor" within the meaning of clause (7) of Section 5 of the IBC. Further, since the time period for making an application for initiation of CIRP is 3 years from the date of accrual of

		the right to sue, it can be concluded that issue of recovery certificate gives rise to fresh cause of action and timeline for the purpose of initiation of CIRP.
Proceeding under SARFAESI cannot be continued after initiation of CIRP and declaration of moratorium	*Indian Overseas Bank v. M/s. RCM Infrastructure Ltd. and Anr.* Civil Appeal No. 4750 of 2021 [Dated: 18.05.2022]	1. The appellant bank on failure of the Corporate Debtor to repay the loans advanced to it, in exercise of the power conferred on it under SARFAESI Act, 2002, sold the assets of the Corporate Debtor through e-auction. 2. When the part payment was due from the auction purchaser and sale certificate was pending execution, the application for initiation of CIRP by the Corporate Debtor was admitted by NCLT and accordingly, moratorium was declared. 3. Pursuant to an application made by the promoter of the CD challenging the impugned transaction, the sale of the property of CD was set aside by NCLT. **Issue:** Whether security realisation by the financial creditor who has received part payment from the purchaser under auction sale of the property of the corporate debtor under Security Interest (Enforcement) Rules, 2002 before the initiation of CIRP, can be continued post the initiation of CIRP and declaration of moratorium? **Decision:** The Supreme Court held that since the sale in the present case is governed by the provision of Rule 8 and 9 of the Security Interest (Enforcement) Rules, 2002, sale will be considered as completed only when the auction purchaser makes the entire payment and the authorised officer issue a certificate of sale of the property in favour of the purchaser. In the given case, part payment of the sale consideration was made by the purchaser and no sale certificate was executed as on the date of admission of the CIRP application. Hence, SC held that being prohibited u/s 14 (1) (c), FC could not continue the proceedings under the SARFAESI Act once the CIRP was initiated and the moratorium was ordered **VKC comments:** This ruling is quite significant, as it holds that the mere act of repossession by a creditor u/s 13 of SARFAESI

		does not amount to transfer; hence, IBC proceedings, moratorium and consequently, the sweep of the resolution plan will cover assets lying under the possession of creditors, to the extent the sale certificate in respect thereof has not been issued. Effectively, therefore, the action taken u/s 13 (4) gets nullified by subsequent IBC proceedings, unless the sale has already been effected before the onset of the moratorium.
Promoters whose shares have been "appropriated" upon default cannot claim to be creditors of the corporate debtor, as mere act of invocation of pledge does not amount to transfer to the pledgee	*PTC India Financial Services Limited v. Venkateswarlu Kari And Another* Civil Appeal No. 5443 of 2019 [Dated: 12.05.2022]	1. A bridge loan was extended by PIFSL to the corporate debtor (NNPIL) and accordingly, a pledge deed was executed in favour of the PIFSL by the holding company (MHPL) of the corporate debtor (NNPIL) pursuant to which shares in the fellow subsidiary (NEVPL) of the corporate debtor was pledged. 2. Post that, the corporate debtor filed an application u/s. 10 of IBC and because of the payment defaults on the part of the corporate debtor, PIFSL also invoked the rights in terms of pledge deed, whereby the DP has accorded PIFSL the status of 'beneficial owner' of the pledged shares of NEVPL. 3. Post invocation of pledge, MHPL filed a claim before IRP as secured creditor stating that PIFSL having been conferred status of 'beneficial owner', MHPL no longer has any title or right over NEVPL shares. Accordingly, MHPL had stepped into the shoes of PIFSL as a creditor of NNPIL to the extent of the value of shares of NEVPL now owned by PIFSL. Contrarily, PIFSL also filed a claim as FC. 4. Both the claims being rejected by IRP, PIFSL and MHPL filed separate applications before NCLT. 5. Upon hearing, NCLT, vide common order, disposed off the applications by accepting the MHPL's claim by primarily relying on the Depositories Act and Regulation 58 of the 1996 Regulations. The order was upheld by NCLAT. **Issue:** Whether invocation of pledge is equivalent to transfer of shares to the lender? If

