

KNOWLEDGE REPONERE (2-13 APRIL, 2018)

 **INSTITUTE OF INSOLVENCY PROFESSIONALS**

A wholly owned subsidiary of ICSI and registered with IBBI
(Formerly known as ICSI Insolvency Professionals Agency)

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Published by:

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(2-13 April, 2018)

Dear Professional Members,

Greetings!

We are pleased to share with you our next issue of the bulletin on the Insolvency and Bankruptcy Code, 2016 (“Code”).

I. REPORT OF THE INSOLVENCY LAW COMMITTEE

Ministry of Corporate Affairs has released the Report of the Insolvency Law Committee (“Committee”) on 3rd April, 2018. The Committee has made noteworthy recommendations including classification of home buyers as financial creditors owing to unique nature of financing done by them in real estate projects, exemption of Micro, Small and Medium Enterprises (“MSMEs”) from application of certain provisions of the Code in view of recognition of the importance of MSMEs and unique challenges faced by them, streamlining disqualifications of certain persons from submitting resolution plans, excluding guarantors assets vis-a-vis moratorium on the assets of corporate debtor, recalibration of voting thresholds for various decisions of committee of creditors. I am of the firm belief that recommendations made by the Committee to MCA, Government of India will go a long way in streamlining the corporate insolvency resolution process and removing difficulties faced by Insolvency Professionals.

During the consultation process for making recommendations to the Committee, ICSI’s wholly owned subsidiary ICSI Institute of Insolvency Professionals (“ICSI IIP”- Formerly known as Insolvency Professionals Agency), a frontline regulator under the Code for educating, developing, monitoring and disciplining Insolvency Professionals enrolled with it has made significant contribution in ascertaining the views of various stakeholders on the issues arising from functioning and implementation of the Code including issues that may impact the efficiency of the corporate insolvency resolution process and liquidation framework prescribed under the Code.

The Report of the Insolvency Law Committee can be accessed at:

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/ILRReport2603_03042018_2018-04-03%2015:21:01.pdf

II. IMPORTANT ORDERS BY INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

IBBI issued an order against an Insolvency Professional

- IBBI has imposed a penalty on Mr. Dhaivat Anjaria, Interim Resolution Professional and Resolution Professional for conducting corporate insolvency resolution process of Electrosteel Steels Ltd. Penalty equivalent to one tenth of the total fee payable to Mr. Anjaria for the said case has been imposed on him.
- The penalty has been imposed on him on the grounds of contravention of following provisions of the Code:
 - Sections 18(1)(b), 23, 25(2)(e), 29, 196(1)(g) and (h) and 208(2)(d) of the Code.
 - Regulation 36 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and
 - Paragraphs 1, 13, 14 and 19 of the Code of Conduct in First Schedule of the IBBI (Insolvency Professionals) Regulations, 2016.

The complete order in this respect can be accessed at :

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/DC_Dhaivat_2018-04-13%2020:35:48.pdf

III. POLICY UPDATES

a) Insolvency and Bankruptcy Board of India (Information Utilities (Amendment) Regulations, 2018

IBBI vide its press release dated 28th March 2018, published the amendments named IBBI (Information Utilities) (Amendment) Regulations, 2018 amending

Regulation 42 and Schedule in the Annexure to Form A to the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017.

The amendments can be accessed at:

[http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Mar/27th%20Mar%202018%20IBBI%20\(Information%20Utilities\)%20\(Amendment\)%20Regulations,%202018_2018-03-28%2018_18_26_2018-03-28%2019:01:08.pdf](http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Mar/27th%20Mar%202018%20IBBI%20(Information%20Utilities)%20(Amendment)%20Regulations,%202018_2018-03-28%2018_18_26_2018-03-28%2019:01:08.pdf)

b) IBBI amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

After considering the comments received from stakeholders till 31st December, 2017; IBBI notified the second amendment to be called as Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 and the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018, vide its Press Release dated 28th March, 2018. The amendment regulations are made to be effective from 1st April, 2018.

