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Execution of an Award or Decree during Corporate Insolvency Resolution Process (CIRP): The Controversy between CIRP and Arbitral Awards as well as other Decree Holders

Debarun Mukherjee[*] *& Saurabh Verma*[**]

ABSTRACT

*The coexistence of the Insolvency and Bankruptcy Code, 2016 (**IBC**) and the Arbitration and Conciliation Act, 1996 (**the 1996 Act**) has sparked a complex legal discourse surrounding the execution of arbitral awards in the context of the Corporate Insolvency Resolution Process (**CIRP**). The analysis attempts to shed a light on the issue of executing an arbitral award during CIRP by thoroughly exploring the chronological progression of the judicial stance on this matter. This involves a dual exploration: first, evaluating the legality of entertaining an application based on a court decree or arbitral award, and second, addressing the issue of calculating the time limit for such applications. This exploration will be facilitated through a comprehensive review of pertinent judgments rendered by the esteemed National Company Law Tribunals (**NCLT**), the National Company Law Appellate Tribunal (**NCLAT**), and the apex authority, the Supreme Court. By tracing the evolution of judicial interpretations and decisions, a deeper understanding of the nuanced aspects surrounding the maintainability of applications derived from decrees or awards and the intricacies of time limitation calculation will be uncovered. The study explores the question of whether an arbitral award constitutes a claim against the corporate debtor. It also explores the maintainability of arbitral awards or decrees by other*

[*] Debarun Mukherjee is a fourth-year student at NLC, Bharati Vidyapeeth University Pune.
[**] Saurabh Verma is a Legal Manager at Tata Motors Ltd.

*adjudicating authorities like Debt Recovery Tribunals (**DRT**) and Real Estate Regulatory Authorities (**RERA**), and touches upon the execution of foreign arbitral awards.*

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I. INTRODUCTION TO THE INSOLVENCY PROCESS

The IBC has changed the former legislations regarding the insolvency process of a company. The Code entitles the NCLT to adjudicate matters related to the insolvency of any corporation. The notion of insolvency

arises when a company is unable to meet its obligations and is unable to clear its debts and dues with its creditors. The inception of the insolvency process starts with the application for insolvency by the creditors of the company as well as the company itself if it seems to wind up due to its inability to meet its obligations. Once the application under Section 94[1] of the Code is made by the suitable party, the NCLT has to either accept or reject the application within a reasonable time. If the application is accepted, the tribunal must appoint an interim resolution professional (**IRP**) to invite all the concerned creditors, both financial creditors and operational creditors, to form the Committee of Creditors (**CoC**). The primary function of the CoC is to determine the best possible course of action for the company to recover from bankruptcy and ultimately winding up.

The authors attempt to delve into the issues pertaining to interplay of arbitration and insolvency by critically examining and analysing whether an arbitral award holder can constitute a member of the Committee of Creditors (**CoC**) and the rights available to them as part of the process. Where decree holders, including arbitral award holders, are not members of the CoC, the authors lay out the rights and remedies available at their disposal. However, most importantly, the authors first aim to answer the issue as to whether the decree granted by other adjudicating authorizes constitutes a valid claim in the insolvency process and the effect of limitation and moratorium on the execution of such decrees/awards.

[1] The Insolvency and Bankruptcy Code, 2016, s 94. Application by debtor to initiate insolvency resolution process: (1) A debtor who commits a default may apply, either personally or through a resolution professional, to the Adjudicating Authority for initiating the insolvency resolution process, by submitting an application.

