# Important case laws for IBC in CA Final Law

In both the attempts since the insertion of IBC in the syllabus of CA Final - **Corporate and Allied Laws**, questions based on cases laws & recent judgements have been asked in the examinations.

However, no case law is mentioned in the institute's study material and neither was any case notified in the RTPs issued before the Nov'17 & May'18 exams. IBC has a weightage of 10 crucial marks and thus, one should not miss out on anything in its preparation.

So, in this write-up, at CA Students App we have listed some prominent cases which should definitely be relevant for the exam in November 2018:

I. Certificates from Indian banks required for initiating insolvency proceedings u/s Sec 9 will be **OPTIONAL** for foreign Operational creditors who do not have an Indian bank account - **SHILPI CABLE TECHNOLOGIES LIMITED VS. MACQUARIE BANK LIMITED (Supreme Court)**

II. Lawyers/advocates can issue demand notice (u/s 8) on their own letter head on behalf of the operational creditor - **SHILPI CABLE TECHNOLOGIES LIMITED VS. MACQUARIE BANK LIMITED (Supreme Court)**

III. Financial Creditor cannot sell personal assets of the guarantor of the CD during the CIRP process as it would be against the object of moratorium granted by the code. – **SBI VS VEESONS ENERGY SYSTEMS (NCLT Chennai) ; SANJEEV SHRIYA VS SBI (Allahabad H.C.)**

IV. However, the honourable NCLT Delhi bench in the case OF **PHOENIX ARC PVT. LTD. VS. SCHWEITZER SYSTEMTEK INDIA PVT. LTD.** gave a contradictory ruling on the matter and stated that Sec 14 applies moratorium only to properties of CD & not of its guarantors or promoters.

V. IBC will override all the state laws that were passed earlier than IBC, according to Section 238 of the Code. - **INNOVENTIVE INDUSTRIES LIMITED VS. ICICI BANK LIMITED (Supreme Court)**

VI. Once an application has been admitted under IBC & IRP has been appointed to manage the company, the erstwhile directors, who are no longer in the management, lose the right to appeal on company's behalf. So appeal should be filed in the name of directors/ shareholders in their personal capacity and not in name of the CD. - **INNOVENTIVE INDUSTRIES LIMITED VS. ICICI BANK LIMITED (Supreme Court)**

VII. The apex court deliberated on what qualifies as a 'dispute' under the code. The answer to this question is relevant since Sec 8 of the code bars initiation of insolvency proceedings by an operational creditor if there is a pre-existing dispute between the parties. The primary issue before the court was whether a 'dispute' can exist only if there are pending legal proceedings between the parties or will a rebuttal to a claim by the company also qualify as a 'dispute'. The apex court took a liberal interpretation to rule that as long as the company can show that a genuine dispute truly exists in fact, the NCLT has to reject an operational creditor's insolvency application. This ruling has clarified that the requirement of a proceeding being initiated prior to a notice being issued under the insolvency law is not a requirement in case of a bona fide dispute - **MOBILOX INNOVATIONS PVT. LTD. Vs. KIRUSA SOFTWARE PVT. LTD. (Supreme Court)**

VIII. Settlement outside the court between the parties is allowed and case can be withdrawn even after admission of the insolvency application – **LOKHANDWALA KATARIA CONSTRUCTION PVT. LTD. VS NISUS FINANCE AND INVESTMENT MANAGERS LLP (SUPREME COURT)**

IX. NCLT must give CD the opportunity of being heard before passing any order when application is made to initiate CIRP against the CD - **FALCON TYRES LIMITED VS. EDELWEISS ASSET RECONSTRUCTION CO. LIMITED (SUPREME COURT)**

X. The timelines provided in Sections 7, 9 and 10 for deciding a matter within 14 days as well as the time to remove a defect within 7 days are directory and not mandatory. However, the applicant needs to submit in writing showing sufficient cause as to why the applicant could not remove the objections within 7 days. It is for the adjudicating authority to decide as to whether sufficient cause is shown. If it is satisfied that such cause is shown, only then it would entertain the application on merits, otherwise it will have right to dismiss the application. However, the time period of 180 or 270 days for completion of CIRP is mandatory. - **SURENDRA TRADING COMPANY VS. JUGGILAL KAMLAPAT JUTE MILLS COMPANY LIMITED AND OTHERS (SUPREME COURT)**

Students are advised to take note of the above case laws and prepare from the same for the CA Final Law Exams.

You can download the pdf copy of all the above case laws from this link.

Please keep [CA Students App] updated our team will be coming up with more such important case laws and notes for CA Final and IPCC Nov 2018 Exams.