

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE
(01st January, -8th February, 2019)

Dear Professional Members,

Greetings!

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

PAST EVENTS

1. National Conclave on Corporate Insolvency and Valuation on 8th January, 2019 at Pune (Maharashtra)



ICSI Institute of Insolvency Professionals, ICSI Registered Valuers Organisation, Insolvency Professional Agency of Institute of Cost Accountants of India, ICMAI Registered Valuers Organisation jointly with Insolvency and Bankruptcy Board of India organised the 'National Conclave on Corporate Insolvency and Valuation' at Sheraton Grand, Pune, Maharashtra on 08th January, 2019.

Dr.Navrang Saini, Whole Time Member, IBBI, while appreciating the organisers of the conclave, emphasised the crucial role being played by IPAs and RVOs in bringing up brigade of professionals in the field of Insolvency and Valuation.

Shri Makarand Lele, President, ICSI highlighted the new professional opportunities available to the new generation of upcoming professionals in the field of Insolvency and Valuation.

Ms. Alka Kapoor, CEO, ICSI IIP emphasised on the conduct of insolvency professionals and their reporting obligations.

As a constant endeavour to educate and develop the professionals, ICSI IIP during the event released a new publication at the hands of Dr. Navrang Saini, titled "IBC Judicial/Regulatory Rulings for Stateholders A Handbook" covering summary of some of the important judicial pronouncements and the learnings by various stakeholders under IBC.

2. Webinar on Judicial/Regulatory Interpretations under the Insolvency and Bankruptcy Code, 2016 on 12th January, 2019



The Contribution of NCLT and IBBI in creating positive impact on the Economy through implementation of IBC 2016 in the last two years has been immense and is continuing. ICSI IIP was privileged to have Justice Shri M. M. Kumar, President, NCLT and Dr. M. S. Sahoo, Chairperson IBBI at one platform through a Webinar on January 12, 2019. It was a Golden opportunity for the Stakeholders of IBC across the country to reach out to the Adjudicating Authority and the Regulator by a single click of a link.

3. ICSI IIP organized Insolvency Law Quiz on 31st January, 2019

ICSI IIP in commemoration of success of 2 years of Insolvency and Bankruptcy Code, 2016 organized an Online Insolvency Law Quiz for Students & Professionals on Thursday January 31, 2019. The Competition was organized for the Students below the

age of 25years of any Institute, School, College, University or Organization. Around 6000 applications were received and amongst them 1000 applications were short listed for the quiz. Top three scorers will be rewarded cash prize along with certificate and publications while other top 07 participants will receive publications along with certificate.

UPDATES

❖ **Initiative taken up by ICSI IIP to forward IBC Learning Curves everyday.**

ICSI IIP in its continuous endeavour to educate and promote Insolvency Professionals has initiated to forward everyday learning curve to all the Insolvency Professionals along with other professionals.

ADMITTED CASES

Cases under the Code are being filed expeditiously across the various benches of National Company Law Tribunal ("NCLT"). The newly admitted cases with regard to CIRP under the Code are as below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount default mentioned application (in Rupees)	in as in
1.	In the matter of Hiranandani Palace Gardens Pvt.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	11.20 Lakh	
2.	In the matter of BIW Fabricators Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	16.14 Lakh	
3.	In the matter Vijay Rochlani Vs Shantai Exim Ltd	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	50 Lakh	

4.	In the matter of Aura Management Services Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	47.34 Lakh
5.	In the matter of Kanupat Himghar Pvt. Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Kolkata	14.98 Crores
6.	In the matter of Swastik Ceracon Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Ahmedabad	46.36 Lakh
7.	In the matter of Krrish Shalimar Projects Pvt. Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	1.85 Crore
8.	In the matter of UTC Softech Pvt. Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	47.50 Lakh
9.	In the matter of N K Louha Udyog Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	35.70 Lakh
10.	In the matter of N K Louha Udyog Pvt. Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Kolkata	20.09 Crore
11.	In the matter of Kaliber Associates Pvt.	Section 7 of the Code dealing with the initiation of CIRP by financial	New Delhi	1 Crore

	Ltd	creditor.		
12.	In the matter of Sattik Exports Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Kolkata	28.10 Lakh
13.	In the matter of Sahil International Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chandigarh	98.17 Lakh
14.	In the matter of Unnati Fortune Holdings Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	4.53 Crore
15.	In the matter of Gokula Kannan Chits	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chennai	12.75 Lakh
16.	In the matter of Ganga Advisory Pvt. Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Ahmedabad	17.95 Crore

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Venky Hi-tech Ispat Ltd.	Kolkata	08.01.2019
2.	In the matter of Amar Remedies Limited	Mumbai	29.01.2019

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Gupta Infrastructure (India) Pvt. Ltd.	Mumbai	02.01.2019
2.	In the matter of Uthrakalimman Infrastructures Private Limited	Chennai	07.01.2019
3.	In the matter of Sheth Metal Pvt. Ltd.	Mumbai	07.01.2019
4.	In the matter of Powercon Projects & Association Limited	Kolkata	08.01.2019
5.	In the matter of Notion Ink Design Labs Private Limited	Bengaluru	09.01.2019
6.	In the matter of Kingfisher Industries Private	Chandigarh	09.01.2019
7.	In the matter of Kamla Landmarc Motors Pvt. Ltd.	Mumbai	10.01.2019
8.	In the matter of Bharati Defence and Infrastructure Ltd.	Mumbai	14.01.2019

