

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## **KNOWLEDGE REPONERE (09<sup>th</sup> February- 15<sup>th</sup> 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**").

### **UPCOMING EVENTS**

- ❖ **Interactive Session and Networking for Insolvency Professionals & Other Professionals being organized on 20<sup>th</sup> February, 2019**

An interesting thought provoking interaction inter se the Insolvency Resolution Professionals (IRPs) and other experts is being organised by ICSI IIP to focus on some specific issues/difficulties faced by the IRPs. The Session shall involve free exchange of ideas, thoughts and views on the present IBC regime. The suggestions made during the Session shall be analyzed and brought to the Regulators' notice seeking amendments to the regulations, thereby intending to make the CIRP process more effective and efficient.

**Date-** February 20, 2019

**Time-** 6pm to 8pm

**Venue-** Andhra Association, 24-25, Lodhi Institutional Area, New Delhi – 110003

**Registration fees** – Rs. 300/- per person (payment can be made through Cash/Paytm/DD).

**Last date of registration** – February 18, 2019

**[Registration fee includes Evening Tea at 5:30PM] The payment may be made by cash/paytm/DD in favour of "ICSI Institute of Insolvency Professionals" payable at New Delhi.**

❖ **IBC- A game changer for the Bankers': An Interactive Session on February 27, 2019**

**Insolvency and Bankruptcy Board of India and ICSI Institute of Insolvency Professionals (ICSI IIP)** jointly proposes to organise a half-day session for the Bankers on the subject '**IBC- A game changer for the Bankers'**, at the Conference Hall, 5th Floor, Andhra Association, 24-25, Lodhi institutional Area, New Delhi on February 27, 2019 from 3.00pm to 6.00pm.

**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:

<b>S. No.</b>	<b>Case Title</b>	<b>Relevant Section</b>	<b>NCLT Bench</b>	<b>Amount default mentioned in application (in Rupees)</b>
1.	In the matter of Sholingur Textiles Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	53.80 Crore
2.	In the matter of AKR Home Depot Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chennai	3.60 Lakh
3.	In the matter of Gupta Dyeing & Printing Mills Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Ahmedabad	10.19 Lakh

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Infinitas Energy Solutions Pvt. Ltd.	Chennai	06.02.2019
2.	In the matter of Summer India Textiles Mills Private Limited	Chennai	08.02.2019
3.	In the matter of Deleo Construction Private Limited	Chennai	08.02.2019

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Naachair Paper Boards Private Limited	Chennai	08.02.2019

## NEWS UPDATE

- **NCLAT extends deadline for NCLT Ahmedabad to decide on Essar.**  
The National Company Law Appellate Tribunal (NCLAT) in its order dated 12<sup>th</sup> Feb,2019 granted a week more time to NCLT Ahmedabad to decide over the Rs 42,000 crore resolution plan submitted by ArcelorMittal for the debt ridden EssarSteel.  
(Source: [http://timesofindia.indiatimes.com/articleshow/67955114.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://timesofindia.indiatimes.com/articleshow/67955114.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))
- **NCLT asks director to seek permission before travelling abroad.**  
The Mumbai Bench of NCLT has recently asked four directors of Gammon India Ltd. to not leave the country without obtaining its permission.  
(Source: [https://barandbench.com/nclt-asks-directors-to-seek-approval-before-traveling-abroad/?branch\\_match\\_id=608564215592243914](https://barandbench.com/nclt-asks-directors-to-seek-approval-before-traveling-abroad/?branch_match_id=608564215592243914) )
- **State Bank Of India Finds Only One Taker For Essar Steel Loans.**  
(Source: <https://www.bloombergquint.com/business/state-bank-of-india->

[finds-only-one-taker-for-essar-steel-loans#gs.BzNq8AZ1](#))

- **ArcelorMittal must wait more for Essar Steel resolution; NCLT defers bankruptcy verdict again.**