The issue in controversy addressed in this paper is the composition of the CoC and the ability of certain classes to be considered as creditors substantiating their claims with the company. For the sake of brevity to this research the specific classes of creditors concerned are those who have a valid decree, arbitral award or special judicial orders such as RERA or DRT. The research aims to explore various legal interpretations issued by the judiciary, addressing a myriad of issues stemming from the application and understanding of different provisions within the Code. Nevertheless, certain aspects within this realm have proven to be particularly captivating due to the emergence of contradictory judgments that were eventually resolved or are still awaiting definitive resolution. One such intriguing issue revolves around a fundamental question regarding the execution of an arbitral award from a competent authority. This exploration delves into the nuances surrounding the CoC composition and the eligibility of specific classes as creditors, aiming to provide insights into the complexities that arise in insolvency and bankruptcy proceedings. It is worth noting that these decrees and awards are enforceable in India as if they were civil court decrees, according to the provisions outlined in the Arbitration and Conciliation Act, 1996.[2] This scenario arises when financial or operational creditors holding an arbitral award against the corporate debtor in question, seek its inclusion within the ambit of CIRP under the provisions of the Code.

The roots of this complex matter are intricately tied to the definitions presented in the Code, namely those of 'claim', 'creditor', 'debt', 'default',

[2] The Arbitration and Conciliation Act, 1996, s 34.

'financial debt', 'financial creditor', 'operational debt', and 'operational creditor'.[3] To comprehensively address this issue, this analysis will commence by providing a concise overview of these crucial definitions, as stipulated within the Code. This scrutiny will not only shed light on the intricacies of the legal landscape but also contribute to the ongoing refinement of insolvency and bankruptcy procedures in India.

II. RIGHTS OF A DECREE HOLDER DURING CIRP

In *Swiss Ribbon Pvt. Ltd. v Union of India,*[4] the Supreme Court addressed a fundamental concern regarding the constitutionality of Sections 5(7) and 5(8) of the Code, delineating the definitions of 'financial creditor' and 'financial debt'. The CIRP Regulations outline the scrutiny and validation of claims by the resolution professional, who ultimately assesses the amount for each claim. The Code also provides a detailed definition of 'related party'. A closely linked question is whether, even if such an application is considered maintainable under the Code, the limitation period for pursuing the claim should commence from the initial default by the corporate debtor or from the date of the respective decree or award. This complexity has consistently puzzled judicial authorities, emphasizing the crucial need for clarity and consistency in interpreting and applying the Code's provisions. As the Code matures and its jurisprudence evolves, resolving such intricate matters will significantly shape the trajectory of insolvency and bankruptcy proceedings in India. Additionally, an examination will be conducted to ascertain whether insights can be derived from the application forms

[3] The Insolvency and Bankruptcy Code 2016, s 3(10).
[4] *Swiss Ribbon Pvt Ltd v Union of India* (2019) 4 Supreme Court Cases 17.

prescribed for financial creditors and operational creditors when submitting petitions before the esteemed NCLT.

The Hon'ble Supreme Court, in its judgment in *K. Kishan v M/s Vijay Nirman Company Private Limited*,[5] deliberated on the maintainability of an application under Section 9 of the Code. This application, filed by an operational creditor, was grounded in an arbitral award that had been contested under Section 34 of the 1996 Act. Importantly, the corporate debtor had initiated proceedings for the challenge, and the matter was still pending adjudication at the time of consideration. The central issue before the court was whether such an application under the Code could be deemed maintainable under these circumstances. relied upon its judgment in *Mobilox Innovations*[6] and issued a stern warning regarding the provisions of the Code being misused by decree/award holders in lieu of debt enforcement procedures recognized in law: *"Following this judgment, it becomes clear that operational creditors cannot use the Insolvency Code either prematurely, or for extraneous considerations, or as a substitute for debt enforcement procedures."*[7]

III. EFFECT OF THE MORATORIUM PERIOD DURING THE INSOLVENCY PROCESS

The interaction between an arbitral award and the CIRP process can be complex and is subject to legal interpretation. Generally, during the CIRP, there is a moratorium period in place where creditors, including

[5] *K. Kishan v M/s Vijay Nirman Company Private Limited* [2017] SC Civil Appeal No. 21824 of 2017.
[6] *Mobilox Innovations v Kirusa Software* AIR 2017 SC 4532.
[7] Ibid.

arbitral award holders, are barred from taking any action to recover their debts or enforce their rights against the distressed company. Following the initiation of corporate insolvency resolution, the NCLT sets a 180-day moratorium[8] on the debtor's operations. This is known as a 'calm period', during which no judicial proceedings for recovery, enforcement of security interests, sale or transfer of assets, or cancellation of key contracts against the debtor is permitted by creditors, including arbitral award holders. This moratorium is intended to provide a breathing space for the company to undergo the resolution process without facing multiple legal actions from its creditors.

