

INSOLVENCY INSIGHT

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The Hon'ble NCLAT, Delhi in the case of Anil Kumar v. Mukund Choudhary Company Appeal (AT) (Insolvency) No. 38 of 2025 has held that the 180-day moratorium period under Section 101(1) of the IBC is mandatory and cannot be extended as the provision explicitly states that the moratorium "shall cease to have effect" at the end of 180 days or upon the adjudication of the repayment plan under Section 114, whichever is earlier.

This is a case where a Personal Guarantor filed an application under Section 94(1) of the IBC, leading to an interim moratorium and the appointment of the Appellant as Resolution Professional (RP). The application was admitted on 30.04.2024, starting the Personal Insolvency Resolution Process (PIRP) with a 180-day moratorium. After a public announcement and submission of a repayment plan, creditors requested changes. The RP sought a 90-day extension, which the Adjudicating Authority granted on 04.12.2024 without addressing the moratorium, leading to this appeal.

The NCLAT, Delhi analyzed whether the 180-day moratorium under Section 101(1) of the IBC can be extended. The Tribunal examined the statutory language, which states that the moratorium "shall cease to have effect" after 180 days or upon the decision on the repayment plan under Section 114, whichever comes first. Referring to Supreme Court rulings, the Tribunal concluded that when the language is clear, no additional interpretation is needed. It also distinguished this case from others where extensions were allowed, stating that Section 101(1) does not permit such discretion.

The NCLAT concluded that the 180-day moratorium under Section 101(1) is mandatory and cannot be extended. The statutory provision automatically ends the moratorium after 180 days, and neither the NCLT nor the NCLAT can extend this period beyond what the law allows.

NCLAT Ruling: No Eviction of Tenants Under IBC in Absence of Contractual or Legal Change

In the case of Sumati Suresh Hegde and Ors. v. Anand Sonbhadra (RP) and Ors., Comp. App. (AT) (Ins) No. 884 of 2024, the Hon'ble NCLAT, New Delhi, held that the insolvency process under the IBC does not empower the Resolution Professional (RP) to evict tenants unless there is a change in the tenant's status by contract or by operation of law.

The appellants had inherited tenancy rights after their predecessor's death, and a civil court decree had previously established their tenancy in the disputed property. After the Corporate Debtor, Champalalji Finance Pvt. Ltd., filed a suit for eviction, the RP sought possession under Section 60(5) of the IBC and Section 25(2)(a) without following the eviction suit process. The NCLT ruled that the RP was entitled to take possession of assets, including leased properties, overriding the protections offered by the Maharashtra Rent Control Act, 1999.

The NCLAT analyzed whether the NCLT had the jurisdiction to order eviction under the IBC. It emphasized the difference between tenancy and lease, asserting that tenancy can only be terminated through the Maharashtra Rent Control Act and not under the IBC. The Tribunal also found that precedents cited by the appellants supported their position, particularly in cases where tenancy was upheld under

similar circumstances.

The NCLAT concluded that once a tenant, always a tenant unless the status changes by contract or law. As the tenancy rights had not changed, the RP's application under the IBC was not maintainable, and the appeal was allowed, setting aside the NCLT's eviction order.

The Operational Creditor does not qualify under Section 5(20) of the IBC if the relationship between the OC and CD is that of 'joint suppliers.'

The NCLT dismissed Transline Technologies Ltd.'s application under Section 9 of the Insolvency and Bankruptcy Code, 2016, to initiate CIRP against Experio Tech Pvt. Ltd. The Tribunal ruled that Transline did not qualify as an "Operational Creditor" under Section 5(20) of the Code, as the relationship was one of joint suppliers, not debtor and creditor.

Transline Technologies, an Operational Creditor, filed the petition against Experio Tech, seeking CIRP initiation. Transline, which provides IT-related electronic equipment, raised invoices totalling Rs. 5,34,92,510/- for supplies to Experio Tech. The MoU signed on 03.09.2021 outlined their business arrangement, where Transline exclusively supplied raw materials to Experio Tech, which then supplied finished products to third parties. Both agreed to jointly manage the supply and share profits equally from sales.

The Tribunal found that the terms of the MoU reflected a joint venture between the parties rather than a typical creditor-debtor relationship. It was evident that Transline Technologies and Experio Tech were working together as joint suppliers.

The Tribunal relied on the NCLAT's decision in Prashanth Shekara Shetty to highlight that the Operational Creditor must meet the criteria under Section 5(20) of the Code. The nature of the arrangement did not meet the required conditions for filing an application under Section 9, as there was no distinct debtor-creditor relationship between the parties.

In light of the above analysis, the Tribunal held that the application filed by Transline Technologies Ltd. for initiating CIRP against Experio Tech Pvt. Ltd. was not maintainable. Therefore, the petition was dismissed.



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