

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (9th March-15th 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

❖ 16th Pre Registration Educational Course being conducted in Delhi

All the three IPAs viz. ICSI IIP, IIIPI and IPA ICAI, are jointly conducting the 16th Pre Registration Training Programme as detailed below:

Date: 25th March, 2019 – 31st March, 2019.

Place: Delhi

Venue: Yet to be decided.

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 in application (in Rupees)	in as in
1.	<i>In the matter of Rays Power Experts Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial	Jaipur	4.16 Crore	

		creditor.		
2.	<i>In the matter of PVS Textiles Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	81.51 Crore
3.	<i>In the matter of Net 4 India Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Principal Bench	194 Crore
4.	<i>In the matter of Gourmet Renaissance Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	13.91 Lakh

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of NCML Industries Limited</i>	Principal Bench	08.03.2019

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Standard Chartered Bank and State Bank of India Vs Essar Steel India Limited</i>	Ahmedabad	08.02.2019
2.	<i>In the matter of State Bank of India Vs Alok Industries</i>	Ahmedabad	08.02.2019

ESSAR STEEL INSOLVENCY SYNOPSIS:

1. On 2.8.2017, the Adjudicating Authority (NCLT, Ahmedabad Bench), passed an order under Section 7 of the Code at the behest of financial creditors, being the State Bank of India and the Standard Chartered Bank, admitting a petition filed under the Code for financial debts owed to them by the corporate debtor Essar Steel India Limited (hereinafter referred to as ESIL), in the sum of roughly Rs.450000000000 (Rupees Forty Five Thousand Crores).
2. Shri Satish Kumar Gupta was appointed as the Interim Resolution Professional (IRP) and confirmed as such on 4.9.2017. Consequently, the Resolution Professional published an advertisement dated 6.10.2017, seeking expression of interest from potential resolution applicants who wished to submit resolution plans for the revival of ESIL. In terms of the advertisement, the last date for submission of an Expression of Interest (EoI) was 23.10.2017.
3. One 'Arcelor Mittal India Private Limited' (hereinafter referred to as AMIPL) submitted an expression of interest on 11.10.2017. An entity called Numetal Limited (hereinafter referred to as Numetal), also submitted an expression of interest on 20.10.2017. On 24.12.2017, the Resolution Professional published a 'request for proposal', in which it was stated that the last date for submission of resolution plans would be 29.1.2018.
4. On a request made by the Committee of Creditors, the NCLT extended the duration of the corporate insolvency resolution process by 90 days beyond the initial period of 180 days, i.e., up to 29.4.2018. The Resolution Professional therefore issued the first addendum to the request for proposal, extending the date for submission of resolution plans to 12.2.2018.
5. Both AMIPL and Numetal submitted their resolution plans on 12.2.2018. On 20.3.2018, apprehending that the Resolution Professional would recommend that it be declared ineligible, Numetal before the NCLT inter alia seeking that it be declared eligible as a resolution applicant. On 23.3.2018, however, the Resolution Professional found both AMIPL and Numetal to be ineligible under Section 29A.
- 6. Since Section 29A(c) is a see-through provision, great care must be taken to ensure that persons who are in charge of the corporate debtor do not come back in some other form to regain control of the company without first paying off its debts. The ineligibility under clause (c) can only be removed if the person submitting the**

resolution plan makes payment of all overdue amounts before submission of a resolution plan.

[Section 29A(c) states that "(c) [at the time of submission of the resolution plan has an account,] or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) [or the guidelines of a financial sector regulator issued under any other law for the time being in force,] and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II.—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;"]

7. The ineligibility of any resolution applicant cannot be cured by paying off any debts. If a person has been a promoter, or in the management, or control, of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place, and in respect of which an order has been

made by the Adjudicating Authority under the Code, such person is ineligible to present a resolution plan under Section 29A (g). This ineligibility cannot be cured by paying off the debts of the corporate debtor.

[Section 29A(g) states that "(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;"]

8. ArcelorMittal's bid for the company includes an upfront payment of Rs 42,000 crore towards the debt resolution of Essar Steel, with an additional Rs 8,000 crore of capital infusion into the company to support operational improvement, increase production levels, and deliver enhanced levels of profitability. In October 2018, the CoC of Essar Steel had voted to approve ArcelorMittal's plan and a letter of intent was issued.
9. Apart from the directors of Essar Steel who are Prashant Ruia, Dilip Oommen, and Rajiv Bhatnagar, dissenting financial creditor Standard Chartered Bank had also approached the NCLAT on 11.03.2019. Standard Chartered Bank said that it was challenging the entire corporate insolvency resolution process of Essar Steel as it was flawed.
10. Standard Chartered had alleged it was being discriminated against by the committee of creditors (CoC) of Essar Steel as it had been allotted a very less value against its claim. The allegation was, however, rejected by the CoC, which had told NCLT Ahmedabad that the bank was, in fact, getting two times its share.
11. The National Company Law Appellate Tribunal (NCLAT) on 11.03.2019 asked Arcelor Mittal to consider revising its Rs 42,000 crore bid for Essar Steel India Limited (ESIL), while also observing that a window of opportunity could be provided to the promoters of Essar if they cleared all the debt related to Essar group.