The pivotal case of *Dena Bank v C. Shivakumar*[9] saw the Supreme Court addressing the crucial matter of whether a petition under Section 7 of the Code is subject to limitation. The NCLAT's verdict indicated that the Bank's appeal under Section 7 of the IBC had exceeded the permissible time limit. This determination arose from the absence of any documented evidence suggesting that the corporate debtor had acknowledged its debt owed to the appellant Bank. The communications exchanged by the respondents were aimed at resolving disputes amicably and concluding ongoing litigation. Consequently, these communications could not be construed as a formal acknowledgement of debt under Section 18 of the Limitation Act, 1963.[10] However, the corporate debtor's financial statements and balance sheets, which inherently indicated an

[8] The Insolvency and Bankruptcy Code 2016, s 12(1) – "Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process" (emphasis supplied).
[9] *Dena Bank v C Shivakumar* [2021] SC Civil Appeal No. 1650 of 2020.
[10] The Limitation Act, 1963, s 18.

acceptance of liability, effectively extended the time limitation by a period of three (3) years. This extension was further reinforced by the issuance of a recovery certificate in favour of the appellant Bank.

IV. DOES ARBITRAL AWARD CONSTITUTE A CLAIM AGAINST THE CORPORATE DEBTOR?

An arbitral award is a decision made by an arbitration tribunal in a dispute between parties. It is a final and binding resolution that typically determines the rights and obligations of the parties involved. In the context of corporate debtors, an arbitral award can indeed constitute a claim against the corporate debtor if it involves a monetary award or a determination of obligations owed by the corporate debtor to the opposing party.

The NCLAT, in the case of *Ashok Agarwal v Amitex Polymers Private Limited*,[11] overturned the decision of the NCLT, New Delhi Bench, which had ruled that an application made under Section 9 of the IBC by an operational creditor, based on a consent decree issued by the Ld. Additional District Judge, was not valid. The NCLAT noted that there were precedents indicating that, prior to the implementation of the IBC, an action for executing a decree and a winding-up petition could both be pursued simultaneously based on the same decree.

[11] *Ashok Agarwal v Amitex Polymers Private Limited* [2021], NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 608 of 2020.

The NCLAT further observed that the judgment in the case of *Sushil Ansal*[12] had been stayed by the Supreme Court. In light of these considerations, the NCLAT concluded that the appellant, an operational creditor, had submitted a claim in the form of a Company petition asserting that the corporate debtor owed a specific amount, and this claim was supported by a 'consent decree' from a civil suit. The NCLAT deemed the appellant, being a 'decree holder', to fall under the definition of 'operational creditor' as outlined in Section 5(20) of the Code. The NCLAT disagreed with the NCLT's view that had excluded 'decree holders' from this definition, declaring such interpretation to be legally unsustainable. Furthermore, the NCLAT referred to Section 3(10) of the Code, which defines 'creditor', and emphasised that even 'decree holders' could not be excluded from filing applications under the Code. Thus, the NCLAT concluded that the term 'creditor', as per Section 3(10), encompasses both 'financial creditors' and 'operational creditors'.