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	K. Sashidhar Vs. India Overseas Bank	05.02.2019	Supreme Court	The Hon'ble Supreme Court observed that the National Company Law Tribunal has no jurisdiction and authority to analyse or evaluate the commercial decision of the Committee of Creditors (CoC) to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors.	https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/K%20Sashidhar%20Vs%20India%20Overseas%20Bank%20&%20Ors%20Civil%20Appeal%20No.%2010673-2018%20with%20CA%20No.%2010719%20-2018%20CA%20No.%2010971%20-20-

					2018%20and%20SLP%20(C)%20No.%2029181-2019-02-06%2010:31:11.pdf
2.	Vijay Kumar Jain Vs Standard Chartered Bank & others (Ruchi Soya Industries Ltd)	31.01.2019	Supreme Court	<p>1. The present appeal arises out of an NCLAT judgment rejecting the appellant's prayer for directions to the RP to provide all relevant documents including the resolution plans in question to members of the suspended Board of Directors of the corporate debtor in each case so that they may meaningfully participate in meetings held by the CoC.</p> <p>2. SC observed that the statutory scheme of IBC and CIRP Regulations made it clear that though the erstwhile Board of Directors are not members of the CoC, yet, they have a right to participate in each and every meeting held by the CoC and also have a right to discuss along with members of the CoC all resolution plans that are presented at such meetings under Section 25(2)(i)</p>	https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Vijay%20Kumar%20Jain%20Vs%20Standard%20Chartered%20Bank%20&%20Ors%20Civil%20Appeal%20No.%208430-2018-2019-01-31%2023:14:57.pdf

				<p>3. SC decided that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the CoC, must be given a copy of such plans as part of "documents" that have to be furnished along with the notice of such meetings.</p>	
3.	Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.	25.01.2019	Supreme Court	<p>In this landmark judgment the Hon'ble Apex Court has settled a number of issues. The Apex Court, inter alia held that:</p> <ul style="list-style-type: none"> • Classification between FCs and OCs is neither discriminatory, nor arbitrary, nor violative of Article 14. • Discussing the powers of the RP, SC observed that the RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA. • The appointment of members of NCLT and NCLAT has been regularly appointed. • There is nothing in the Code which interdicts the CD from pursuing counterclaims in other judicial fora. • RP has no adjudicatory powers. He has administrative powers as opposed to quasi-judicial powers. 	https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/25th%20Jan%202019%20in%20the%20matter%20of%20Swiss%20Ribbons%20Pvt.%20Ltd.%20&%20Anr.%20Writ%20Petition%20(Civil)%20No.%2037,99,100,115,459,598,775,822,849%20&%201221-2018%20In%20Special%20Leave%20Petition%20(Civil)%20No.%2028623%20of%202018%2019-01-25%2013:07:58.pdf
4.	Forech	22.01.2019	Supreme	Supreme Court held that	https://ibbi.gov.i

	India Ltd Vs Edelweiss Assets Reconstruct ion Co.		Court	Corporate Insolvency Resolution Process(CIRP) under the Insolvency and Bankruptcy Code (IBC) can continue independent of any pending winding up process against the corporate debtor pending in the High Court under the Companies Act.	n//webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Forech%20India%20Ltd%20Vs%20Edelweiss%20Assets%20Reconstruction%20Co.%20Ltd%20Civil%20Appeal%20No.%20818-2018-2019-01-26%2010:49:58.pdf
5.	Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd.	03.01.2019	NCLAT	NCLT has no power to convert CIRP into fast track insolvency process	https://nclat.nic.in/Useradmin/upload/3193343475c38770a16237.pdf
6.	Asset Reconstruct ion Company (India) Ltd.	07.01.2019	NCLAT	The Adjudicating Authority is not required to decide mis-match of 'debt' occurred and the mis-match of 'debt' cannot be a ground to reject the claim if the amount is due more than Rupees One Lakh and there is a 'default'. If the 'debt' is more than 1 Lakh, then the AA is required to admit the application, except where there is defect, which can be removed within 7 days from the date of receipt of the notice from the AA.	https://nclat.nic.in/Useradmin/upload/17391819745c3336cda9539.pdf
7.	MSX Mall Pvt. Ltd.	07.01.2019	NCLAT	NCLAT held that the arbitration proceedings, if so pending may continue but the award passed by the Arbitral Tribunal against the 'Corporate Debtor' be not given effect during the period of	https://nclat.nic.in/Useradmin/upload/5092829615c342c931d4db.pdf

