

ICSI IIP - IBC KNOWLEDGE CAPSULE 4

Role of Adjudicating Authorities

The following table shows a list of the roles to be performed by Adjudicating Authorities (specifically, NCLT) during the Corporate Insolvency Resolution Process and the Liquidation Process. The list is divided into two types of categories with respect to the source that their role is defined by.

Supreme Court	
NCLAT	

S. No.	ROLE DEFINED	SOURCE	DATE OF THE ORDER
1.	Adjudicating Authority has jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes such as those arising under MMDR Act, 1957 and the rules issued there under, especially when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action.	<i>Embassy Property Development Pvt. Ltd. Vs. State of Karnataka & Ors.</i>	03.12.2019
2.	The limited judicial review is available to AA wherein the AA cannot interfere on merits with the	<i>Committee of Creditors of Essar Steel India Limited</i>	15.11.2019

	commercial decision taken by the CoC.	<i>Vs. Satish Kumar Gupta & Ors.</i>	
3.	If on a given set of facts, that the parameters such as the fact that the CD needs to keep going as a going concern during the CIRP; maximize the value of the assets, etc have not been kept in view, AA may send a resolution plan back to the CoC to re-submit such plan after satisfying the parameters.	<i>Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.</i>	15.11.2019
4.	Upon receipt of a “rejected” resolution plan, the AA is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1).	<i>K. Sashidhar Vs. Indian Overseas Bank</i>	05.02.2019
5.	The legislature, consciously, has not provided any ground to challenge the “commercial wisdom” of the individual FCs or their collective decision before AA.	<i>K. Sashidhar Vs. Indian Overseas Bank</i>	05.02.2019
6.	A party can directly approach AA for withdrawal or settlement at any stage if the CoC is not constituted which will be decided by the AA after hearing all the concerned parties.	<i>Swiss Ribbons Pvt. Ltd. Vs. Union of India</i>	25.01.2019
7.	The CoC does not have the last word on the subject; if CoC arbitrarily rejects a just settlement and/or withdrawal claim, the AA can always set aside such decision under section 60 of the Code.	<i>Swiss Ribbons Pvt. Ltd. Vs. Union of India</i>	25.01.2019

8.	The AA and the CoC oversee the Administrative functions of the RP.	<i>Swiss Ribbons Pvt. Ltd. Vs. Union of India</i>	25.01.2019
9.	An aggrieved resolution applicant can approach the AA for relief only after a resolution plan has been considered by the CoC after voting and not prior to that.	<i>Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.</i>	04.10.2018
10	AA alone has jurisdiction when it comes to applications and proceedings by or against a corporate debtor covered by the Code, making it clear that no other forum has jurisdiction to entertain or dispose of such applications or proceedings.	<i>Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.</i>	04.10.2018
11	The timelines that are to be adhered to by the NCLT (AA) and NCLAT are of great importance, and that reasons must be recorded by either the NCLT or NCLAT, if the matter is not disposed of within the time limit specified.	<i>Arcelor Mittal India Private Limited Vs. Satish Kumar Gupta and Ors.</i>	04.10.2018
12	It is the duty of AA to find out whether a suitable resolution plan is there to be approved instead of going for liquidation	<i>Quantum Limited Vs. Indus Finance Corporation Ltd.</i>	20.02.2018
13	It is always open the AA to exclude certain period for the purpose of counting the total period of 270 days.	<i>Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors.</i>	08.05.2018
14	The AA should not replace an RP	<i>Sharvan Kumar</i>	28.05.2018

	except for special circumstance and good reasons.	<i>Vishnoi Vs. Crown Alba Writing Instruments P. Ltd.</i>	
15	The AA not being a Court or Tribunal & CIRP not being litigation, has no jurisdiction to decide whether a foreign decree is legal or illegal.	<i>Usha Holdings LLC and Another Vs. Francorp Advisors Private Limited</i>	30.11.2018
16	AA has no power to convert a CIRP into fast track CIRP, to extend CIRP beyond 270 days, and to reject the fees of a RP which has already been decided by CoC	<i>Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd. & Anr.</i>	03.01.2019
17	AA has no jurisdiction to reject the application under Section 9 on the ground that Corporate Debtor is MSME.	<i>Bannari Amman Spinning Mills Ltd. Vs. My Choice Knit & Apparels Pvt. Ltd</i>	03.09.2019
18	AA, while hearing Section 7 application, is not required to consider if a resolution for a given company would be possible or not and whether or not it would be possible to keep it a going concern.	<i>Mr. Vineet Khosla Vs. Edelweiss Asset Reconstruction Financial Creditor Company Ltd.</i>	06.09.2019
19	AA is not required to check the viability, feasibility and other conditions of the resolution plan in respect of corporate debtor under CIRP.	<i>Sreeram E. Techno School Pvt. Ltd. Vs. Beans and More Hospitality Pvt. Ltd.</i>	11.09.2019
20	AA should not have passed order for replacement of IRP when the CoC with 100% majority has taken	<i>Bank of Baroda Vs. Maa Tara Ispat Industries Private</i>	12.09.2019

	decision under Section 22.	<i>Limited</i>	
21	AA cannot straight away direct any investigation to be conducted by the Serious Fraud Investigation Office	<i>Mr. Lagadapati Ramesh Vs. Mrs. Ramanathan Bhuvaneshwari</i>	20.09.2019
22	Subsequent bench of AA has no jurisdiction to sit in appeal over the order passed by earlier bench not it is competent to deliberate on such issue.	<i>Pratima P. Shah, Vs. IDBI Bank Limited & Ors.</i>	30.09.2019
23	It is not open to the AA to deliberate on the issue whether e-Stamp is a forged document or not.	<i>Karan Goel Vs. Pashupati Jewellers & Anr.</i>	01.10.2019
24	AA has no jurisdiction to decide the question of legality and propriety of the Corporate Guarantee executed by the Corporate Debtor.	<i>Padmaiah Vuppu Vs. Reliance Capital AIF Trustee Company Pvt. Ltd. & Ors.</i>	14.10.2019
25	The AA is not a civil court to decide the breach of contracts between the parties.	<i>Saregama India Limited Vs. Home Movie Makers Private Limited</i>	23.10.2019

Notes:

Abbreviations used:

AA: Adjudicating Authority (NCLT)
IBBI: Insolvency and Bankruptcy Board of India
IPA: Insolvency Professional Agency
ICSI IIP: ICSI Institute of Insolvency Professionals
IP: Insolvency Professional
CIRP: Corporate insolvency resolution process
IRP: Interim Resolution Professional
AR: Authorised Representative
COC: Committee of Creditors
CD: Corporate Debtor
FC: Financial Creditor
OC: Operational Creditor
Code: Insolvency and Bankruptcy Code, 2016

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