Important amendments effected by the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2018 are:

- a. The regulations provide timelines for various activities in a resolution process. The amendments now require the resolution professional to identify the prospective resolution applicants on or before the 105th day from the insolvency commencement date.
- b. The regulations provide that the expenses to be incurred on or by the interim resolution professional / the resolution professional shall be fixed / ratified by the Committee of Creditors and such fixed / ratified expense will form part of insolvency resolution process costs. The amendments now provide that such expenses means the fee to be paid to the interim resolution professional, the fee to be paid to insolvency professional entity, if any, and the fee to be paid to professionals, if any, and other expenses to be incurred by the interim resolution professional / resolution professional.

- c. The interim resolution professional / the resolution professional shall disclose item wise insolvency resolution process costs in such manner, as may be required by the Board.
- d. A financial creditor submitting a claim to the interim resolution professional shall declare whether it is or is not a related party in relation to the corporate debtor.
- e. The forms for submission of claims required affidavit from the claimant. The amendments have dispensed with the requirement of affidavit.

Important amendments effected by the Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2018 are:

- a. The regulations allow a liquidator to sell an asset on a standalone basis. These also allow the liquidator to sell the assets in a slump sale, a set of assets collectively or the assets in parcels. The amendments now allow the liquidator to sell the corporate debtor as a going concern.
- b. The amendments provide that the liquidation cost includes interest on interim finance for a period of twelve months or for the period from the liquidation commencement date till repayment of interim finance, whichever is lower.

The Press Release notifying the amendments can be accessed at:

<http://ibbi.gov.in/webadmin/pdf/press/2018/Mar/Press%20Release%20CIRP%20March%2028%202018.pdf>

c) IBBI amends the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016

On the basis of comments received on the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 and discussion papers, IBBI notified the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018. The amendment regulations are made to be effective from 1st April, 2018.

According to the amendment regulations:

- a. Subject to meeting other requirements, an individual shall be eligible for registration as insolvency professional if he has passed the Limited Insolvency Examination within the last 12 months and has completed a pre-

- registration educational course from an insolvency professional agency, as may be required by the Board.
- b. The syllabus, format, qualifying marks and frequency of the 'Limited Insolvency Examination' shall be published on the website of the IBBI at least three months before the examination.
 - c. An individual with the required experience of 10 / 15 years is eligible for registration as insolvency professional. In addition, an individual with little or no experience shall be eligible for registration as insolvency professional on successfully completing the Graduate Insolvency Programme, as may be approved by the IBBI.
 - d. As a condition of registration, an insolvency professional shall undergo continuing professional education as may be required by the IBBI.
 - e. An insolvency professional shall not outsource any of his duties and responsibilities under the Code.
 - f. A company, a registered partnership firm or a limited liability partnership shall be eligible for recognition as an insolvency professional entity, if -
 - i. its sole objective is to provide support services to insolvency professionals, who are its partners or directors, as the case may be;
 - ii. it has a net worth of not less than one crore rupees;
 - iii. majority of its shares is held by insolvency professionals, who are its directors, in case it is a company;
 - iv. majority of capital contribution is made by insolvency professionals, who are its partners, in case it is a limited liability partnership firm or a registered partnership firm;
 - v. majority of its partners or directors, as the case may be, are insolvency professionals;
 - vi. majority of its whole-time directors are insolvency professionals, in case it is a company; and
 - vii. none of its partners or directors is a partner or a director of another insolvency professional entity.
 - g. An insolvency professional shall disclose the fee payable to him, the fee payable to the insolvency professional entity, and the fee payable to professionals engaged by him to the insolvency professional agency of which he is a professional member and the agency shall publish such disclosure on its website.

The Press Release notifying the stated amendments can be accessed at:

<http://ibbi.gov.in/webadmin/pdf/press/2018/Mar/Press%20Release%20-%20IP%20Regulation%2028032018.pdf>

IV. ADMITTED CASES

Cases under the Code are being filed expeditiously across the various benches of NCLT. It is therefore imperative for our readers to be cognizant of the developments taking place. 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.	State Bank of India v/s. East Coast Energy Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Hyderabad	2,323.69 Crores
2.	ICICI Bank Limited v/s. Essar Power Jharkhand Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Principal Bench	3,500 Crores
3.	State Bank of India v/s. SEL Manufacturing Company Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chandigarh	1,136 Crores
4.	ICICI Bank v/s. Unimark Remedies Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	150 Crores

