



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

“Opportunity is missed by most people because it is dressed in overalls and looks like work.”

➤ **Related Party Status Established Through Agreement Cannot Be Changed By Sending Termination Notice Against Terms Of Agreement: NCLAT**

The National Company Law Appellate Tribunal (NCLAT) New Delhi bench of Justice Rakesh Kumar Jain (Judicial Member) and Mr. Naresh Salecha (Technical Member) has held that related party status established through an agreement under Section 5(24) of the **Insolvency and Bankruptcy Code, 2016 (Code)** cannot be changed by sending a termination notice in contravention of expressed terms of the agreement.

The Corporate Debtor invited the manufacturers to set up their units at mega food park (food park) and the manufacturers are promised basic utilities such as power, steam, water, refrigeration, cold storage etc.

Schreiber Dynamix Dairies Pvt. Ltd. (Appellant) executed a lease deed dated 06.11.2015 with the Corporate Debtor which was subsequently registered on 09.03.2016, pursuant to which the Corporate Debtor leased a part of its food park on a long-term lease basis to the Appellant. The lease deed was effective for a period of 20 years with a lock in period of 10 years expiring on 28.02.2026.

The Appellant and the Corporate Debtor also entered into a **Utility Services and Common Facilities Agreement (Utility Services Agreement)** on 08.02.2016. As per this agreement, the Corporate Debtor was to provide uninterrupted and timely provisions of various utilities including but not limited to warehousing, steam, refrigeration, soft water, cold storage etc.

Source: Live Law

Read Full news: <https://www.livelaw.in/ibc-cases/nclat-related-party-status-established-through-agreement-cannot-be-changed-by-sending-termination-notice-against-terms-of-agreement-284177>

➤ **Non-Registration Of “Charge” U/S 77 Of Companies Act Does Not Bar Creditor From Being Treated As “Secured Creditor” Under IBC During CIRP: NCLAT**

The **National Company Law Appellate Tribunal (NCLAT)**, New Delhi bench comprising **Justice Yogesh Khanna (Judicial Member)** and **Mr. Arun Baroka (Technical Member)** have held that non-registration of “charge” in terms of Section 77 of Companies Act, 2013 is not a *sine qua non* for a Creditor to be treated as a “Secured Creditor” under section 3(30) of the Insolvency and Bankruptcy Code, 2016 (IBC) by the Resolution Professional (RP).

The Tribunal observed that the intent of legislature was never to apply Section 77 of the Companies Act upon the Corporate Insolvency Resolution Process (CIRP) because the treatment of “secured creditor” and “security interest” in the liquidation process is entirely different from that of during the CIRP.

Source: Live Law

Read Full news: <https://www.livelaw.in/ibc-cases/nclat-non-registration-of-charge-us-77-of-companies-act-not-bar-creditor-from-being-treated-as-secured-creditor-under-ibc-during-cirp-284084>

➤ **No Bar On Corporate Debtor From Contesting Application U/S 9 Of IBC Even If No Reply Is Given To Demand Notice Issued U/S 8: NCLAT**

The **National Company Law Appellate Tribunal (“NCLAT”)** New Delhi bench of **Justice Rakesh Kumar Jain (Judicial Member)**, **Mr. Naresh Salecha (Technical Member)** and **Mr. Indevar Pandey (Technical Member)** has held that just because no reply was given by the Corporate Debtor to the demand notice issued by the Operational Creditor under section 8 of the **Insolvency and Bankruptcy Code, 2016 (Code)**, the Corporate Debtor cannot be precluded from contesting the application filed under section 9 of the Code.

Source: Live Law

Read Full news: <https://www.livelaw.in/ibc-cases/no-bar-on-corporate-debtor-from-contesting-application-us-9-of-ibc-even-if-no-reply-is-given-to-demand-notice-issued-us-8-of-code-nclat-284178>

