

KNOWLEDGE REPONERE

**(A WEEKLY BULLETIN)
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INSOLVENCY PROFESSIONALS AGENCY

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“Practice like you have never won; perform like you have never lost.” – Nikos Kazantzakis

Dear Professional Members,

Any new legislation requires a revisit, considering the implementation difficulties being faced by the stakeholders. The Insolvency and Bankruptcy Code, 2016 (“Code”) a historic landmark economic legislation of the current era, is in its nascent stage, providing opportunities for the professionals to practice as insolvency professionals coupled with challenges in implementation of the Law. The challenges can be addressed by the regulator only with the involvement of the stakeholders. In fact, the stakeholders were involved ever since the making of the Code and the regulations made thereunder through a consultative process of receiving public comments and were considered through an advisory committee.

Considering the implementation difficulties being faced by the stakeholders, the Insolvency and Bankruptcy Board of India (IBBI) has invited public comments on the Regulations made under the code. The comments received between 4th July, 2017 to 31st December, 2017 shall be taken into consideration and following the due process, Regulations will be modified to the extent considered necessary. It is anticipated that IBBI will come out with the modified regulations by 31st March, 2018 and same will come into force on 1st April, 2018. We request all the professionals to widely participate and provide their valuable comments as this is the right time to fine tune to smoothen the process under the Code and to incorporate best practices. In fact the perception of the world organisations about the Code has been positive. OECD 2017 Economic Survey of India indicates bankruptcy laws as one of the key structural reform for boosting growth. The filling up of finer gaps will make this legislation a world class one.

You may send your views/observations to **mehreen.rahman @icsi.edu** to enable us to collate the same and send to IBBI.

1) Case Updates

The speedy filing of the cases under the Code at various NCLT Benches is taking a new turn every day. The newly admitted cases with regard to Corporate Insolvency Resolution Process (CIRP) under the Code are as below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	M/s. Punjab National Bank V/s. M/s. Charbhujia Industries Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	20.68 Crores
2.	M/s. DBS Bank Ltd. V/s. M/s. Edu Smart Services Pvt.Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	New Delhi	13.96 Crores
3.	M/s. Standard Chartered Bank V/s. M/s. Prag Distillery (P) Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Hyderabad	Order not available
4.	M/s. Peerless Financial Services Limited V/s. M/s. Rasoya Proteins Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	5.55 Crores
5.	M/s. Jindal Saxena Financial Services Private Limited V/s. M/s. Mayfair Capital Private Limited	Section 7 of the Code dealing with initiation of CIRP by operational creditor.	New Delhi	8.17 Crores
6.	M/s. Sunline Suppliers Private Limited V/s. M/s. Infinity Fab Engineering Company Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Bengaluru	11.25 Lakhs
7.	M/s. Auromira Energy Company Private Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Chennai	Order not available
8.	M/s. F.M. Hammerle	Section 10 of the Code dealing with	Mumbai	Order not available

	Textiles Limited	initiation of CIRP by Corporate Debtor.		
9.	M/s. Ennore Coke Limited(ECL)	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Kolkata	Order not available
10.	M/s. Roofit Industries Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Mumbai	451 Crores

2) NCLT Case Briefs

VEDIKA NUT CRAFT PRIVATE LIMITED

Applicant	Vedika Nut Craft Private Limited (Corporate Debtor)
Respondent	NA
Relevant Section under which case was filed before NCLT	Section 10 of the Code dealing with the initiation of Corporate Insolvency Resolution Process by Corporate Debtor.

- The present application was filed before NCLT, Principal Bench, New Delhi (hereinafter referred to as “Adjudicating Authority”) by Vedika Nut Craft Private Limited (hereinafter referred to as “Applicant”) to initiate Corporate Insolvency Resolution Process against itself u/s 10 of the Code.
- The applicant is a company incorporated under the provision of the Companies Act, 1956 on 13.06.2008 and its main business involves the processing and oil extraction of dry fruits.
- The applicant achieved a turnover of Rs. 241.24 Crores in the financial year 2011-2012. However, market factors beyond the control of company resulted in financial stress and applicant’s account were restructured in March, 2015. However on 30.06.2016 the applicant’s account was classified as Non Performing Asset (NPA) due to non-implementation of its restructuring plan by the Banks
- The applicant argued that its restructuring plan failed due to unsupportive nature of its Financial Creditors, who, in spite of releasing Rs. 5.24 Crores of cash credit and a fresh limit of Rs. 4.34 Crores, did not give any support to its restructuring plan.