5.	M/s. RKTC Logistics Private Limited v/s. M/s. Dream Systems Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	54.54 Lakhs
6.	DBM Geotechnics and Constructions Pvt. Ltd. v/s. Dighi Port Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	21.75 Crores

V. RESOLUTION V/S. LIQUIDATION- A STATUS

a) List of Companies that have undergone Resolution till 31.03.2018

S. No	Case Title	Bench	Date of Order
1	Synergies Doorey Automotive Ltd.	Hyderabad Bench	02.08.2017
2	Shree Metalik Ltd.	Kolkata Bench	07.11.2017
3	Kamineni Steel & Power India Pvt. Ltd.	Hyderabad Bench	27.11.2017
4	Jekpl Private Ltd.	Allahabad Bench	15.12.2017
5	Chhaparia Industries Pvt. Ltd.	Mumbai Bench	29.09.2017
6	Hotel Gaudavan Pvt. Ltd.	Principal Bench	13.12.2017
7	Prowess International Pvt. Ltd.	Kolkata Bench	17.10.2017
8	West Bengal Essential Commodities Supply Corp. Ltd.	Kolkata Bench	20.11.2017
9	Shirdi Industries Ltd.	Mumbai Bench	18.05.2017
10	Nandan Hotels Ltd.	Bengaluru Bench	14.10.2017
11	Propel Valves Private Limited	Chennai Bench	19.03.2017
12	Divya Jyoti Sponge Iron private Limited	Kolkata Bench	13.03.2018

13	Precision Engineers and Fabricators Private Limited	Kolkata Bench	01.02.2018
14	Kalyanpur Cements Ltd.	Kolkata Bench	31.01.2018
15	Ved Cellulose Limited	Principal Bench	04.10.2017
16	Kalyanpur Cements Pvt. Ltd.	Kolkata Bench	31.03.18
17	Burn Standard Company Ltd.	Kolkata Bench	06.03.18
18	Shree Radha Raman Packaging Private Limited	New Delhi Bench	15.02.18
19	Palogix Infrastructure Pvt. Ltd.	Hyderabad Bench	12.02.18

b) List of Companies that have undergone Liquidation till 31.03.2018

S. No	Case Title	Bench	Date of Order
1	Rotomac Global Private Limited	Allahabad Bench	23.03.2018
2	Kadevi Industries Limited	Hyderabad Bench	23.02.2018
3	LML Limited	Allahabad Bench	23.03.2018
4	Laxmivinayak Rice Mill Private Limited	Kolkata Bench	22.03.2018
5	Tirupati Ceramics Limited	Chandigarh Bench	22.03.2018
6	Barjora Steel & re-Rolling Mills Private Limited	Kolkata Bench	21.03.2018
7	Aarohi Motors Pvt. Ltd.	Ahmedabad Bench	19.03.2018
8	Diamond Power Transformers Pvt. Ltd.	Ahmedabad Bench	19.03.2018
9	Vessons Energy Systems Pvt. Ltd.	Chennai Bench	19.03.2018
10	Maa Tara Industrial Complex Private Limited	Kolkata Bench	16.03.2018
11	Suvarana Karnataka Cements Pvt. Ltd.	Bengaluru Bench	07.03.2018
12	Upadan Commoditties Pvt. Ltd.	Kolkata Bench	01.03.2018
13	Mega Soft Infrastructure Pvt. Ltd.	New Delhi Bench	28.02.2018
14	DLS Industries Pvt. Ltd.	Mumbai Bench	27.02.2018
15	SRS Modern Sales Limited	Chandigarh Bench	26.02.2018