ArcelorMittal's wait for Essar Steel bankruptcy resolution has got longer with the NCLT verdict deferred to 19 February 2019, and the subsequent NCLAT hearing postponed to 28 February 2019. The Ahmedabad branch of the National Company Law Tribunal (NCLT) is now expected to give its verdict on ArcelorMittal's resolution plan for Essar Steel by 19 February, 2019

(Source: <https://www.financialexpress.com/industry/arcelormittal-must-wait-more-for-essar-steel-resolution-nclt-defers-bankruptcy-verdict-again/1484892/> )

- **NCLAT adjourns RCom's plea for insolvency to 6 March**

The National Company Law Appellate Tribunal (NCLAT) on 12<sup>th</sup> February, 2019 adjourned the hearing over Reliance Communications' plea to proceed with insolvency process to 6 March as the matter is also pending before the Supreme Court.

(Source: <https://www.livemint.com/industry/telecom/nclat-adjourns-rcom-s-plea-for-insolvency-to-6-march-1549983285379.html> )

- **JSW Steel Declared Winning Bidder For Bhushan Power & Steel**

(Source: <https://www.bloomberqquint.com/business/nclt-allows-amtek-autos-resolution-process-to-start-once-again#gs.7j31XEjA>)

- **NCLT Allows Amtek Auto's Resolution Process To Start Once Again**

The Chandigarh bench of the National Company Law Tribunal, on 13<sup>th</sup> February, 2019 allowed the financial creditors of Amtek Auto Ltd. to start the resolution process from scratch, more than 18 months after it was first initiated.

(Source: <https://www.bloomberqquint.com/business/nclt-allows-amtek-autos-resolution-process-to-start-once-again#gs.7j31XEjA>)

## BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	Cushman And Wakefield India Private Limited V. Union Of India &Anr.	31.01.2019	High Court	<p>A writ petition was filed before the Hon'ble Delhi High Court to declare that Rule 3(2) of the Companies (Registered Valuers and Valuation) Rules, 2017 as unconstitutional for violating Article 14, Article 19(1)(g) and Article 301 of the Constitution of India.</p> <p>Rule 3(2) states that no partnership entity or a company can be a registered valuer if it is a subsidiary, joint venture or associate or another company or body corporate.</p> <p>The Court laid down that the objective and intention behind laying down the Rule is clearly to introduce higher standards of professionalism in valuation industry, specifically in relation to valuations</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Cushman%20and%20Wankefield%20India%20Private%20Limited%20Vs%20Union%20of%20India%20&amp;%20Anr%20WP%20(C)%20No.%209883%20-2018%20CM%20No.%2038508-2018-2019-02-06%2011:30:20.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Cushman%20and%20Wankefield%20India%20Private%20Limited%20Vs%20Union%20of%20India%20&amp;%20Anr%20WP%20(C)%20No.%209883%20-2018%20CM%20No.%2038508-2018-2019-02-06%2011:30:20.pdf</a>

			<p>undertaken for the purpose of Companies Act and IBC, 2016. The impugned Rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation, being one of the most essential elements of the proceedings before NCLT.</p> <p>The issue raised was whether exclusion of a subsidiary company, joint venture or associate of other company, for purpose of eligibility for registration as valuer is reasonable.</p> <p>The court held that making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of</p>	
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				<p>registration as valuer, a separate class has been carved out based on classification which is founded on intelligible differentia and as such the Rule cannot be faulted.</p>	
2.	Coal India Ltd. v. Gulf Coil Lubricants India Ltd. &Anr.	11.02.2019	NCLAT	<p>The court observed that the parties have now settled the matter prior to the constitution of the 'Committee of Creditors' and the Adjudicating Authority did not take into account that the principal amount has already been paid and that the original plea of 'Corporate Debtor' that no interest was payable in terms of the Agreement/ Contract has been resolved the Adjudicating Authority appointing 'Interim Resolution Professional', declaring moratorium, freezing of account, and all other order (s) passed by the Adjudicating Authority pursuant</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/11th%20Feb%202019%20In%20the%20matter%20of%20Coal%20India%20Ltd.%20vs%20Gulf%20Coil%20Lubricants%20India%20Ltd.%20&amp;%20Anr.%20[C A(AT)(Insolvency)807-2018] 2019-02-13%2011:20:24.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/11th%20Feb%202019%20In%20the%20matter%20of%20Coal%20India%20Ltd.%20vs%20Gulf%20Coil%20Lubricants%20India%20Ltd.%20&amp;%20Anr.%20[C A(AT)(Insolvency)807-2018] 2019-02-13%2011:20:24.pdf</a></p>