- The applicant also brought to the notice of the Adjudicating Authority that the Union Bank (hereinafter referred to as 'respondent') vide its letter dated 1.1.2016 asked for its entire outstanding loan of more than Rs. 56 crores together with the interest from the applicant and suggested to initiate an action u/s 13 of the SARFAESI Act. However, the said letter was answered with the contention that it is against Debt Restructuring Agreement.
- Eventually, the respondent issued a notice dated 7.06.2016 against the applicant under Section 13(2) of the SARFAESI Act and threatened it to sell all its mortgaged properties with it to realise an outstanding amount of more than Rs. 59 Crores. Similar notices were issued by the Dena Bank on 28.6.2016 to the applicant and the guarantors to pay the amount of more than Rs. 16 Crores, the Central Bank on 1.8.2016 for an outstanding amount of nearly Rs. 14 Crores and the Corporation Bank on 30.07.2016.

Decision of NCLT

- The Adjudicating Authority on examining all the documents, contentions made by the applicant and respondent and the fact that the earnest efforts for restructuring of the applicant company have already been made, came to the conclusion that the provisions of the Code are completely complied with and that the respondent has not been able to point out any defect warranting refusal to admit the petition. Accordingly, the Adjudicating Authority admitted the application.

As a necessary consequence of admitting the application u/s 10 of the Code, moratorium period under Section 14 of the Code was declared with the exception enumerated under Section

M/s. PORTRAIT ADVERTISING & MARKETING PVT. LTD.

V/s.

M/s. MOTHERS PRIDE DAIRY INDIA PVT. LTD.

Appellant	M/s Portrait Advertising & Marketing Pvt. Ltd. (Operational Creditor)
Respondent	M/s Mothers Pride Dairy India Pvt. Ltd. (Corporate Debtor)
Relevant Section under which case was filed before NCLT	Section 8 and 9 of the Code dealing with the initiation of corporate insolvency resolution process by Operational Creditor.

- The present application has been filed under Section 9 of the Code by operational creditor/applicant – M/s Portrait Advertising & Marketing Pvt. Ltd. against debtor – M/s Mothers Pride Dairy India Pvt. Ltd.
- Applicant is company engaged in providing marketing and advertising services. The debtor entered into a contract with applicant dated 14.04.2016 and availed marketing and advertising

services of applicant. The applicant raised invoices for which no payment was made and the total outstanding, after setting off the payments made by debtor, is Rs. 64,49,530/-

- As per the applicant, it entered into contract with third parties to provide timely services to debtor and that all those third parties are sending demand notices to applicant.
- After the default, applicant sent demand notice under Section 8 of the Code on 20.03.2017 for repayment of outstanding amount, however, no reply was received from debtor.
- In response to the notice of application served on debtor, a short reply dated 19.05.2017 was filed by debtor.

Stand of the Debtor

- There is a dispute existing with regard to quality of services rendered by applicant as seen from email dated 06.09.2016 which talked about concern of debtor that there were no hoardings/board/advertisement in Dehradun, Haldwani and Nainital.
- The issue with regard to poor quality of wall painting advertisement as well as hoardings/boards was raised internally and a communication was sent to Director of applicant.
- The issue of making payment to the third parties directly by Corporate Debtor was also raised in the Email dated 09.12.2016.