In essence, the NCLAT's judgment affirmed the inclusion of 'decree holders' as 'operational creditors' under the IBC and criticized the NCLT's opposing interpretation as legally unfounded. On several occasions the constitutional validity of the Code is questioned as it fails to recognize decree holders as a valid creditor and, as discussed in the case of *Sri Subhankar Bhowmik v Union of India & Anr.,*[13] a significant legal development unfolded with implications for the interpretation of the IBC. The Tripura High Court, in its ruling, declared Section 3(10) of the Code as unconstitutional on the grounds that it failed to encompass

[12] *Sushil Ansal v Ashok Tripathi & Ors,* (2020) Company Appeal (AT) (Insolvency) No. 452 of 2020, NCLAT.
[13] *Sri Subhankar Bhowmik v Union of India & Anr* [2022] SC Special Leave to Appeal (C) No. 6104 of 2022.

'decree holder' within the ambit of the term 'creditor'. This decision marked a departure from the prior understanding, contending that excluding 'decree holders' from the 'creditor' definition contradicted fairness and equity principles. The court's rationale centered on the belief that a 'decree holder', having a legal judgment entitling them to a specific sum, deserves equal treatment with other creditors under the Code. By deeming Section 3(10) unconstitutional, the court aimed to rectify this anomaly and ensure a more comprehensive and just interpretation of the term 'creditor' within the legislative framework. The ruling carries implications for the treatment of 'decree holders' in insolvency proceedings, aligning the legal landscape with a more inclusive understanding of creditors' rights in line with constitutional principles.

The verdict indeed acknowledged the decree-holder as a creditor, but with a crucial caveat: a decree holder does not align with the classifications of operational or financial creditors. This distinction holds significant importance, offering clarity on the nuanced differences within the legal framework. The court's discernment underscores the necessity of recognizing this differentiation to navigate the complexities inherent in the categorization of creditors under the IBC.

V. THE AMBIGUITY SURROUNDING THE APPLICABILITY OF AWARDS AND DECREES BY OTHER ADJUDICATING AUTHORITIES

*A. The Order of the Debt Recovery Tribunal (**DRT**)*

The interplay between the principles laid down by the Hon'ble Supreme Court and the provisions of the IBC has led to a complex legal conundrum. While the Supreme Court has provided clarity on the admissibility of applications under Section 7 of the IBC based on decrees or awards, the application of the same principle to Section 9 remains uncertain. This section delves into this ambiguity and examines how recent judicial decisions and legal provisions contribute to the discourse.

a. Established Principle: Judicial Predicament of the Supreme Court and the NCLAT

The Hon'ble Supreme Court's ruling in *Dena Bank (now Bank of Baroda) v C. Shivakumar Reddy*[14] has seemingly settled the issue of applying Section 7 based on decrees or awards. However, the extension of this principle to Section 9 remains debated due to contradictory interpretations by the NCLAT. While the Hon'ble NCLT, Bengaluru Bench, approved an application under Section 7 grounded on a decree and a Recovery Certificate issued by the DRT, the NCLAT overturned this decision. This section scrutinizes the conflicting reasoning presented by the NCLAT and the subsequent overruling by the Supreme Court. A significant aspect of this debate is the implications of favourable judgments, decrees, or certificates of recovery in favour of Financial Creditors. This section also investigates how these outcomes create a fresh basis for invoking Section 7 proceedings under the IBC, regardless of the debt's original classification.

[14] *Dena Bank* (n 9).

b. Analysis of Section 434(1)(b) of the Companies Act, 1956

The Companies Act, 1956, a precursor to the modern legal framework governing companies in India, provided vital provisions that shed light on a company's financial health and its capacity to meet its obligations. Within this legislative context, Section 434(1)(b) assumed importance as a barometer for assessing a company's capability to settle its debts. This provision establishes a connection between the company's inability to fulfil legal processes stemming from decrees or orders of Courts or Tribunals and its overall financial distress. Section 434(1)(b)[15] articulates that a company is considered incapable of settling its debts if it defaults in fulfilling any execution or legal process arising from a decree or order in favour of a creditor. This criterion serves as a trigger point indicating the company's financial distress and incapability to honour its financial obligations. The relevance of Section 434(1)(b) extends to the contemporary landscape of insolvency and debt resolution. While the IBC, has modernized the insolvency regime, the foundational principles of assessing a company's insolvency still find resonance in older provisions such as Section 434(1)(b).