16	Karpagamm Spinners Pvt. Ltd.	Chennai Bench	22.02.2018
17	RHD Enterprises Private Limited	Kolkata Bench	22.02.2018
18	Infinity Fab Engineering Pvt. Ltd.	Bengaluru Bench	20.02.2018
19	Ultra Drytech Engineering Limited	Mumbai Bench	19.02.2018
20	Rolex cycles Pvt. Ltd.	Chandigarh Bench	13.02.2018
21	Jensen & Nicholson (India) Ltd.	Kolkata Bench	12.02.2018
22	Asian Natural resources (India) Ltd.	Ahmedabad Bench	09.02.2018
23	Diamond Polymers Private Limited	Ahmedabad Bench	19.03.2018
24	Ruby Cables Limited	Ahmedabad Bench	05.02.2018
25	Dev Cotex Pvt. Ltd.	Ahmedabad Bench	05.02.2018
26	Somnath Textiles Pvt. Ltd.	Ahmedabad Bench	05.02.2018
27	Gupta Corporation Pvt. Ltd.	Mumbai Bench	01.02.2018
28	Raman Ispat Pvt. Ltd.	Allahabad Bench	31.01.2018
29	Mahaan Proteins Limited	Principal Bench	23.01.2018
30	Roofit Industries Limited	Mumbai Bench	22.01.2018
31	Orieon Kuries and Loans Private Limited	Chennai Bench	15.01.2018
32	Radheshyam fibres Private Limited	Ahmedabad Bench	15.01.2018
33	Gujarat NRE Coke Limited	Kolkata Bench	11.01.2018
34	Tiruppur Surya Hitech Apparels Pvt. Ltd.	Chennai Bench	11.01.2018
35	Auro Mira Energy Company Pvt. Ltd.	Chennai Bench	04.01.2018
36	Gupta Coal India Pvt. Ltd.	Mumbai Bench	01.01.2018
37	Wegilant Net Solutions Pvt. Ltd.	Allahabad Bench	21.12.2017
38	Eolane Electronics Bangalore Pvt. Ltd.	Bengaluru Bench	20.12.2017
39	Advantage Projects and Consultants Pvt. Ltd.	New Delhi Bench III	18.12.2017

40	New Tech Fittings Pvt. Ltd.	Ahmedabad Bench	18.12.2017
41	JODPL Private Limited	Allahabad Bench	18.12.2017
42	R G Shaw and Sons Pvt. Ltd.	Kolkata Bench	15.12.2017
43	Ajudhia Distributors Pvt. Ltd.	Kolkata Bench	15.12.2017
44	New Tech Forge & Foundry Limited	Ahmedabad Bench	12.12.2017
45	Micro Forge (India) Ltd.	Ahmedabad Bench	12.12.2017
46	Innoventive Industries Limited	Mumbai Bench	23.11.2017
47	Shree Rajeshwar Weaving Mills Pvt. Ltd.	Mumbai Bench	05.12.2017
48	U B Engineering Limited	Mumbai Bench	05.12.2017
49	Pooja Tex Prints Pvt. Ltd.	Ahmedabad Bench	29.11.2017
50	Oasis Textile limited	Ahmedabad Bench	22.11.2017
51	Abhayam Trading Limited	Chennai Bench	17.11.2017
52	DCS International Pvt. Ltd.	Bengaluru Bench	17.11.2017
53	Swift Shipping and Friegth Logistics Pvt. Ltd.	Mumbai Bench	20.11.2017
54	Keshav Sponge and Energy Private Limited	Kolkata Bench	14.11.2017
55	Hada Textiles Industries Ltd.	Kolkata Bench	13.11.2017
56	Stewarts & Lloyds of India Limited	Kolkata Bench	26.10.2017
57	NICCO Corporation Limited	Kolkata Bench	17.10.2017
58	Helpline Hospitality Private Limited	New Delhi Bench	11.10.2017
59	Blossom Oils and Fats Limited	Hyderabad Bench	10.10.2017
60	Hind Motors Limited	Chandigarh Bench	28.08.2017
61	Rei Agro Limited	Kolkata Bench	24.08.2017
62	Bhupen Electronic Limited	Mumbai Bench	31.07.2017

VI. UPDATES ON PRONOUNCEMENT

a) NCLT Judgment – (Eligibility of Resolution Applicant under Section 29A of Code)

State Bank of India

...Financial Creditor

V/s.

