

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## KNOWLEDGE REPONERE (22<sup>nd</sup> February-1<sup>st</sup> March, 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

❖ **IBC- A game changer for the Bankers: An Interactive Session, on March 05, 2019.**

**Insolvency and Bankruptcy Board of India (IBBI) and ICSI Institute of Insolvency Professionals (ICSI IIP)** jointly propose to organise a half-day session for the Bankers on the subject, '**IBC- A game changer for the Bankers – An Interactive Session**', at the Conference Hall, 5th Floor, Andhra Association, 24-25, Lodhi Institutional Area, New Delhi, on March 5, 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 case with regard to CIRP under the Code is as follows:

S. No.	Cause Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	<i>M/s Artha Energy Resources LLP v. Photon Energy Systems Limited,</i>	Section 9 of the Code dealing with the initiation of CIRP	Hyderabad	74,17,215

	CP (IB) 231/0/HDB/2018.	by Operational Creditor.		
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## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Brainer Trade & Fin-Tech Pvt., C.P. 1417/I&BP/NCLT/MAH/2018.	Mumbai	22.02.2019
2.	In the matter of Sainath Texport Limited, CP (IB) NO.56/Chd/Hry/2018.	Chandigarh	20.02.2019

## BRIEF OF JUDGMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Liberty House Group PteLtd.v. State Bank of India&amp; Ors., CS(COMM) 1246/2018 &amp; IAs No.16056/2018.</i>	22.02.2019	Delhi High Court	High Court upheld the supremacy of Insolvency and Bankruptcy Code (IBC) over other civil laws, such as, those of contracts and guarantees and said that only the National Company Law Tribunal (NCLT) or similar adjudicating authorities should deal with the cases falling under the IBC. If civil courts were to pass any orders in	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Liberty%20House%20Group%20PTE%20Ltd%20Vs%20State%20Bank%20of%20India%20CS%20(Comm)%201246-2018%20and%20IAs%20">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Liberty%20House%20Group%20PTE%20Ltd%20Vs%20State%20Bank%20of%20India%20CS%20(Comm)%201246-2018%20and%20IAs%20</a>

				<p>matters pertaining to IBC, the entire Corporate Insolvency Resolution Process pending before NCLT would be “put at naught” as “non-serious applicants” would submit resolution plans for consideration before the Resolution Professional (RP) and Committee of Creditors (CoC), and then not abide with it, once it is approved. This would lead to wastage of time, which could make resolution of Corporate Debtors unfeasible. High Court observed that, in such cases, liquidation of the company would be the only alternative left, owing to the time that has lapsed.</p>	<p><a href="#">No.%2016056-2018%20and%2016060-2018%20AND%20CS%20(Comm)%201247-2018%20and%20IAs%20No.16061-2018%20and%2016065-2018%2019-02-22%2020:51:37.pdf</a></p>
2.	<p><i>Mr. Navneet Kumar Gupta v. Bharat Heavy Electricals Limited,</i></p> <p>Company Appeal (AT) (Insolvency) No. 743 of</p>	26.02.2019	NCLAT	<p>NCLT, Mumbai observed that while determining ‘inventory cost’ etc., the ‘Resolution Professional’ wrongly disallowed the substantial claim in its entirety and directed the ‘Resolution</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/26th%20February%202019%20in%20the%20matter%20of%20Monnet%20Power%20Com">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/26th%20February%202019%20in%20the%20matter%20of%20Monnet%20Power%20Com</a></p>

	2018.		<p>Professional' to re-examine the claim on the basis of the accounts and evidence of BHEL and if the evidences corroborated the claim, the same should also be taken into account while finalising the total claim of BHEL. The question for consideration in the appeal matter was whether the 'Resolution Professional' has jurisdiction to reject the claim of BHEL in its entirety, without going into the evidence. NCLAT relied on the case of <i>Swiss Ribbons v. Union of India</i> and observed that "<i>it is clear from a reading of the Code as well as the Regulations that the resolution professional has no adjudicatory powers.</i>" NCLAT further observed that "<i>it is also clear from a reading of these Regulations that the resolution professional is given administrative as opposed to quasi-</i></p>	<p><a href="#">pany%20Limited%20vs%20Bharat%20Heavy%20Electricals%20Limited%20[CA(AT)(Insolvency)%20743-2018] 2019-02-28%2013:39:46.pdf</a></p>
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				<p><i>judicial powers. In fact, even when the resolution professional is to make a "determination" under Regulation 35A, he is only to apply to the Adjudicating Authority for appropriate relief."</i></p>	
3.	<p><i>Rajesh Balasubramanian v. M/s. Everon Castings Pvt. Ltd. &amp; Anr.,</i></p> <p>Company Appeal (AT) (Insolvency) No. 182 of 2019.</p>	25.02.2019	NCLAT	<p>NCLAT observed that the liquidator should act in terms of the directions of the Appellate Tribunal and take steps under Section 230 of the Companies Act. If the members of the 'Corporate Debtor' or the 'creditors' approach the company through the liquidator for compromise or arrangement by making proposal of payment to all the creditor(s), the Liquidator on behalf of the company will move an application under Section 230 of the Companies Act, 2013 before the National Company Law Tribunal. The Tribunal further held that on failure, steps</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/25th%20Feb%20in%20the%20matter%20of%20Rajesh%20Balasubramanian%20vs%20Ms.%20Everon%20Castings%20Pvt.%20Ltd.%20&amp;%20Anr.%20[CA(AT)(Insolvency)%20182-2019] 2019-02-28%2013:42:51.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/25th%20Feb%20in%20the%20matter%20of%20Rajesh%20Balasubramanian%20vs%20Ms.%20Everon%20Castings%20Pvt.%20Ltd.%20&amp;%20Anr.%20[CA(AT)(Insolvency)%20182-2019] 2019-02-28%2013:42:51.pdf</a></p>

