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## **UNCRYSTALLISED LOSS, DAMAGES, INTEREST CANNOT FORM PART OF OPERATIONAL DEBT: NCLAT**

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NCLAT in the case of *Neeraj Jain Versus Cloudwalker Streaming Technologies Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 1354 of 2019 refused to allow losses/ damages// interest to be treated as Operational Debt under Section 5(21) of Insolvency Bankruptcy Code, 2016.

In this case a crucial question having legal as well as practical importance arose that whether the damages accrued on account of breach of contract by the party, amount to “Operational Debt”, or in other words, whether the party to contract, who suffered losses on account of breach of commitments by the other party, is entitled to make an application as an Operational Creditor under Section 9 of the Insolvency Bankruptcy Code, 2016 for the initiation of Corporate Insolvency Resolution Process of such another party.

An opposition to the said Application was maintained *inter alia* mainly on two grounds: *Firstly*, that amount claimed in the application as operational debt, is not backed by any operation or supply of services having undertaken, but a product of mere conjecture and surmises of losses likely to be incurred by the Applicant and *Secondly*, the amount is not crystalized into a debt.

The NCLAT has held that the question being a breach of contract cannot be decided by the Adjudicating Authority in a summary manner and therefore has to be dealt with by an appropriate court of jurisdiction. Furthermore, there having been no supply of services for which a claim is made, no such Application under Section 9 of the Insolvency Bankruptcy Code, 2016 can be maintained.

