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25| September | 2026

IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

Everyone you admire was once a beginner.

➢ Fraudulent Intent Not Required to Establish Preferential Transaction Under IBC: NCLT Delhi

The National Company Law Tribunal (NCLT) at Delhi recently held that fraudulent intent need not be established to show that a transaction was preferential under Section 43 of the Insolvency and Bankruptcy Code (IBC).

The bench comprising President Justice Anupinder Singh Grewal and Technical Member Ravindra Chaturvedi ruled: "*It is pertinent to note that under Section 43(2), there is no need to prove any fraudulent intent for a transaction to be held preferential. Section 43 operates by virtue of a deeming fiction: once the ingredients set out in clauses (a) and (b) of sub-section (2) are established, the transaction is liable to be treated as a preferential transaction with attendant consequences, irrespective of whether it was in fact intended or even anticipated to be so.*"

Section 43 deals with preferential transactions. Broadly, it applies when a corporate debtor transfers its property towards an antecedent financial or operational debt and the transfer places the creditor in a more beneficial position than it would have occupied in a distribution of assets under Section 53 of the IBC.

The case concerned Pellet Energy Systems, whose Corporate Insolvency Resolution Process (CIRP) commenced on July 20, 2018, following a Section 7 petition filed by Oriental Bank of Commerce, now merged with Punjab National Bank.

During the CIRP, AMK & Co. was appointed as transaction auditor to identify transactions covered by provisions relating to preferential, undervalued, extortionate, and fraudulent transactions. The transaction audit identified two payments as preferential transactions. The first was repayment of ₹2 lakh to unsecured creditor Manish Kumar Tripathi during FY 2018-19. The second was payment of ₹11.50 lakh to Adarsh Enterprises during FY 2017-18 towards pre-existing outstanding dues.

Source: Live Law Biz
Read Full News : *fraudulent Intent Not Required to Establish Preferential Transaction Under IBC: NCLT Delhi*

➢ Mere Effect of IBC Order on Property Possession Does Not Make It A Landlord-Tenant Matter: NCLAT

The National Company Law Appellate Tribunal (NCLAT), New Delhi, has reiterated that an insolvency dispute does not become a landlord-tenant dispute merely because an order under the Insolvency and Bankruptcy Code (IBC) affects possession of a property.

"The mere incidental effect of an IBC order on the possession of premises does not convert an insolvency matter into a landlord-tenant matter falling under Entry 18 of List II," the bench of Officiating Chairperson Justice Yogesh Khanna and Technical Member Barun Mitra observed.

Source: Live Law Biz
Read Full News: *Mere Effect of IBC Order on Property Possession Does Not Make It A Landlord-Tenant Matter: NCLAT*

➢ NCLT Mumbai Dismisses Insolvency Plea Against Shapoorji Pallonji

The National Company Law Tribunal (NCLT) at Mumbai has dismissed Uniton Infra Pvt. Ltd.'s ₹4.31 crore insolvency plea against Shapoorji Pallonji and Company Pvt Ltd, holding that the alleged operational debt was not due and payable under the parties' payment terms.

A coram of Judicial Member Ashish Kalia and Technical Member Banwari Lal Meena said that payment was due only after Shapoorji received the corresponding Nellore Municipal Corporation payment. As Shapoorji denied receiving it and Uniton failed to prove otherwise, the debt was held not due and payable warranting dismissal of the Section 9 plea.

Source: Live Law Biz
Read Full News: *NCLT Mumbai Dismisses Insolvency Plea Against Shapoorji Pallonji*