Electrosteel Steels Limited

...Corporate Debtor

Date of Order: 20.03.2018

- NCLT, Kolkata Bench (“Adjudicating Authority”) with the instant order attempted to dispose of the two applications, filed under Section 60(5) in the matter State Bank of India v. Electrosteel Steels Limited admitted for Corporate Insolvency Resolution Process under Section 7 of the Insolvency and Bankruptcy Code (“the Code”) vide order dated 21.07.2017, for the claims and defenses being almost the same in the applications. Rainaissance Steel India Private Limited (“Applicant”), one of the Resolution Applicant in the Resolution Process of Electrosteel Steels Limited filed two different applications against other two different Resolution Applicants on the account of them being ineligible to submit the Resolution Plan.
- As for the brief facts, **in the two alleged different applications the Applicant challenged the decision of the Resolution Professional (“1ST Respondent”) for not considering the objections raised by him against the other Resolution Applicants namely, Tata Steel Limited and Vedanta Limited. The Applicant contended that the said two Resolution Applicants are not eligible to submit the Resolution Plan in accordance with Section 29A (d) r/w (i) and (j) of the Code.**
- Also, the Applicant contended, that Tata Steel UK Limited, also the 2nd Respondent, a 100% subsidiary of Tata Steel Limited was prosecuted by the UK Government under the provisions of UK’s Health and Safety at Work Act, 1974 (in short HSWA) and was sentenced by Royal Courts of Justice Strand, London on 26.07.2016 for two offences for the breach of section 2 (1) of HSWA. The final sentence was revised to 1315000 pounds in an appeal. A copy of the order was claimed to be annexed by the applicant with the application. On the other hand, Vedanta Limited, 3rd Respondent, is a subsidiary of Vedanta Resources Plc holding 50.13% equity in Vedanta Limited as per the

Annual Report of Vedanta Resources Plc for the year 2017. Moreover, Vedanta Resources Plc has another subsidiary Konkola Copper Mines (in short KCM) who undertakes mining operations in Zambia's Copper belt and Central Provinces. It was alleged by the Applicant that the Government of Zambia brought a successful prosecution against KCM for pollution and harm caused while conducting mining operations. And, vide order dated 25.11.2010, passed by Subordinate Court of First Class for the Chingola District Holden a Chingola, Zambia (Criminal Jurisdiction) on the basis of pleading guilty of all the charges by KCM, the court imposed a monetary fine on KCM. A copy of the said order was also said to be annexed by the Applicant with the application. Thus, both being ineligible to submit the Resolution Plan for violation of Section 30 (2) (e) of the Code.

- However, the Resolution Professional challenging the jurisdiction of the NCLT in entertaining an application under section 60 of the Insolvency and Bankruptcy Code, 2016, raised his objection as to the maintainability of the applications on the ground that since the Resolution Plan has not attained its finality and for the finality of a resolution plan submitted to him would be attained by being approved by the Committee of Creditors. **Anybody, who wish to challenge a resolution plan can challenge only when the Adjudicating Authority considers the approval of resolution plan under Section 31 (1) of the Code.**
- Resolution Professional further contended that the revealing the decision regarding the acceptance of a Resolution Plan to a different applicant other than an applicant whose plan has been rejected amounts to disclosure of confidential information from his side and violation of clause 21 of the Code of Conduct appended to the Insolvency & Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. Further, Resolution Professional alleged the compliance of Section 30(2) of the Code by him in considering the Resolution Plan. He further added, in order to ensure that the Resolution Applicants have complied with the requirements of Section 29A, he obtained an affidavit in certification of their eligibility as Resolution Applicants together with other supporting information and documents and enquiry conducted by him to ascertain the eligibility of the impugned Resolution Applicants.
- Impugned Resolution Applicants also questioned the maintainability of the respective application filed against them and alleged, enquires made by the Resolution Professional as to the prudence of the resolution applicants, forming an independent decision.