				to impugned order and action, if any, taken by the 'Interim Resolution Professional', including the advertisement published in the newspaper calling for applications all such orders and actions are declared illegal and are set aside.	
3.	Srei Infrastructure Finance Ltd. v. IDBI Bank Ltd. &Anr.	11.02.2019	NCLAT	<p>An Appeal was preferred by Srei Infrastructure (FC) before the Appellate Authority to direct Adjudicating Authority to pass the order either admitting the application under Section 7 or rejecting the same.</p> <p>The court held that this is not the stage for any party to intervene including the appellant.</p> <p>It further held that it is for the Adjudicating Authority to pass the order either admitting the application under Section 7 or rejecting the same</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/11th%20Feb%202019%20In%20the%20matter%20of%20Srei%20Infrastructure%20Finance%20Ltd.%20vs%20IDBI%20Bank%20Ltd.%20&amp;%20Anr.[CA(AT)(Insolvency)126-2019]2019-02-13%2010:57:37.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/11th%20Feb%202019%20In%20the%20matter%20of%20Srei%20Infrastructure%20Finance%20Ltd.%20vs%20IDBI%20Bank%20Ltd.%20&amp;%20Anr.[CA(AT)(Insolvency)126-2019]2019-02-13%2010:57:37.pdf</a>



				and only thereafter the cause of action arises for one or other party including the appellant herein, if the appellant feels aggrieved against such order.	
4.	State Bank of India v. Jai Balaji Industries Limited &Ors.	08.02.2019	NCLAT	<p>In the present case, an application under Section 7 was filed before the NCLT, Kolkata Bench and was kept pending for an year as NCLT was of the view that winding up/liquidation order has been passed by the Hon'ble High Court of Calcutta.</p> <p>But, winding up order was recalled by the division Bench. NCLT failed to notice this relevant order passed by division Bench.</p> <p>Therefore, Tribunal remitted Jai Balaji matter to the Kolkata Bench with direction to admit the application under Section 7 and also directed that no further hearing is required to be</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/8th%20Feb%202019%20State%20bak%20of%20India%20vs%20Jai%20Balaji%20Industries%20Limited%20&amp;%20Ors.%20[CA(AT)](Insolvency)788-2018]2019-02-12%2017:23:17.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/8th%20Feb%202019%20State%20bak%20of%20India%20vs%20Jai%20Balaji%20Industries%20Limited%20&amp;%20Ors.%20[CA(AT)](Insolvency)788-2018]2019-02-12%2017:23:17.pdf</a>

				given to any person and held that it is a fit case for admission.	
5.	Vipin Kumar v/s RamanathanB huvaneshwari, R.P. for Tejkamal Pharmaceutica ls Pvt. Ltd.	04.02.2019	NCLAT	<p>An appeal was filed stating that the Adjudicating Authority cannot refer the fraud matters which are identified during Corporate Insolvency Resolution Process by Resolution Professional as per Section 66 of the I &amp; B Code, 2016 to Central Government directly for investigation unless it has evidence to form opinion that investigation into affairs of the company is required after giving due notice to the parties concerned.</p> <p>In view of the above, NCLAT has set aside the order dated 20.08.2018 passed by NCLT, Bengaluru Bench with the observation that the question of law has been left open for determination in an</p>	<a href="https://nclat.nic.in/Useradmin/upload/21402626985c628cf2c82ab.pdf">https://nclat.nic.in/Useradmin/upload/21402626985c628cf2c82ab.pdf</a>