		yes, can the pledgor post the invocation of pledge claim to be the financial creditor? **Decision**: The Supreme Court set aside the order of NCLAT by holding that t "beneficial ownership" in the context of the Depositories Act should not be confused with beneficial ownership under general law. Obtaining registration as a "beneficial owner" in terms of section 10 of Depositories Act, 1996 read with regulation 58(8) of the SEBI (Depositories and the Participants) Regulations, 1996 does not amount to any transfer of title to the pledgee. It is merely a procedural precondition to sale by the pledgee and that there is no concept of 'sale to self' by the pledgee and that the pledgee is bound by the two options provided under section 176 of the Indian Contract Act, 1872, viz., the right to bring a suit against the pledgor and to retain the goods pledged as collateral security, or to sell the thing pledged on giving reasonable notice to the pledgor and sue for the balance, if any.. Please see our detailed write up on this ruling here.
Scope of Section 60(6) of IBC	*New Delhi Municipal Council v. Minosha India Limited* Civil Appeal No. 3470 of 2022 [Dated: 27.04.2022]	1. It was alleged by the appellant that the moratorium certainly had nothing to do with the delayed launching of proceedings under Section 11(6) of the Arbitration and Conciliation Act, 1996. **Issue:** Whether provision of Section 60(6) of IBC gives rise to a new lease of life to the proceedings at the instance of the CD on the basis of moratorium imposed u/s 14? **Decision:** The Supreme Court held that the entire period during which the moratorium was in force in respect of corporate debtor in regard to a proceeding as contemplated therein at the hands of the corporate debtor shall be excluded in computing the period of limitation.
Employee/ workmen claims under IBC	*Sunil Kumar Jain and others v. Sundaresh Bhatt and others*	1. Some of the workmen and employees of the Corporate Debtor filed the present appeal claiming wages/salaries which is due to them for the pre-initiation and post-initiation period of CIRP along with provident fund, gratuity and pension fund under Section 36(4) of the

	Civil Appeal No. 5910 of 2019 [Dated: 19.04.2022]	IBC in priority over other dues, which are also not paid till date. **Issue:** 1. Whether the liquidator has claim over the provident fund, gratuity fund and pension fund kept out of the liquidation estate assets? 2. Whether the salaries and wages payable to the employees and workers for the CIRP period be included in CIRP costs? **Decision:** 1. The Supreme Court held that when the provident fund, gratuity fund and pension fund ('fund') are kept out of the liquidation estate assets, the share of the workmen dues shall be kept outside the liquidation process and the concerned workmen/employees shall have to be paid the same out of such fund, if any, available and the Liquidator shall not have any claim over such funds. 2. The salaries/wages payable to employee/workmen for the CIRP period shall be included in the CIRP costs only when it is proved that the corporate debtor was a going concern during the CIRP period and the workmen/employees claiming their dues for the CIRP period have actually worked during the CIRP while the CD was a going concern.
Interpretation of the meaning of "operational debt"	*M/s Consolidated Construction Consortium Limited v. M/s Hitro Energy Solutions Private Limited* Civil Appeal No. 2839 of 2020 [Dated: 04.02.2022]	1. Pursuant to the terms of contract, the receiver of the goods deposited a security deposit of Rs. 50,00,000 with the supplier. On termination of the contract, the appellant refunded the amount back to the receiver on behalf of the supplier. 2. And now this appeal was filed against the supplier for claiming back the refund of the security deposit which was refunded by the appellant to the purchaser on termination of the contract. **Issue:** Whether the term "operational creditor" includes only those who supply goods or services to a corporate debtor and exclude those

		who receive goods or services from the corporate debtor. **Decision:** As defined under section 5(21) of the Code *"operational debt" means a claim* ***in respect of*** *the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.* The Supreme Court in the present case interpreted the phrase "***in respect of****"* in a broad and purposive manner to come upon with a balance between the letter and spirit of the statute by including all those who provide or receive operational services from the corporate debtor, which ultimately lead to an operational debt. Therefore, 'operational debt' will also include a debt arising from a contract in relation to the supply of goods or services by the corporate debtor.