- The Adjudicating Authority, on hearing parties on both the sides and perusing the documents submitted before it so far as the contention as to maintainability of the applications on the ground that the Resolution Plans being not submitted before the Adjudicating Authority and presently being before the Committee of Creditors (“CoC”) the Adjudicating Authority cannot consider the applications as per sub-Section (1) of Section 31 of the Code, is concerned, observed that, keeping in view the application being filed under Section 60(5) of the Code, though approval or rejection of a Resolution Plan by CoC can be challenged by any aggrieved parties at a time **when it comes before the Adjudicating Authority as per Section 31 of I & B Code, the present applications is not against the Resolution Plan but non consideration of objection raised in respect of eligibility of two Resolution Applicants came up for consideration before the Resolution Professional** and whether Resolution Professional has considered the objection or not raised by the Applicant moreover, as per Section 60(5)(c) of the Code, Adjudicating Authority is authorised to decide inter alia any question of law or facts arising out of or in relation to the insolvency resolution or liquidation proceeding of the Code, thus the applications are maintainable.
- Further, the Adjudicating Authority in view of the Resolution Professional claim of obtaining affidavits and other supporting documents from all the prospective Resolution Applicants as part of diligence under Section 29A and only reply affidavit being filed in support of the said claim without producing any material reinforcing the same, doubted the knowledge of the Resolution Professional on the Resolution Applicants and their connected persons’ involvement in an offence within the jurisdiction of court outside India as provided in respect of clause (j) of Section 29A. Besides, on considering the Applicant successfully proving the conviction of the subsidiary companies of the alleged Resolution Applicants breaching the statutory provisions of the law in foreign country and Section 30 (2)(e) r/w 30 (3)-resolution plan that does not contravene any of the provisions of law for the time being in force be only presented to the CoC, deduce the fact the Resolution Professional before submission of resolution plan to CoC is bound to take a decision as to the resolution applicant’s eligibility. The reply affidavit does not establish anything in regard to the Resolution Professional has taken a justifiable decision as to the eligibility of the opposed Resolution Applicants whose plans were submitted to the CoC and thus the decision taken by the Resolution Professional regarding the eligibility of the Resolution Applicant as per Section 29A of the Code is without considering the objections raised by the Applicant. Mere pleading in the reply affidavit is devoid of any merit together with the

indication that Resolution Professional had no knowledge about the connected persons' conviction in any foreign court.

- Further, deciding the obligation of the Resolution Professional to inform the decisions in respect to the objections regarding the eligibility of the Resolution Applicants to the objectors in the context of the confidentiality of the information relating to the insolvency resolution process and clause 21 of the Code of Conduct appended to the first schedule to the IBBI (Insolvency Professional) Regulation, 2016, the Adjudicating Authority observed that Resolution Professional without updating his knowledge regarding the confidentiality to be upheld by him did not inform the decision taken by him in respect of the objections raised by the applicant in respect of eligibility of the Resolution Applicant. The Adjudicating Authority further stressed that such information is not a personal data of the Resolution Applicant or any particulars regarding the bidding amount. Passing of information to Resolution Professional by any one competent resolution applicant shall not be kept unheard by a Resolution Professional in case of this nature for if he took a wrong decision upon any incorrect materials submitted by interested resolution applicant and CoC had occasion to approve the plan relying on a wrong decision of a Resolution Professional and later rejection by the Adjudicating Authority may lead to non-approval of a plan approved by CoC and further lose of opportunity for CoC to call for fresh resolution plan.

Also, the Adjudicating Authority, on the failure of the Resolution Professional to prove that he recorded the reasons for arriving at the decision that the disputed Resolution Applicants are eligible as such in accordance of Section 29A and, reading Section 25 of the Code with Clause 1 to 21 more specifically Clauses 9, 16 and 17 to the first schedule of IBBI (Insolvency Professional) Regulation, 2016, highlighted the fact that the **Resolution Professional must act with objectivity in his professional dealings by ensuring that his decisions are made without the presence of any bias conflict of interest, coercion or undue influence of any party whether directly connected to the insolvency proceeding or not.** Further, Resolution Professional has to record his reasons for taking any decisions as regard to the determination of the prudence of a Resolution Applicant. **However, in the present case serious challenges are raised against the independence of the Resolution**

Professional plus no valid reasons were put as to holding eligibility of the impugned Resolution Applicants and discharge of his function by uninfluenced by any one. Hence, the Adjudicating Authority while stressing the extent to which the private communication with the stakeholder be also disclosed in the interest of finding out a reputable Resolution Applicant with the prior permission of an Adjudicating Authority, concluded the fact that disclosure of decision in holding the eligibility of the disputed Resolution Applicants is not at all violation of any provision, particularly Clause 21, of IBBI (Insolvency Professional) Regulations, 2016 as was alleged.