In the context of insolvency proceedings, this provision assumes significance as it aligns with the broader intent of ensuring creditor protection and effective debt recovery. When a company defaults on complying with a decree or order, it signals its financial inability to meet

[15] The Companies Act 1956, s 434(1)(b) – provides that *"any person aggrieved by any decision or order of the Company Law Board made before such date may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order"* (emphasis supplied).

its obligations. This aligns with the fundamental objective of the insolvency process.

B. An Award from the Real Estate Regulatory Authority (RERA)

a. Challenges in enforcement of an award by RERA

The interaction between RERA awards and CIRP poses unique challenges. The primary issue revolves around the classification of RERA awards as 'operational debt' or 'financial debt' under CIRP. The characterization significantly impacts the priority and treatment of RERA claims in the resolution process.

b. Judicial Precedents and Legal Interpretations

In the case of *Mr. Prabuddha Sarkar v Messrs. Ascent Buildtech Private Limited*,[16] a significant legal scenario unfolded involving a financial creditor and a builder corporate debtor. The matter centered around a decree secured by the financial creditor from the Uttar Pradesh Real Estate Regulatory Authority (**UP RERA**) against the corporate debtor. This decree, unfortunately, was not honoured, prompting the initiation of its execution and leading to the issuance of a Recovery Certificate by UP RERA against the corporate debtor. In response to the Recovery Certificate, the corporate debtor chose to challenge its validity before the esteemed Allahabad High Court through a writ petition. The court, upon

[16] *Mr Prabuddha Sarkar v Messrs Ascent Buildtech Private Limited* [2021] NCLT New Delhi, Company Petition No. IB 3085/ND/2019.

deliberation, issued a directive instructing the corporate debtor to deposit a specified sum within a stipulated timeframe. Regrettably, the corporate debtor failed to fulfill this obligation within the designated timeline. Subsequently, the financial creditor, faced with the corporate debtor's persistent default, resorted to invoking Section 7 of the IBC. The NCLT underscored that its decision was not hinged solely on the Recovery Certificate; rather, it employed the certificate as a corroborative piece of evidence illustrating the corporate debtor's default.

c. Position during the Pre-IBC Era

The jurisprudential landscape related to limitation period for filing insolvency application witnessed the overruling of the Hon'ble NCLAT's judgment in *G. Eswara Rao*[17] by the Hon'ble Supreme Court which previously debarred filing of insolvency petition after a prolonged period, in the case of *Asset Reconstruction Company (India) Limited v Bishal Jaiswal*,[18] albeit concerning a distinct matter. Similarly, the pronouncement in *Digamber Bhondwe*[19] also faced suspension by the Hon'ble Supreme Court subsequently. The tribunal held that a decree holder cannot be categorized as either a 'financial creditor' or an 'operational creditor'. The NCLAT rejected the argument suggesting that the inclusion of 'decree holder' in the definition of 'creditor' in Section 3(10) of the IBC implies that a decree can be the basis for initiating an

[17] *G. Eswara Rao v Stressed Assets Stabilization Fund* [2020], Company Appeal (AT) (Insolvency) No. 1097 of 2019, NCLAT.
[18] *Asset Reconstruction Company (India) Limited v Bishal Jaiswal* (2021) 6 Supreme Court Cases 366.
[19] *Digamber Bhondwe v JM Financial Asset Reconstruction Co. Ltd.* [2020], Company Appeal (AT) (Insolvency) No. 1379 of 2019, NCLAT.

application under Section 7 of the Code. According to the NCLAT, while Section 3(10) broadly defines 'creditor' in Part I of the IBC to include 'financial creditor', 'operational creditor', and 'decree holder', Sections 7 and 9 in Part II, specifically addressing 'financial creditor' and 'operational creditor', do not incorporate 'decree holder' for initiating CIRP.