				are to be taken for outright sale of the 'corporate debtor' so as to enable the employees to continue in service on such outright sale.	
4.	<i>Dhinal Shah v. Bharati Defence Infrastructure Ltd., Company Appeal (AT) (Ins.) No. 175 of 2019.</i>	22.02.2019	NCLAT	The resolution plan submitted by 'Edelweiss Asset Reconstruction Company Ltd.' was duly approved by the Committee of Creditors by a voting share of 94.3%. The NCLAT, while noticing this fact, observed that, in spite of the same, the Adjudicating Authority has gone into the question of viability and feasibility of the resolution plan, including maximization of the assets. The Appellate Authority thus directed that the liquidator or the Adjudicating Authority will not take any steps to sell or transfer or alienate movable or immovable assets of	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/22nd%20Feb%202019%20in%20the%20matter%20of%20Dhinal%20Shah%20Vs.%20Bharati%20Defence%20Infrastructure%20Ltd.%20Company%20Appeal%20(AT)%20(Ins.)%20No.175-2019-2019-02-26%2015:47:57.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/22nd%20Feb%202019%20in%20the%20matter%20of%20Dhinal%20Shah%20Vs.%20Bharati%20Defence%20Infrastructure%20Ltd.%20Company%20Appeal%20(AT)%20(Ins.)%20No.175-2019-2019-02-26%2015:47:57.pdf</a>

				the Corporate Debtor, nor create any third party encumbrance on it without prior approval of the Appellate Tribunal.	
5.	<i>Ajay Agarwal &amp; Anr. v. Ashok Magnetic Ltd. &amp; Ors., Company Appeal (AT) (Insolvency) No. 792 of 2018.</i>	22.02.2019	NCLAT	<p>NCLT orders dt. 9th November, 2018 were impugned inter alia on the grounds that the orders for 'Rejection of the Resolution Plan' and 'liquidation of Corporate Debtor' passed by the NCLT, were not in accordance with law.</p> <p>While disposing of the Appeal, the NCLAT held the following propositions of law:</p> <ul style="list-style-type: none"> <li>If a case is not considered by the 'Committee of Creditors' in accordance with the law, it is the duty of the Adjudicating Authority to remand the matter back to the Committee of Creditors for reconsideration</li> </ul>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/22nd%20Jan%202019%20in%20the%20matter%20of%20Ajay%20Agarwal%20&amp;%20Anr.%20Vs.%20Ashok%20Magnetic%20Pvt.%20Ltd.%20&amp;%20Ors.%20CA%20(AT)%20(Insolvency)%20No.%20792%20&amp;%20793-2018_2019-02-26%2015:50:24.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/22nd%20Jan%202019%20in%20the%20matter%20of%20Ajay%20Agarwal%20&amp;%20Anr.%20Vs.%20Ashok%20Magnetic%20Pvt.%20Ltd.%20&amp;%20Ors.%20CA%20(AT)%20(Insolvency)%20No.%20792%20&amp;%20793-2018_2019-02-26%2015:50:24.pdf</a>

				<ul style="list-style-type: none"> <li>• In case of liquidation of the CD, the liquidator is required to act in accordance with law.</li> </ul>	
6.	<i>Standard Chartered Bank v. Prag Distillery Private Limited, CP (I&amp;B) 1067/NCLT/MB/2017.</i>	21.02.2019	NCLT, Mumbai Bench	<p>NCLT, Mumbai Bench directed that if there is no consideration received by the Corporate Debtor against the transfer of an asset which is under his ownership, and the assets were not sold, but only transferred to the holding company for its utilization, then the assets of the Corporate Debtor are to be returned and restored to the Corporate Debtor by the holding company within one month from the date of this order.</p> <p>Assets which are not sold but only transferred to its holding company could be valued in liquidation process of Corporate Debtor.</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/21st%20Feb%202019%20in%20the%20matter%20of%20Prag%20Distillery%20Private%20Limited%20MA%20267-2018%20In%20CP%20(I&amp;B)%201067-NCLT-MB-2017-2019-02-26%2017:21:19.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/21st%20Feb%202019%20in%20the%20matter%20of%20Prag%20Distillery%20Private%20Limited%20MA%20267-2018%20In%20CP%20(I&amp;B)%201067-NCLT-MB-2017-2019-02-26%2017:21:19.pdf</a>
7.	<i>Lal Baba Seamles</i>	20.02.2019	NCLT, Chennai	On a suggestion made by the NCLT, a	<a href="https://ibbi.gov.in/webad">https://ibbi.gov.in/webad</a>



	<p><i>tubes (P) Ltd. v. Halfen Moment India Pvt. Ltd., CP/745/IB/2018.</i></p>		<p>Bench</p>	<p>settlement was reached between the parties. NCLT specified the dates on which payment needs to be made. While disposing of the application NCLT gave liberty to the Operational Creditor to approach the NCLT seeking revival of their application in case of failure by the Corporate Debtor to make payments as per settlement plan.</p>	<p><a href="https://www.nclt.nic.in/pdf/order/2019/Feb/20th%20Feb%202019%20in%20the%20matter%20of%20Halfen%20Moment%20India%20Pvt.%20Ltd.%20CP-745-IB-2018_2019-02-22%2012:37:55.pdf">min/pdf/order/2019/Feb/20th%20Feb%202019%20in%20the%20matter%20of%20Halfen%20Moment%20India%20Pvt.%20Ltd.%20CP-745-IB-2018_2019-02-22%2012:37:55.pdf</a></p>
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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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