				appropriate case.	
6.	Kushal Ltd. v/s Ramchandra D. Choudhary&Or s.	01.02.2019	NCLAT	<p>An appeal was filed before the appellate tribunal stating that an approved resolution by CoC was placed before the approval of Adjudicating Authority for more than seven months back, the Adjudicating Authority for one or other reason is adjourning the matter.</p> <p>NCLAT directed NCLT with observation to list the matter immediately within 2 weeks otherwise the appellant can file interlocutory application to NCLAT.</p>	<a href="https://nclat.nic.in/Useradmin/upload/19584974985c592c625f87e.pdf">https://nclat.nic.in/Useradmin/upload/19584974985c592c625f87e.pdf</a>
7.	Vandana Industries Ltd. v/s IL & FS Financial Services Ltd. &Anr.	01.02.2019	NCLAT	<p>A Section 10 application was filed by the Board of Directors of the Company without approval of the shareholders.</p> <p>NCLAT dismissed the application filed before NCLT under sec 10 of IBC, 2016 and made it void even though</p>	<a href="https://nclat.nic.in/Useradmin/upload/1463609625c5961756a925.pdf">https://nclat.nic.in/Useradmin/upload/1463609625c5961756a925.pdf</a>

				<p>liquidation order was passed by Adjudicating Authority.</p> <p>NCLAT directed the Corporate Debtor to pay the fees of RP within 2 weeks.</p>	
8.	Union of India, Ministry of Corporate Affairs v. Mr. MukeshManeklalChoksi	06.02.2019	NCLT, Mumbai Bench	<p>A Statutory Auditor, colluded with the Chairman/Director of other Respondent company and has given a false Audit certificate relating to the Profit &amp; Loss Account and Balance Sheet of the Respondent company i.e. Zen Shaving Limited, without even examining and verifying the books of accounts, and the Statutory Auditor has not given any plausible explanation for such irresponsible fraudulent activities.</p> <p>NCLT held that the statutory Auditor shall not be eligible to be appointed as an Auditor of any company for a period of 5 years from the date of</p>	<p><a href="https://nclt.gov.in/sites/default/files/Interim-order-pdf/CP%20365%20of%202018%20Union%20of%20India%20vs%20Mukesh%20Choksi%20-06.2.2019%20FINAL%20AMENDED%208.2.19.pdf">https://nclt.gov.in/sites/default/files/Interim-order-pdf/CP%20365%20of%202018%20Union%20of%20India%20vs%20Mukesh%20Choksi%20-06.2.2019%20FINAL%20AMENDED%208.2.19.pdf</a></p>

				<p>passing this order, and the auditor shall also be liable for action under Section 447 of the Companies Act, 2013.</p>	
9.	Unimetal Castings Ltd Vs. TJSB Sahakari Bank Ltd	25.01.2019	NCLT, Mumbai Bench	<p>The Corporate Debtor (CD) submitted that loan was appearing in the Balance Sheet of the CD which is acknowledgement of liability and CD has not disputed the fact of loan being shown as liability in its Balance Sheet.</p> <p>Thus, the liability shown in the balance sheet is a clear acknowledgement of debt by the CD and is not barred by Limitation Act.</p> <p>Therefore the adjudicating authority being satisfied with the fact that the CD defaulted in making payment towards the liability to the petitioner held that the petition deserves to be admitted.</p>	<p><a href="https://nclt.gov.in/sites/default/files/Interim-order-pdf/TJSB%20SAHAKARI%20BANK%20LTD.%20CP-3622-2018%20NCLT%20ON%2025.01.2019%20INTERIM.pdf">https://nclt.gov.in/sites/default/files/Interim-order-pdf/TJSB%20SAHAKARI%20BANK%20LTD.%20CP-3622-2018%20NCLT%20ON%2025.01.2019%20INTERIM.pdf</a></p>

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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