However, the Hon'ble NCLAT, in its ruling in *Amitex Polymers Private Limited*,[20] wielded its authority to overturn the challenged order emanating from the NCLT, New Delhi Bench. In this case, an operational creditor sought relief through a Section 9 application under the IBC, grounded on a consent decree issued by the Learned Additional District Judge of the Saket Court, New Delhi. In its reasoning, the NCLAT referenced several Indian court judgments that established the coexistence of decree execution and winding-up petitions stemming from the same decree during the pre-IBC era.

d. Current Interpretation Post-IBC

The NCLAT acknowledged the intervention of the Hon'ble Supreme Court in staying the judgment in *Sushil Ansal*.[21] Fueled by these considerations, the NCLAT arrived at a definitive and irrevocable determination: a 'decree holder' categorically remains within the purview of the 'operational creditor' definition, as meticulously outlined in Section 5(20) of the Insolvency and Bankruptcy Code, 2016. The contrary stance adopted by the adjudicating authority in the contested

[20] *Amitex* (n 11).
[21] *Sushil Ansal* (n 12).

order was deemed to be fundamentally untenable under meticulous legal scrutiny by the NCLAT. This case underscores the intricate interplay between diverse legal doctrines, judicial precedents, and statutory interpretations, reinforcing the need for meticulous and comprehensive legal assessment in insolvency matters.

e. Practical Approach: Harmonization and the Way Forward

The practical implications of enforcing RERA awards in CIRP involve procedural complexities and timelines. RERA emphasises the swift resolution of disputes, which contrasts with the timeline-driven nature of CIRP. Coordination between RERA authorities, insolvency professionals, and creditors is essential to ensure the effective enforcement of RERA awards during the insolvency process. Efforts to harmonize RERA awards and CIRP can be seen through legislative amendments and judicial interpretations. The need for a coherent approach is evident to balance the rights of homebuyers, creditors, and distressed companies. A well-defined framework that addresses the classification, priority, and enforcement of RERA awards in CIRP is imperative.

VI. EXECUTION OF FOREIGN ARBITRAL AWARDS

In early cases discussing the eligibility of foreign decrees or awards as grounds for applications under Sections 7 and 9 of the Code, the focus often revolved around foreign legal judgments. In *V. R. Hemantraj v*

Stanbic Bank Ghana Limited,[22] the NCLAT faced a challenge where a corporate debtor disputed a Section 7 admission order, contending that an ex parte decree from a foreign court should not serve as valid evidence of default. Despite this argument, the NCLAT upheld the admission order, emphasizing that a foreign decree is indeed evidence of debt and default, not just a declaration of entitlement. The record of default must be established separately to prove non-payment in line with the decree. The NCLAT also highlighted that the guarantee executed by the corporate debtor in favor of the creditor reinforced the validity of the admission order. The Supreme Court later upheld this ruling, indicating growing recognition of foreign decrees and awards as legitimate bases for the Code applications, provided they establish debt and default. These cases demonstrate a trend towards accepting foreign judgments in insolvency proceedings, reflecting the global nature of business transactions. This promotes effective creditor rights enforcement, although carefulness is required to prevent misuse as a shortcut for debt recovery. Striking a balance between genuine insolvency resolution and preventing abuse remains a challenge for the judiciary even today.

In *Usha Holdings v Francorp Advisors (P) Ltd.*,[23] a foreign court's decree raised questions about its applicability in insolvency proceedings. The NCLAT clarified that the adjudicating body lacks the authority to rule on the legality of foreign decrees, but a connection between an operational creditor and the corporate debtor must be established,

[22] *VR Hemantraj v Stanbic Bank Ghana Ltd* [2018] NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 213 of 2018.
[23] *Usha Holdings v Francorp Advisors (P) Ltd* [2018] NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 44 of 2018.

relevant to goods or services provision. Failure to establish this link led to Section 9 application dismissals.

