

Bank guarantee can be invoked even during moratorium period issued under section 14 of the IBC.

CASE TITLE	Bharat Aluminium Co Ltd Vs. JP Engineers Pvt Ltd & Ors ¹
CASE CITATION	COMPANY APPEAL (AT)(INSOLVENCY) NO.759 OF 2020
DATE OF ORDER	26.02.2021
COURT/TRIBUNAL	NCLAT, New Delhi
CASES REFERRED	UP State Sugar Corporations Vs. Sumac International Ltd.
SECTION/REGULATION REFERRED	Section 14 of IBC, 2016

Brief of the case:

The appellant 'Bharat Aluminium Company Limited' filed this Appeal against the order dated 31.07.2020 passed by the National Company Law Tribunal New Delhi, Bench whereby NCLT dismissed the appellant's application and directed appellant not to demand the release of bank guarantee amount from the Andhra Bank, in view of the moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC) against the Corporate Debtor.

Decision:

Hon'ble NCLAT, allowed the appeal with following observations:

"37. With the aforesaid, we hold that the Corporate Debtor has issued bank guarantee for ensuring the price of goods. The bank guarantee is irrevocable and unconditional and payable on demand without demur. The assets of the surety are separate from those of the corporate debtor, and proceedings against the corporate debtor may not be seriously impacted by the actions against assets of third party like surety. Bank guarantee can be invoked even during moratorium period issued under section 14 of the IBC in view of the amended provision under section 14 (3)(b) of the IBC.

38. Ld. Adjudicating Authority has not considered the aforesaid amended provision. Therefore, the impugned order is not sustainable in law. Hence, the impugned order is hereby set aside..."



QR CODE FOR FULL ORDER/JUDGEMENT:

¹<https://nclat.nic.in/Useradmin/upload/5980202866038e2b16744f.pdf>