Decision of Adjudicating Authority and reasons thereof

The Adjudicating Authority admitted the application on the ground that:

- A perusal of the emails relied upon by applicant shows that there is no dispute sufficiently raised with regard to quality of service.
- The emails relied upon by debtor merely indicate that some dispute with regard to Dehradun hoarding/advertisement bills have been raised, however, the same is not such as to show that there was an actual dispute and that the quality of services were seriously doubted.
- There was no cessation of relationship between the applicant and debtor.
- As a sequel to admission of application, the following direction was issued:
 - The matter was referred to IBBI for appointment of Interim Resolution Professional.
 - Moratorium was declared u/s 14 of the Code.

3) Reserve Bank of India (RBI) to issue corrigendum in Essar Steel Case (Source:Business Standard)

In mid June 2017, RBI came out with a list of 12 top loan defaulters who constitutes 25% Non-Performing Assets (NPAs) of Indian economy and to initiate insolvency proceeding against them under the Code. Essar Steel was named as one of the top defaulters in the list and insolvency proceedings was also initiated against it.

However, at the time of hearing legal counsel of Essar Steel stated that “As per Section 35 of the Banking Regulations Act, lenders could not have initiated insolvency proceedings at a time when restructuring process was on and also that Essar Steel could not be categorized as a top loan defaulter since it is undergoing recovery process”.

Legal Counsel of Essar Steel further argued that Essar Steel is performing well since last financial year and had paid almost Rs 3,467 Crores to its lenders.

Taking in consideration the above stated arguments, RBI intimated Gujarat High Court that it would issue a corrigendum of its circular issued on 13th June, 2017 that allowed National Company Law Tribunal (NCLT) to accord priority to 12 (NPA) accounts set to face insolvency proceedings. The Court has adjourned the hearing of Essar Steel's petition asking for a stay on insolvency proceedings till 12th July, 2017.

On 8th July,2017 RBI issued a Press Release for issuing corrigendum in respect of its circular issued on 13 June, 2017 bearing reference number 2016-2017/3363 ("Press Release") titled '**RBI identifies Accounts for Reference by Banks under the Insolvency and Bankruptcy Code (IBC)**'.

The press release can be accessed from the below mentioned link:

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=41011

4) Rejected Cases

Numerous cases have been filed under the Code across different benches of NCLT. However, recently the few cases have been rejected by NCLT on specific grounds while majority have been rejected on routine grounds such as non presence of parties at the time of hearing, mutual consent between the parties to withdrew the case, inadequate documents etc.

S. No	Case Title	Reasons for rejection
1.	Mr. Penugonda Satish Babu V/s. Amarpali Biotech India Private Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, New Delhi Bench under Section 9 of the Code.• The Applicant (Operational Creditor) and Respondent (Corporate Debtor) entered into a Clearing & Forwarding Agreement on 1st May, 2014 as per which Applicant will act as C&F Agent of Respondent and will deal in distribution and supply of products to Respondent.• As per the terms of Agreement , a sum of Rs. 5 Lakhs was deposited with the Corporate Debtor as a refundable security and also Applicant was authorized by Respondent to obtain VAT & CST Registration in relation to transfer of goods.• The business of Respondent was stopped in November, 2015 and Applicant approached to

		<p>Respondent for final settlement. But as per Applicant no positive response came from the Respondent for settlement.</p> <ul style="list-style-type: none">• As per the facts of the case, Applicant even served demand notice to the Respondent to which Respondent did not offer any reply and accordingly Applicant proceeded for corporate insolvency resolution process under the Code against Respondent.• Respondent contended that the Applicant has violated several clauses of the C&F Agreement and also failed to discharge its obligations.• As per Operational Creditor, Corporate Debtor is liable to pay Rs. 17,39,623 in respect of services provided by former to latter. However, Operational Creditor failed to submit relevant proofs in order to justify the amount in default.• NCLT stated that the remedy that Applicant wants to seek under the said case is not available under the Code and hence the parties should refer the case somewhere else.• Further as per the order this case doesn't falls under the summary jurisdiction and hence was dismissed by NCLT without any costs.
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We hope these updates add value to your knowledge. We shall be happy to receive your feedback in this regard.

Wish you good luck in all your endeavors!!

CS ALKA KAPOOR
CHIEF EXECUTIVE OFFICER
(Designate)