- Furthermore, the Adjudicating Authority while casting light on the objective behind the introduction of ordinance that proposed the amendment by adding Section 29A and a Proviso to Section 30(4) stressed on the fact that the objective behind the amendment is to prevent any tainted stakeholders or any stakeholders who's related or connected parties or persons is a defaulter or convict as per Section 29A and no such holder can any way become a resolution applicant for participating in the bidding for stressed assets, decided as to the eligibility of the Resolution Applicants under Section 29A of the Code and held, this Authority cannot make a decision to hold opposed resolution applicants eligible or ineligible for mainly two reasons. One, since Resolution Professional had already submitted all the resolution plans received by him to the CoC, it would be unfair and unjust in reopening the issue already finalised by the Resolution Professional, which is his power. Secondly, Proviso to Section 30(4) empowers CoC to consider the qualification of a resolution applicant as per the provisions under Section 29A, independently. **Also, that Resolution Professional and CoC being responsible for the interest and assets of a corporate debtor at the stage, this Adjudicating Authority cannot pass an order regarding the eligibility of the Resolution Applicants as it is under consideration of CoC.**
- Finally, taking into consideration all the above conclusions drawn, the Adjudicating Authority, holding that it is fair and just to direct Resolution Professional to inform the reasons of his decisions on the eligibility of the disputed Resolution Applicants in the case in hand to all the applicants and thus allowing to submit any further objections or evidence in regard to alleged disqualification of the disputed Resolution Applicant and place the further

objections, reply or any material submitted to Resolution Professional to CoC, who shall take an independent decision in regard to Section 29A r/w Proviso to Section 30 (4) of the Code, allowed the applications with following directions:-

1. Copy of the decision of the Resolution Professional in respect of eligibility of the impugned Resolution Applicants as per Section 29A with supporting reasons for taking the decision is to be given to the applicant within three days of the date of the order with proper acknowledgement:
2. The applicants are allowed to submit its reply or further objections if any to the decisions taken by the Resolution Professional to him in person or through e-mail within three days of the date of the receipt of the copy of the decision as directed above;
3. The Resolution Professional is directed to place all the objections of the applicants with supporting documents before the CoC with a copy of the order for its independent consideration as per proviso to Section 30 of the Code.

b) Major NCLAT judgements and their briefs

S. No.	Case Title	Brief
1	Binani Industries Limited V/s. Mr. Vijay Kumar V. Iyer and Anr Contemt	<ul style="list-style-type: none"> • Representing Binani Industries Limited, the contempt petition in an instant matter filed before NCLAT by its (suspended) Board of Directors on the requisite notice under Section 24 of the Code r/w Regulations 19, 21(3), 35, 36 7 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, not timely being furnished, taking away the opportunity of the (Suspended) Board of Directors to point out any better ‘Resolution Plan’ submitted by another ‘Resolution Applicant, which should have been accepted in place of the already approved plan by CoC. • Further, it was contended that the requisite notice

		<p>under aforementioned Section read together with the Regulation was issued to (Suspended) Board of Directors only a day prior to the meeting of the CoC, in contrast to the requirement of seven days notice along with the other relevant documents of the Meeting.</p> <ul style="list-style-type: none"> • However, NCLAT on finding the (Suspended) Board of Directors not competent to represent the Binani Industries Limited dismissed the petition, without commenting on the role to be played by the (Suspended) Board of Directors or any intention of any legislation that allow the (Suspended) Board of Directors to be present in the CoC, for not being maintainable giving the liberty to raise all the issues before the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench.
2	<p>Machhar Polymer Private Limited V/s. Sabre Helmets Private Limited</p>	<ul style="list-style-type: none"> • The appeal in this matter before NCLAT was filled after the application preferred by the Operational Creditor, also the Appellant in the present appeal, under Section 9 of the Code was rejected by the National Company Law Tribunal, Mumbai Bench, via order dated 28th September 2017, on the ground of being barred by limitation. • NCLAT took into account, the decision of this Appellate Tribunal in <i>M/s Speculum Plast Pvt. Ltd. V/s PTC Techno Pvt. Ltd.</i> that the delay in filing the application of more than three years to consider any laches on the part of the applicant might be allowed to be explained, even where the delay is in relation to the filing of the claims of dues to Insolvency Resolution Professional, except in the cases of continuing cause of action and where the application is filed under Section 10 of the Code, allowed the application setting aside the impugned order.

