

NEWSLETTER



NEWS UPDATES FOR SEPTEMBER, 2026

Supreme Court: NCLAT E-Filing Glitch Cannot Render Litigant Remediless, Sets Aside Time-Barred Dismissal

The Supreme Court (Regional Provident Fund Commissioner-II v. Ms. Mamta Binani & Ors., Diary No. 42931 of 2026) held that a litigant cannot be denied a remedy where a tribunal's own e-filing system failed to receive papers despite a bona fide attempt within the limitation period. The Bench of Justice Dipankar Datta and Justice Sheel Nagu set aside an NCLAT order dismissing an IBC appeal as time-barred, restoring the matter for a decision on merits.

Key Points

- The Court held that when a court or tribunal's own e-filing system fails to receive papers presented bona fide and within the prescribed time, the litigant cannot be rendered remediless on the ground that the tribunal has no power to condone the delay.
- The Bench relied on the principle of *actus curiae neminem gravabit* an act of the court shall prejudice no one to hold that the fault of a malfunctioning Registry system cannot be visited upon a diligent litigant.
- The Court was careful to preserve the rule that the NCLAT cannot condone delay beyond the statutory outer limit under the IBC. It distinguished the present case as one of non-functional infrastructure rather than negligence or laches, a finding supported by the Registry's own report.
- The first bona fide attempt at filing was directed to be treated as the date of presentation, with the period of system failure excluded from the limitation computation, and the appeal was restored to the NCLAT for fresh consideration.

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Supreme Court Affirms IRP Remuneration Fixed by CoC Is Open to Judicial Scrutiny

The Supreme Court (Mohd Nazim Khan v. HDFC Bank Ltd. & Ors., C.A. 12083/2026) declined to interfere with an NCLAT ruling that a Committee of Creditors' decision on an Interim Resolution Professional's remuneration is not immune from judicial review. The Bench of Justice P.S. Narasimha and Justice Alok Aradhe examined the fixation on merits before declining to disturb it.



NEWS UPDATES FOR SEPTEMBER, 2026

Key Points

- The Court affirmed that fixation of an IRP's fees by the CoC, though rooted in commercial wisdom, is not automatically insulated from judicial scrutiny the way plan-approval decisions often are; reasonableness of remuneration can still be tested.
- The ruling draws a line between the CoC's core commercial decisions on a resolution plan, where courts defer heavily, and administrative/remuneration decisions, where a more searching review is permissible.
- After examining the remuneration decision on merits, the Court left undisturbed the NCLAT's order upholding the CoC's fixation of the IRP's total remuneration at ₹3 lakh.

NEWSLETTER



NEWS UPDATES FOR SEPTEMBER, 2026

Supreme Court Issues Notice on Whether a Deregistered NBFC Remains a 'Financial Service Provider' Under the IBC

The Supreme Court (Asmitha Microfin Ltd. v. Reserve Bank of India, Diary No. 48051/2026) issued notice on a challenge to an NCLAT ruling that refused to allow an NBFC to initiate insolvency proceedings against itself, holding that it continued to be a "financial service provider" despite cancellation of its RBI registration.

Key Points

- The NCLAT had held that cancellation of an NBFC's certificate of registration by the RBI does not, by itself, take the entity outside the special regime for financial service providers under the IBC.
- So long as an entity is treated as a financial service provider, ordinary CIRP provisions cannot be triggered against or by it directly; insolvency of such entities instead proceeds only through a notification-based, regulator-involved route under Section 227 of the IBC.
- By issuing notice, the Court has signalled it will examine whether deregistration by the sectoral regulator changes an entity's classification for IBC purposes, an issue with implications for other NBFCs facing licence cancellation while carrying debt.



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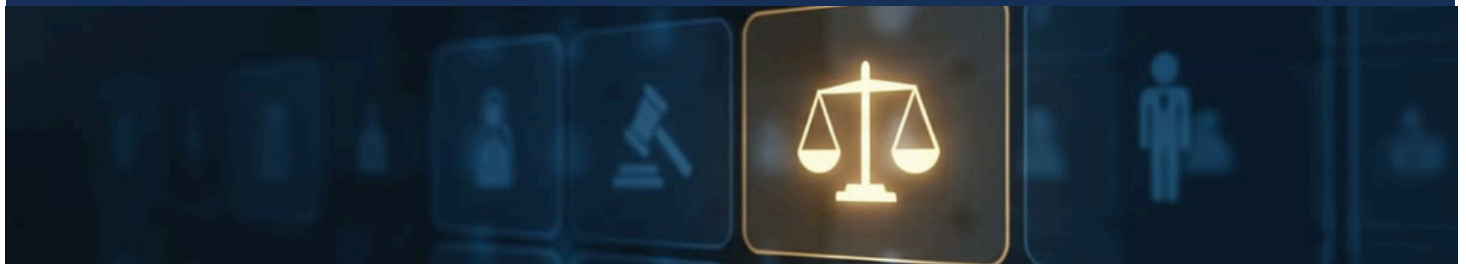
NEWS UPDATES FOR SEPTEMBER, 2026

NCLAT, Chennai: Arbitration Clause Is a Private Remedy, Cannot Override Statutory Rights Under the IBC

The NCLAT, Chennai (Posco International Corporation v. Mohana Cotton Ginning Pvt. Ltd., TA (AT) No. 205/2021) held that an arbitration clause in a contract, being a private remedy agreed between the parties, cannot override or displace the statutory remedy available under the IBC.

