Debt & Default

1. Brand Realty Services Ltd. V. Sir John Bakeries India Pvt. Ltd. [(IB) 1677 (ND)/2019] NCLT order dt.22.07.2020

When the definitions of 'operational debt', 'debt' and 'default' are read together, it can be said that the definition of 'debt' as defined under the Code does not mean 'operational debt' only, rather it includes 'financial debt' as well as liability or obligation in respect of a claim, which is due from any person, and 'default' means non-payment of 'debt', but in order to trigger section 9 of the Code, an OC is required to establish a 'default' for non – payment of 'operational debt' as defined under section 5(21) of the Code and if a person fails to establish that, they cannot initiate CIRP.

2. Rita Kapur V. Invest Care Real Estate LLP and Ors. [CA (AT) (Ins.) No. 111 of 2020] NCLAT order dt. 02.09.2020

It is latently and patently clear that once the 'debt' is converted into 'capital', it cannot be termed as 'financial debt'.

3. Innoventive Industries Ltd. V. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017

The 'debt' is disputed so long as the 'debt' is 'due' i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of AA, that it may reject an application and not otherwise.

4. Transmission Corporation of Andhra Pradesh Ltd. V. Equipment Conductors and Cables Ltd. [Civil Appeal No. 9597 of 2018] SC order dt. 23.10.2018

Existence of an undisputed 'debt' is *sine qua non* of initiating CIRP.

5. Krishna Enterprises V. Gammon India Ltd. [CA (AT) (Ins.) No. 144 of 2018 and other appeals] NCLAT order dt. 27.07.2018

If in terms of any agreement, interest is payable to the OC or the FC, then 'debt' will include interest, otherwise, the principal amount is to be treated as 'debt' which is the liab ility in respect of the 'claim' which can be made from the CD.

6. Park Energy Pvt. Ltd, V. Syndicate Bank and Anr. [CA (AT) (Ins.) No. 270 of 2020] NCLAT order dt. 24.08.2020

Mere fact of 'debt' being due and payable is not enough to justify the initiation of CIRP at the instance of the FC, unless the 'default' on the part of the CD is established.

7. Innoventive Industries Ltd. V. ICICI Bank & Anr. [Civil Appeal Nos 8337-8338 of 2017] SC order dt. 31.08.2017

'Default' is defined in section 3(12) of the Code in very wide terms as non- payment of a 'debt' once it becomes due and payable, which includes non- payment of even part thereof or an instalment amount.

8. B.K. Educational Services Pvt. Ltd. V. Parag Gupta and Associates [Civil Appeal No. 23988 of 2017 and other appeals] SC order dt. 11.10.2018

The context of section 3(12) of the Code is actual non- payment by the CD when a 'debt' has become due and payable.

9. R. Sridharan V. Assets Care & Reconstruction Enterprise Ltd. [CA (AT) (Ins.) No. 241 of 2018] NCLAT order dt. 25.07.2018

An amount not released to FC due to misunderstanding between the consortium of banks, cannot be treated as 'default'.

10. Promila Taneja V. Surendri Design Pvt. Ltd. [CA (AT) (Ins.) No. 459 of 2020] NCLAT order dt. 10.11.2020

The legislature was conscious regarding liabilities arising from a particular type of lease and it made specific provision in section 5(8)(d) to make it a 'financial debt'. No such provision was made in respect of an operational debt.

11. Anand Rathi Global Finance Ltd. V. Doshi Holdings Pvt. Ltd. [C.P.(IB)-1220/(MB)/2020] NCLT, Mumbai order dt.19.02.2021

CIRP can be initiated against a CD which has 'defaulted' in repaying the loan in the capacity of co-borrower/pledgor, as the liability of borrower and co-borrower/pledgor is co-extensive

under the Indian Contract Act, 1872.

12. State Bank of India V. Shri Lal Mahal Ltd. [IB-613/ND/2019] NCLT, New Delhi order dt. 25.02.2021

It is beyond purview of the AA to venture into the question of the reason for the 'default' and the intention behind the 'default' as submitted by the CD especially when the application is filed under section 7 of the Code.