3	Mahesh Kumar Panwar V/s. Abhishek Anand	<ul style="list-style-type: none"> • The instant appeal was preferred, against the order dated 28th February, 2018 whereby and where under the NCLT, New Delhi Bench proceeded with the liquidation proceeding in the instant matter on the recommendation of the Committee of Creditors, on the ground that the resolution process has not been completed in accordance with the Code; for the details of the creditors was not recorded by the ‘Resolution Professional’ and the proper procedure has not been followed while calling for the applications from the Resolution Applicant. • The Appellant Authority, after hearing both the sides and perusing the record of the matter and observing that, for the reason that the Directors have not cooperated with the Resolution Professional for the relevant documents relating to the title deeds of the properties belonging to the ‘Corporate Debtor’ being not supplied to the ‘Resolution Professional’, the Resolution Professional and Committee of Creditors could not proceed and that the stipulated period of 180 days of completing the Resolution Process being already over, found no merit in the appeal and hence dismissed the appeal with no cost.
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VII. INSOLVENCY PROFESSIONAL’S CONCLAVE

IBBI announced Insolvency Professionals Conclave on ‘**Building the Institution of Insolvency Professionals**’ on 5th May, 2018 at Mumbai, vide its Press Release dated 28 March, 2018.

The complete details of the announcement can be accessed at:

<http://ibbi.gov.in/webfront/whatsnew.php>

VIII. NEWS AROUND THE CORNER

1) JSW Steel-AION Capital emerges successful bidder for Monnet Ispat

- JSW Steel-AION Capital has emerged as the successful bidder to acquire bankrupt Monnet Ispat and Energy (MIEL) which is one of the first top 12 loan defaulters identified by RBI.
- The consortium of JSW Steel-AION Capital has been declared as successful resolution applicant by the Committee of Creditors of MIEL.
- The insolvency resolution process of MIEL commenced on July 18, 2017. The resolution plan, submitted jointly by JSW Steel and AION Capital, was the only offer that Monnet Ispat and Energy received on December 23 -- the last date for the submission of the bids.
- MIEL owes more than Rs 10,000 crores to its lenders.

(Source: Business Standard/Dated: 12th April, 2018)

2) State Bank of India rejects out-of-court settlement for Uttam Galva

- Uttam Galva Steel's out-of-court settlement offer to pay State Bank of India (SBI) 51% of dues has been rejected by NCLT, Mumbai Bench.
- Uttam Galva was admitted for proceedings under the Insolvency and Bankruptcy Code (IBC) on March 15, 2017.
- Uttam Galva has defaulted an amount of Rs 14.86 billion, out of a total Rs 18.32-billion loan advanced by SBI. In total, the company owes Rs 61.92 billion (FY17), and has made an offer of 51 per cent to settle the entire loan amount of SBI.
- However, SBI told the NCLT, Mumbai Bench that they would agree for an out-of-court settlement only if 100 per cent of the defaulted amount will be paid to them by the Company.

(Source: Business Standard/Dated : 10th April, 2018)

3) Bharat Heavy Electricals Limited(BHEL) faces insolvency

- BHEL (a Public Sector Undertaking) is facing insolvency proceedings at NCLT, Principal Bench.
- The application for insolvency of BHEL has been filed by an ex-employee for unpaid salaries and allowances who was a pilot at Air India for 28 years.
- The next hearing in the matter is to be held on 9th May, 2018.

(Source: www.barandbench.com /Dated: 9th April, 2018)

4) Supreme Court refuse out of court settlement for Binani Cement

- Committee of Creditors of Binani Cement had selected Rajputana Properties Pvt Ltd (RRPL) as a bidder to takeover Binani Cement.
- In a setback for Ultratech, the Supreme Court on Friday refused to allow out-of-court settlement to Binani Cement.

(Source: Business Standard /Dated: 13th April, 2018)

5) Twin balance sheet problem nearing resolution: ASSOCHAM

Press Release issued by ASSOCHAM in this regard can be accessed at:

<http://www.assochem.org/newsdetail.php?id=6796>

(Source: Business Standard/Dated: 15th April, 2018)

We trust you will find this issue of our bulletin useful and informative.

Wish you good luck in all your endeavors!!

Team ICSI IIP