Key Points

- The Tribunal held that a corporate debtor cannot resist an otherwise maintainable insolvency application merely by pointing to an arbitration clause in the underlying contract, since the existence of an alternative private forum does not oust the special jurisdiction created by the IBC.
- The ruling reinforces the broader principle that arbitration, being a creature of contract between two parties, cannot take away or curtail a remedy Parliament has made available under a special statute enacted for the collective benefit of all creditors.
- This aligns with the settled position that insolvency proceedings under Section 7 and Section 9 are proceedings in rem, not inter-se contractual disputes, and are therefore not amenable to being pushed into arbitration.



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NCLAT, Delhi: Removing Hypothecated Machinery During Insolvency Can Amount to Fraudulent Trading

The NCLAT, Delhi (Dinesh Keshawrao Atkare & Madan Keshawrao Atkare v. Palak Swapnil Desai, Company Appeal (AT) (Insolvency) 325/2025) held that removing high-value secured (hypothecated) machinery during insolvency proceedings and replacing it with substantially lower-value machinery is not a mere technical irregularity.



NEWS UPDATES FOR SEPTEMBER, 2026

Key Points

- The Tribunal treated the substitution of secured machinery with assets of materially lower value during the insolvency process as conduct capable of amounting to fraudulent trading, rather than an innocent bookkeeping or logistical issue.
- The ruling signals that suspended management and other persons in control of assets during insolvency proceedings face real exposure where they tamper with, remove, or diminish the value of hypothecated security without authorisation.
- Resolution professionals and liquidators are put on notice to closely track secured asset registers against physical verification reports, since a mismatch in value or specification can now be treated as evidence of wrongdoing rather than a mere discrepancy.



NEWSLETTER



NCLAT, Delhi: Mere Pendency of Criminal Proceedings Does Not Disqualify a Resolution Applicant

The NCLAT, Delhi (Suraksha Realty Ltd. v. Amit Gupta & Ors., Company Appeal (AT) (Insolvency) 1041/2024) ruled that the mere pendency of criminal proceedings or an investigation does not, by itself, make a prospective Resolution Applicant ineligible to submit a resolution plan under the IBC.



NEWS UPDATES FOR SEPTEMBER, 2026

Key Points

- The Tribunal clarified that Section 29A ineligibility is not attracted merely because a criminal case or investigation is pending against a resolution applicant; there must be an actual finding or conviction bringing the applicant within the specific disqualifications listed in that provision.
- The ruling protects the principle that pendency of an investigation is not equivalent to guilt, preventing objectors from using unproven allegations to knock out otherwise eligible resolution applicants.
- Committees of Creditors evaluating resolution plans now have clearer guidance that they need not, and should not, treat a mere FIR or ongoing probe as a disqualifying factor unless it falls squarely within Section 29A's specific triggers.

NEWSLETTER



NEWS UPDATES FOR SEPTEMBER, 2026

NCLAT, Delhi: GNIDA and NOIDA Are Not Secured Creditors in Shubhkamna Buildtech Insolvency

The NCLAT, New Delhi (Greater Noida Industrial Development Authority v. Anand Sonbhadra & Ors., Company Appeal (AT) (Insolvency) 184/2023 & 1107/2023) dismissed appeals by the Greater Noida Industrial Development Authority (GNIDA) and the New Okhla Industrial Development Authority (NOIDA), holding that their lease deeds did not create a security interest making them secured creditors in the insolvency of Shubhkamna Buildtech Pvt. Ltd.

Key Points

- The Bench of Justice Mohammad Faiz Alam Khan and Technical Member Naresh Salecha held that the "first charge" recorded under the lease deeds was limited to the authorities' share of any unearned increase in land value, and did not extend to a general security interest over the corporate debtor's assets.
- By denying secured-creditor status, the ruling keeps development authorities' dues within the ordinary unsecured or statutory-dues priority under Section 53, rather than allowing them to leapfrog other creditors in the distribution waterfall.
- The decision is being watched closely by real-estate insolvency practitioners, since similar lease arrangements with development authorities recur across many stalled housing and industrial projects.



NEWSLETTER



NEWS UPDATES FOR SEPTEMBER, 2026

NCLT, Mumbai: IBC Prevails Over RERA Where a Resolution Plan Conflicts With Individual Homebuyer Refund Rights

The NCLT, Mumbai (Vivek Talwar & Ors. v. Rajesh Jhunhunwala, Resolution Professional, I.A. (IB) No. 3688 of 2025 in C.P. (IB) No. 389/MB/2022) held that a resolution plan cannot be compelled to separately honour individual homebuyers' refund rights under Section 18 of the Real Estate (Regulation and Development) Act, 2016, where doing so conflicts with the collective insolvency resolution process.

Key Points

- The Tribunal reasoned that once CIRP is triggered, all creditors — including homebuyers with RERA refund orders — must submit their claims within the collective resolution framework rather than enforcing individual statutory remedies in parallel.
- The ruling rests on the IBC's non-obstante clause, which gives it overriding effect over other laws, including RERA, to the extent of any inconsistency once insolvency proceedings have commenced.
- Individual allottees holding RERA refund orders will now have to route their claims through the resolution professional and abide by the treatment given to their class under the approved plan, rather than seeking standalone enforcement of the RERA order.



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