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NCLT: Neither a Tribunal nor a Court for IBC

ROLE PLAY. It is essential to understand the character and remit of the Adjudicating Authority to secure the effective functioning of the IBC

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Among the bright law students of the National Law University Delhi, the authors often encounter a question: Is the National Company Law Tribunal (NCLT) an Adjudicating Authority (AA), a tribunal, or a court under the Insolvency and Bankruptcy Code, 2016 (IBC)? The doubt arises because all orders under the IBC are issued in the name of the NCLT, and over time, it has assumed multiple roles under the Code.

The AA has, on several occasions, struck down regulations. For instance, it held the regulation providing for an invitation for expressions of interest as *ultra vires* the IBC. The Delhi High Court, however, set it aside, clarifying that the jurisdiction to examine the validity or legality of subordinate legislation does not vest in the AA. In another case, the AA ruled that the regulation governing withdrawal of insolvency proceedings was not binding upon it. The Supreme Court overturned this, affirming that the regulation was indeed binding on the AA.

There are instances where the AA has initiated contempt proceedings, quashed disciplinary proceedings initiated by the regulator, and even imposed penalties on insolvency professionals. Such instances of overreach prompted the Supreme Court to repeatedly caution that the AA must not innovate beyond the statute, intrude into the commercial wisdom of stakeholders, invoke equitable considerations, or discard statutory provisions. These judicial reminders reaffirm that the NCLT is neither a court nor a tribunal but an AA with a defined role. Parliament's decision to designate the NCLT as the AA signifies a deliberate de-courtifying move. It has positioned the AA as a statutory controller of the insolvency process, whose jurisdiction is bounded, procedural, and purpose-driven. Wherever Parliament intended trial-like adjudication, it has explicitly created tribunals, vested with the powers to assess evidence and decide on questions of fact and law.

The AA under the IBC is not an innovation in isolation. It draws upon established statutory frameworks in Indian law, where 'authorities' rather than 'tribunals' discharge process-centric functions. The AAs under the Prevention of Money Laundering Act and the Foreign Exchange Management Act are illustrative: they administer statutory processes and ensure compliance within a defined remit.

This legislative instinct becomes clearer in comparative perspective. In other jurisdictions, insolvency and restructuring are judicially anchored: U.S. Chapter 11 sits in Article I Bankruptcy Courts, wielding broad equitable powers; the U.K. houses corporate rescue in the High Court (Business & Property Courts); and Singapore's High Court exercises deep, equity-laden jurisdiction. In sharp contrast, the IBC deliberately casts the AA not as a judge of substance but as a supervisor of process.

Role definition

Discriminator	AA	Tribunal	Court
Adjudication of Lis	Incidental/ limited	Yes	Yes
Equitable consideration	No	Sometimes (statutorily limited)	Yes
Process oversight	Yes	Limited	No
Review of law	No	No	Yes

LESSONS FROM THE PAST

The IBC's architecture also reflects lessons from the Sick Industrial Companies (Special Provisions) Act, 1985, and its implementing body. Though established with the noble intent of reviving sick industries, the agency often strayed into unsanctioned equity jurisdiction, deferring liquidation indefinitely and trapping enterprises in prolonged limbo. The IBC was conceived as a corrective to that legacy, ensuring that no adjudicatory forum could derail or dilute the time-bound process of resolution.

Accordingly, while the NCLT is manned by judges, its powers under the IBC are intentionally narrow, limited to verifying statutory compliance and maintaining procedural discipline.

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Courts and tribunals assume jurisdiction only where a dispute, or *lis*, exists; in its absence, they cannot act. The AA, by contrast, does not need a *lis* to function. It adjudicates disputes, but only incidentally to its statutory role of supervising the insolvency process. Courts review both law and fact and may examine the constitutionality of legislation, while tribunals, though narrower in scope, review administrative actions within their statutory bounds. The AA stands on a distinct footing: it cannot test the validity of the Code, or of the rules and regulations. Its mandate is limited to ensuring that the statutory process is observed, yet its procedural reach is wider, as the IBC requires its involvement at multiple stages, even where no *lis* exists.

For instance, an application to initiate a corporate insolvency resolution process. Once a financial creditor demonstrates a default, the AA has a mandatory, non-discretionary duty to admit the application. That said, disputes may arise within proceedings, and the AA can examine them, but the scope of adjudicatory powers is circumscribed. In an application by an operational creditor, the AA may determine whether a pre-existing dispute relating to the default exists. It must reject the application if the dispute is genuine; however, it cannot evaluate the merits or strength of the dispute, which remains the domain of civil courts. The IBC establishes a constellation of institutions, each with distinct responsibilities. The Code vests the CoC with the authority to approve resolution plans; accordingly, the AA cannot revisit their merits or substitute its judgment for the CoC's commercial wisdom. Its role is limited to ensuring statutory compliance, and even where a legal infirmity is identified, it may reject the plan but cannot modify or replace the CoC's decision. Similarly, regulatory oversight rests with the regulator, whose regulations have the full force of law and bind both the AA and CoC, irrespective of their own views on their desirability or wisdom.

The AA is not the apex authority but operates within an ecosystem of coequal institutions exercising binding authority. This design preserves the IBC's core philosophy: insolvency resolution is fundamentally a commercial and regulatory process, with the AA serving as its procedural gatekeeper rather than its ultimate decision-maker.

The designation of the NCLT as the AA under the IBC is thus neither incidental nor terminological. It reflects a carefully calibrated institutional design, responsive both to the substantive demands of insolvency law and to the normative lessons of India's regulatory past. The AA embodies a hybrid identity: judicial in form, given its composition and limited adjudicatory powers, yet administrative and supervisory in function, given its expansive statutory functions, many of which do not involve any *lis*.

For purposes of the IBC, it must step out of the institutional wrap of the NCLT and issue orders in its own name. Better still, there could be a dedicated AA exclusively for the IBC.

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