

# Insolvency & Bankruptcy Code, 16

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**Appearances before NCLT & NCLAT**

# Corporate Jurisdiction

- Jurisdiction & Scope
- Grievance Redressal Mechanism
- Nuances of Drafting
- Art of Appearance & Court Craft
- Handling of Clients & Practice Setup

# NCLT Jurisdiction under IBC

- Acts / Code
- Insolvency & Bankruptcy Code, 16
- Territorial
- Based upon Registered office , various Benches of NCLT
- NCLT as Adjudicating Authority or “AA”

- Expeditious Disposal
- Power of Contempt now with Tribunal – Sec. 425
  - Exercised in various matters by AA
  - Penal and monetary penalties
- Only Tribunal for Corporate Matters
  - Jurisdiction of civil court barred
  - Supreme Court judgement of SP Khemka & Anr. VS NEPC Micon n others

- NCLAT as Appellate Tribunal
  - Jurisdiction of High Court when to be exercised
  - IBC/ Companies Act / Competition Act
- Appeal from NCLAT to Supreme Court
  - IBC fast paced resolutions
  - Jurisdiction
  - Amendments

# NCLT & NCLAT

- Three tier system – NCLT / NCLAT / Supreme Court
  
- NCLT – Adjudicating Authority “AA”
  - Exercised in various matters by NCLT
  - Requirements to be seen :
  - IBC Code/ NCLT Rules, 16/ CIRP Regulations
  - Application to AA Rules along with other relevant Rules

# Art of Appearance



A woman was found guilty in traffic court. When the judge asked for her occupation, she said she was a schoolteacher. The judge rose from the bench. “Madam, I have waited years for this moment

# Court Craft

- Preparation
- Drafting
- Pleadings
- Nuances of court appearances
- Bench ?



# Nuances of Drafting

- NCLT Rules & other relevant rules and forms
- Contents of Applications / Petitions
- Forms thereunder
- Facts to be narrated clearly & unambiguous
- Relevancy of other laws :
  - ▣ Companies Act
  - ▣ Limitation Act
  - ▣ Evidence Act
  - ▣ CPC
  - ▣ Law of Contempt
  - ▣ Other relevant laws

# Nuances of Drafting



CAN YOU JUST LEAVE ME ENOUGH MONEY  
SO I CAN FLEE THE COUNTRY?

# Pleadings

- Issues in hand
- Clear and unambiguous
- Concise
- Clarity of thoughts
- Applicability of Provision
- Documents and information attached

# Nature and grounds in various matters

## Instances of some applications :

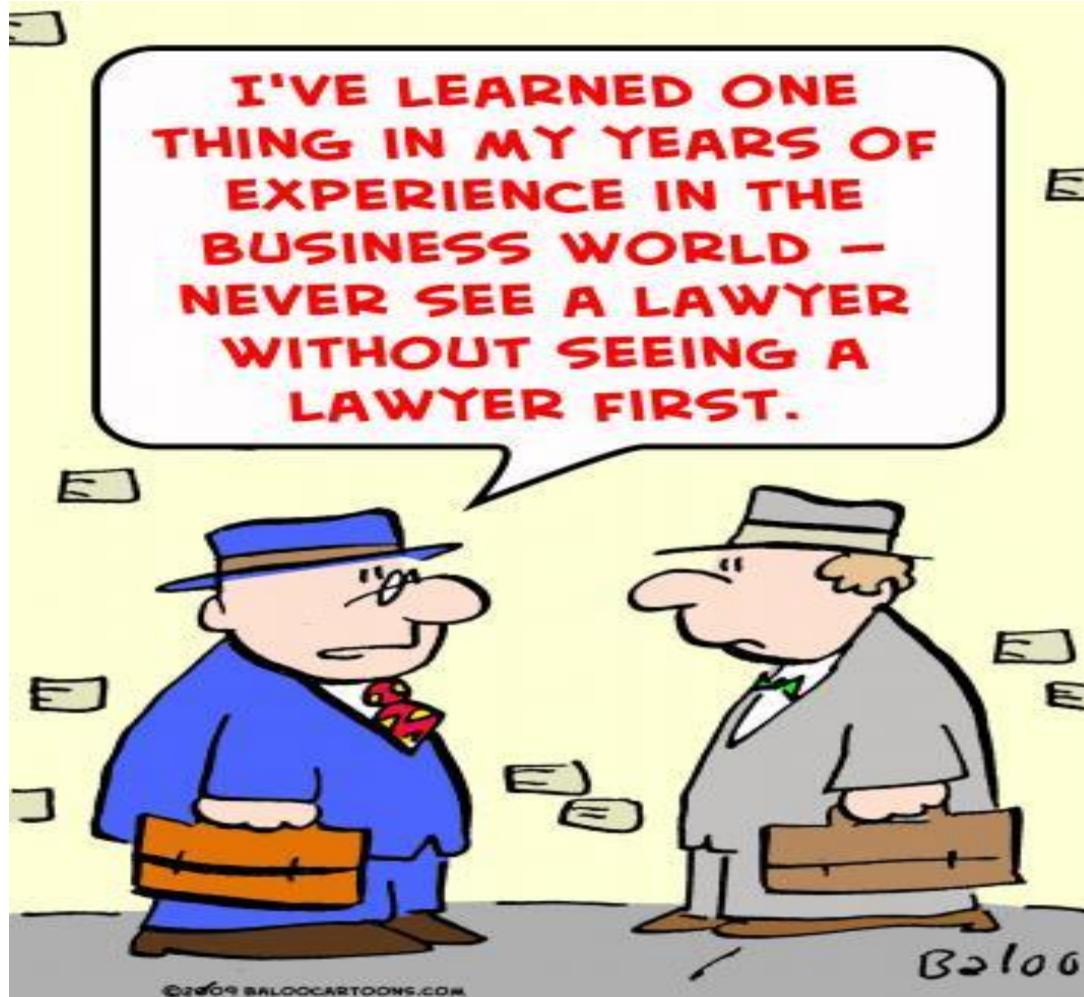
- Rule 11 application or even S 60(5) application
- Section 19 application
- Appointment of RP or change of RP
- Application for preferential transactions / undervalued transaction / transaction defrauding creditors
- Submission of Resolution Plan S 30

# Issues in drafting of applications in Chapter III

- S 43 to. S 51
- For instance
- S. 43 preferential transaction app and time frame
  - For Corporate Debtor
  - Time frame – 2 yrs RP / 1 yr otherwise
  - There is a transfer of property or interest of CD / benefit of creditor or surety or guarantee
  - For any FC/OC or other liabilities owed by CD and
  - Transfer has put the above in beneficial position vis a vis S 53

- Exceptions also their in ss (3)
- Provision is clear & unambiguous
- Not everything can be covered
- Different provision / different scope
- While drafting – specific default / extent / time period / information / parties / documents & relief

# Court experiences



# NCLAT – Appellate Tribunal

- Appeal u/s 61 of the Code
- Appellate Tribunal not a fact finding authority
- Question of law needs to be crystallised, not all issues can be taken up
- Segregation of issues is required to be made
- One needs to be always prepared before AT as no further opportunity can be granted
- Interim / final order challenged needs to be considered before AT



# Virtual Hearing

- SOP's of virtual hearing needs to be read for various courts / tribunals
- Filings / Listing
- Software / Login / timings
- Addressing the Bench
- Document Sharing
- Cross Arguments
- Contentious hearings



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