12. The Essar promoters will have to clear all the debts related to the group, according to a Supreme Court judgment, to become eligible to bid for Essar Steel again.

In the order passed by NCLT, Ahmedabad on 08.03.2019, the following were the observations of the Bench:

- It is the prime duty of the RP to examine and ascertain that each resolution plan is in conformity with the relevant provisions of the Code. The plan can be put up to the CoC for obtaining requisite majority only after RP has ascertained it.
- Resolution Applicant cannot demand reliefs and concessions as a matter of right for successful implementation of a resolution plan so far as it relates to completion of statutory formalities. It is open to the resolution applicant to approach the competent authorities for grant of such concessions.
- The CoC should overlook and reconsider the method of apportionment of the amount received by the resolution applicant by offering more haircut to the financial creditors in favor of the left out unsecured creditors and other operational creditors.

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Liberty House Group PTE Ltd. v. State Bank Of India & Ors</i>	22.02.2019	High Court	<p>The questions raised in this application, have clearly arisen in relation to the insolvency resolution of Castex Ltd. and ARGL Ltd. being corporate debtors.</p> <p>It was held that the jurisdiction of this Hon'ble Court will also be barred by Section 231 of the Code which provides that "<i>No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered, by or under, this Code to</i></p>	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%20No.%2016056-2018%20and%2016060-2018%20AND%20

				<p><i>pass any order.”</i> The jurisdiction of this Court is thus expressly barred over the subject matter of these suits, by aforesaid provisions of the Code.</p> <p>Hon’ble 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 code.</p> <p>While rejecting Liberty House’s plea, the court imposed a cost of Rs 50 lakh on the company.</p>	<p>20CS%20(Com m)%201247-2018%20and%20IAs%20No.16061-2018%20and%2016065-2018 2019-02-22%2020:51:37.pdf</p>
2.	<p><i>Mr. Hemanth Meka Rao v. Asset Reconstruction Company (India) Ltd. (ARCIL) & Anr.</i></p>	07.03.2019	NCLAT	<p>This appeal was filed by Mr. Hemanth Meka Rao, Shareholder of ‘M/s. Meka Dredging Company Private Limited’- (‘Corporate Debtor’) against the liquidation order passed by NCLT, Chennai under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 in absence of any approved resolution plan.</p>	<p>https://nclat.nic.in/Useradmin/upload/19590441095c85f9658927c.pdf</p>

				<p>A sum of Rs. 14 Crores was due and out of which a settlement for Rs. 10.38 Crores was made. Earlier also two 'Financial Creditors' paid total amount of Rs. 37 Crores to 'Asset Reconstruction Company (India) Ltd.' and Rs. 2.5 Crores to 'L&T Finance', who had given no dues certificate.</p> <p>However, the Appellate Tribunal held that on completion of the 'Resolution Process', any settlement with the promoters and the creditors cannot be allowed.</p> <p>Therefore the appeal was disposed off.</p>	
3.	<i>Avishek Roy v. Diamond Steel Enterprise</i>	NCLAT	12.03.2019	<p>A shareholder of 'M/s Reacon Engineers (India) Pvt. Ltd.' preferred an appeal against order dated 5th December, 2018 passed by National Company Law Tribunal, Kolkata admitting the application under Section 9 of the Insolvency and Bankruptcy Code, 2016.</p> <p>On 26th December, 2018, a 'Deed of Settlement' was executed and stamped</p>	<p>https://nclat.nic.in/Useradmin/upload/9538463835c88bdb263364.pdf</p>

				<p>that was purchased by the Operational Creditor prior to Deed of Settlement dated 26th December, 2018. The CoC was subsequently constituted on 28th December, 2018, which was indicated by order dated 4th January, 2019.</p> <p>The Appellate Tribunal held that it is clear that much prior to constitution of Committee of Creditors, parties reached settlement on 26th December, 2018.</p> <p>The parties have reached settlement prior to constitution of Committee of Creditors and because of that the Appellant is entitled to derive advantage of the settlement.</p> <p>The order admitting application under Section 9 was thus set aside.</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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