				'Moratorium'.	
8.	Bank of India Vs. Rural Electrification Corporation Ltd. & Ors	08.01.2019	NCLAT	<p>NCLAT held that it is not necessary to initiate 'Corporate Insolvency Resolution Process' against the 'Principal Borrower' before initiating 'Corporate Insolvency Resolution Process' against the 'Corporate Guarantors'.</p> <p>It is always open to the 'Financial Creditor' to initiate 'Corporate Insolvency Resolution Process' under Section 7 against the 'Corporate Guarantors', as the creditor is also the 'Financial Creditor' qua 'Corporate Guarantor'.</p>	https://nclat.nic.in/Useradmin/upload/8934369465c34942dcf152.pdf
9.	Ashok B. Jiwrajka, Director of Alok Infrastructure Ltd. Vs. Axis Bank Ltd.	16.01.2019	NCLAT	<p>It was argued that since CIRP for the parent company has not yet been completed, admission against the subsidiary is not allowed under Section 60(5) of the IBC.</p> <p>NCLAT held that since the subsidiary is an entity distinct from its parent, the moratorium provisions will not apply to subsidiary and it can be proceeded against separately.</p>	https://nclat.nic.in/Useradmin/upload/16748006845c401f1bd5180.pdf
10.	S C Sekaran Vs Amit Gupta	29.01.2019	NCLAT	Liquidator was directed by Appellate authority to verify claims of all the creditors; take into custody and control of all the assets, property, and actionable claims of the	https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%200S%20K%20Sekaran%20Vs%20

				'corporate debtor', carry on the business of the 'corporate debtor' for its beneficial liquidation etc. as prescribed under Section 35 of the I&B Code.	Amit%20Gupta%20&%20Ors%20CA%20(AT)%20No.%20495%20,%20496%20-2018 2019-01-31%2023:35:47.pdf
11.	TATA Steel v. Liberty House	04.02.2019	NCLAT	<p>National Company Law Appellate Tribunal(NCLAT) rejected the appeal filed by Tata Steels against consideration of revised resolution plans in the insolvency process of Bhushan Power and Steels.</p> <p>Further, Appellant Authority remitted the case to NCLT, Principal Bench for passing an appropriate order. It also held that if in case, the Adjudicating Authority is of the opinion that the discrimination has been made between the 'Financial Creditors' and the 'Operational Creditors', it may give opportunity to the 'JSW Steel' to improve its plan and thereby, by substituting the approved 'Resolution Plan' with such improvement.</p>	https://ibbi.gov.in/webadmin/pdf/order/2019/February/4th%20Feb%202019%20in%20the%20matter%20of%20Tata%20Steel%20Limited%20Vs.%20Liberty%20House%20Group%20Pte.%20Ltd.%20&%20Ors.%20CA%20(AT)%20(Insolvency)%20No.%20198-2018 2019-02-04%2017:48:21.pdf
12.	Alka Agarwal & Ors Vs Parsvnath Landmark	01.02.2019	NCLT	NCLT in its order dated 11th January, 2019 had allowed insolvency proceedings against Parsvnath Landmark after	https://nclt.gov.in/sites/default/files/Interim-order-pdf/Alka%20Aga

				<p>three home buyers approached the tribunal complaining about delay in completion of the project. Rejecting the company's submission that the application was not maintainable and delay was on account of various clearances and the matter of issue of ownership of the said land is still pending before the Delhi High Court., etc, NCLT said that the amount has been raised from the petitioners/allottees under a real estate project and in such a situation not only the debt has a commercial effect of borrowings and come within the scope of 'financial debt', but also the petitioners are covered by the definition of expression 'financial creditor'.</p> <p>Hon'ble NCLT in its order dated 01.02.2019 has closed the insolvency resolution process against a Parsvnath Developers subsidiary after homebuyers 'amicably settled' their dispute with the realty firm.</p>	rwal%20%26%200Ors%20Vs.%20Parsvnath%20Landmark%20Developers%20Pvt%20Ltd%20%26%200Ors. 4.pdf
13.	TVS Interconnect Systems Pvt. Ltd.	15.01.2019	NCLT	<p>After the IRP is appointed, payment of his remuneration should not be fixed by Court. IRP has liberty to raise his professional bill and submit his expenses before Committee of</p>	https://nclt.gov.in/sites/default/files/final-orders-pdf/TVS%20Interconnect%20Systems%20Pvt.%20Ltd.%20Vs%20ORG%20Informa

				Creditors and Committee of Creditors will make the payment as per norms.	tics%20Ltd.pdf
14.	In the matter of Amar Remedies Limited	29.01.2019	NCLT	Corporate Debtor filed a petition under section 10 of the IBC, 2016 without disclosing that a liquidation order has already been passed by the Hon'ble High Court. NCLT held that the petition was filed under section 10 of the IBC, 2016 after the suppression of the material facts, which were known to be material, therefore the petition was rejected and a cost of Rs. 10 Lakh was imposed which shall be paid by the Corporate Applicant.	https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/29th%20Jan%202019%20in%20the%20matter%20of%20Amar%20Remedies%20Limited%20MA%20No.%20524-2018%20In%20CP(IB)%201053%20(MB)%20-2017%202019-02-01%2017:29:14.pdf

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

Wish you good luck in all your endeavors!!

Team ICSI IIP

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