In *Peter Johnson John (Employee) v KEC International Limited*,[24] the NCLAT established that operational creditor applications based on foreign ex parte decrees, from non-reciprocating territories, must be rejected unless enforceability is judged by a competent Indian Civil Court in line with Section 13 of the Civil Procedure Code, 1908.

In *Agrocorp International (PTE) Limited v National Steel and Agro Industries Limited*,[25] an operational creditor applied under Section 9 based on a UK-seated GAFTA arbitration award. The corporate debtor questioned enforceability without Indian judicial review, citing past Indian judgments. However, the NCLT clarified that foreign awards from reciprocating territories can be executed in India per Section 44A of the CPC, making them binding. The question of judicial challenge remains in the appropriate jurisdiction.

Conclusively, foreign arbitral awards can be recognized as decree holders during the CIRP process, given they meet the relevant legal criteria and can be enforced through the applicable mechanisms. While acknowledging that foreign judgments aid cross-border business dealings, careful evaluation is essential to prevent misuse while maintaining insolvency resolution goals.

[24] *Peter Johnson John (Employee) v KEC International Ltd* [2019] NCLAT New Delhi, Company Appeal (AT) (Insolvency) No. 188 of 2019.
[25] *Agrocorp International (PTE) Ltd v National Steel and Agro Industries Ltd* [2019] NCLT Mumbai, CP(IB) No. 798/MB/C-IV/2019.

VII. CONCLUSION

The legal landscape has seen recent developments that have brought clarity to the admissibility of applications under Section 7 of the Code. This follows the Hon'ble Supreme Court's ruling in the *Dena Bank* case,[26] which established the maintainability of such applications, even when based on a decree, judgment, or award that conclusively determines the corporate debtor's liability to the financial creditor. However, the situation remains less definitive for applications under Section 9 of the Code that rely on similar grounds. This is due to conflicting judgments by the NCLAT on this matter, although recent events, such as the overruling of *G. Eswara Rao*[27] by the Hon'ble Supreme Court and the stay of *Digamber Bhondwe*,[28] seem to favour the stance taken in the *Amitex Polymers*[29] judgment by the NCLAT. The *Amitex Polymers* judgment aligns with the principles set forth in *Dena Bank* and suggests that Section 9 applications based on a decree or award should also be deemed maintainable. This interpretation gains support from the reasoning behind the *Dena Bank* judgment and its applicability to Section 9 applications relying on decrees or awards.

However, it is important to note that caution has been sounded by the Hon'ble Supreme Court in cases like *M/s Vijay Nirman*[30] and more recently, *Messrs. Jai Balaji Industries v D.K. Mohanty*.[31] These rulings

[26] *Dena Bank* (n 9).
[27] *G. Eswara Rao* (n 18).
[28] *Digamber* (n 20).
[29] *Amitex* (n 11).
[30] *M/s Vijay Nirman* (n 5).
[31] *Messrs Jai Balaji Industries v DK Mohanty* [2020], Supreme Court, Civil Appeal No. 5899 of 2021, 1 October 2021.

warned against the potential misuse of the Code as a means for decree-holding creditors, particularly operational creditors, to replace traditional debt enforcement mechanisms. This caution is reasonable considering the challenges decree-holders face in enforcing their claims through regular channels, as acknowledged by the Supreme Court in various judgments, including the recent *Messer Griesheim GmbH v Goyal MG Gases Private Limited*[32] case.

Balancing these considerations poses a significant challenge for judicial authorities. The fine line between utilising a decree or award for legitimate insolvency resolution purposes versus exerting undue pressure on a corporate debtor for payment instead of following recognized debt enforcement methods remains a complex issue. As the legal landscape evolves, it will be intriguing to observe how the judicial authorities navigate this balance, safeguarding the genuine objectives of insolvency resolution while preventing misuse of the legal framework.

[32] *Messer Griesheim GmbH (now called Air Liquide Deutschland GmbH) v Goyal MG Gases Private Limited* [2022], Supreme Court, Civil Appeal No. 521 of 2022, 28 January 2022.