

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## **KNOWLEDGE REPONERE (16<sup>th</sup> March-29<sup>th</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**").

### **PAST EVENTS**

- ❖ **15th Pre-Registration Educational Course was organized in Chennai from 9th March to 15th March 19, 2019**



❖ **Webinar on Charter of Responsibilities of IRP / RP and CoC in a CIRP, Graduate Insolvency Program (GIP) and Ease of Doing Business (EoDB) on 25th March 2019**



IIPI, ICSI IIP and IPA ICAI in association with IBBI organized a two hours Webinar on *Charter of Responsibilities of IRP / RP and CoC in a CIRP, Graduate Insolvency Program (GIP) and Ease of Doing Business (EoDB)* on 25th March 2019 (Monday) at 04:00 PM for the Insolvency Professionals and other stake holders.

**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.	<i>In the matter of Apple Industries Ltd.</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	New Delhi	82.80 Lakh	

2.	<i>In the matter of Vadali Infotech Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	4.61 Crore
3.	<i>In the matter of Alpine Realtech Pvt. Ltd.</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	95.45 Crore
4.	<i>In the matter of Hamsini Foundations Private Limite</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	16.20 Crore
5.	<i>In the matter of Western India Metal Processors Ltd</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	9.85Crore
6.	<i>In the matter of Brys Hotels Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	71.94 Crore
7.	<i>In the matter of Vardhman Estates and Developers Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	1.21 Crore
8.	<i>In the matter of Baywatch Shelters Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	7.90 Crore

9.	<i>In the matter of Bhareth Formulations Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	23.32 Crore
10.	<i>In the matter of Kavveri Telecom Infrastructure Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Bengaluru	69.18 Crore

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Namdhari Food International Pvt. Ltd.</i>	New Delhi	13.03.2019
2.	<i>In the matter of Farmville Agrovet Ltd.</i>	Guwahati	14.03.2019
3.	<i>In the matter of Elevated Mercantile Pvt. Ltd.</i>	Mumbai	15.03.2019
4.	<i>In the matter of Berhampur Finance &amp; Leasing Private Limited</i>	Kolkata	25.03.2019

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Subburaj Spinning Mills Private Limited</i>	Chennai	12.03.2019

### BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Alchemist Asset Reconstruction Co. Ltd.</i>	19.03.2019	NCLT, Delhi Bench	An application was filed on behalf of the workmen of Moser Baer India Limited,	<a href="https://nclt.gov.in/sites/default/files/Interim-order-pdf/Alchemist%2">https://nclt.gov.in/sites/default/files/Interim-order-pdf/Alchemist%2</a>

	<p><i>v. Moser Baer Limited</i></p>		<p>seeking direction to exclude Provident fund, Pension fund and Gratuity fund from the waterfall mechanism envisaged under Section 53 of Insolvency and Bankruptcy Code, 2016 and pay them Provident fund, Pension fund and Gratuity fund dues, as those dues will not constitute part of the liquidation estate.</p> <p>NCLT observed that under section 36(4)(a)(III), the expression 'liquidation estate' has been defined and it is clarified that all sums due to any workmen or employee from Provident fund, Pension fund and Gratuity fund were not to constitute and be included within the expression "liquidation estate assets".</p> <p>NCLT allowed the application and made clear that if there is any deficiency to the Provident fund, Pension fund and Gratuity fund, then the liquidator shall ensure that the fund is made available to the said aforesaid accounts, even if their employer has not diverted the</p>	<p><a href="#">0Asset%20Reconstruction%20Co.%20Ltd%20and%20Moser%20Baer%20India%20Limited%20 6.pdf</a></p>
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				requisite amount.	
2.	<i>Pr. Director General of Income Tax v. Synergies Dooray Automotive Ltd. &amp; Ors.</i>	20.03.2019	NCLAT	<p>The point of contention in this appeal matter was “<i>whether Income Tax, Value Added Tax or other statutory dues, such as Municipal Tax, Excise Duty, etc. come within the meaning of Operational Debt or not</i>” and “<i>whether the Central Government, the State Government or the legal authority having statutory claim, come within the meaning of Operational Creditors.</i>”</p> <p>The Tribunal observed that “<i>Operational Debt’ in normal course means a debt arising during the operation of the Company (‘Corporate Debtor’). The ‘goods’ and ‘services’ including employment are required to keep the Company (‘Corporate Debtor’) operational as a going concern. If the Company (‘Corporate Debtor’) is operational and remains a going concern, only in such case, the statutory liability, such as payment of Income Tax, Value Added Tax etc., will arise. As the</i></p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/20th%20Mar%202019%20In%20the%20matter%20of%20Pr.%20Director%20General%20of%20Income%20Tax%20(Admn.%20&amp;%20TPS)%20%20vs%20OMs%20synergies%20dooray%20Automotive%20Ltd.%20&amp;%20Ors.%20[CA(AT)(Insolvency)%2005-2017] 2019-03-24%2013:00:01.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/20th%20Mar%202019%20In%20the%20matter%20of%20Pr.%20Director%20General%20of%20Income%20Tax%20(Admn.%20&amp;%20TPS)%20%20vs%20OMs%20synergies%20dooray%20Automotive%20Ltd.%20&amp;%20Ors.%20[CA(AT)(Insolvency)%2005-2017] 2019-03-24%2013:00:01.pdf</a>

				<p><i>'Income Tax', 'Value Added Tax' and other statutory dues arising out of the existing law, arises when the Company is operational, we hold such statutory dues has direct nexus with operation of the Company. For the said reason also, we hold that all statutory dues including 'Income Tax', 'Value Added Tax' etc. come within the meaning of 'Operational Debt'."</i></p> <p>Tribunal also observed <i>"Income Tax Department of the Central Government' and the 'Sales Tax Department(s) of the State Government' and 'local authority', who are entitled for dues arising out of the existing law are 'Operational Creditor' within the meaning of Section 5(20) of the 'I&amp;B Code'."</i></p>	
3.	<i>Daiyan Ahmed Azmi v. Rekha Kantilal Shah, Liquidator &amp; Ors.</i>	20.03.2019	NCLAT	Appellant submitted that the period from 14th November, 2018 to 11th January, 2019 should have been excluded for the purpose of counting 270 days and that the Committee of Creditors could have considered the application under	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/Leo%20Duct%20Engineers%20and%20Consultants%20Ltd%202019-03-25%2015:39:16.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/Leo%20Duct%20Engineers%20and%20Consultants%20Ltd%202019-03-25%2015:39:16.pdf</a>

Section 12-A of the I&B Code, 2016 filed by Appellant.

It was further informed that 90% of the shareholders of the Financial Creditor have already intimated the Adjudicating Authority that they are considering the matter and in spite of the same, the Adjudicating Authority rejected the prayer for extension, which resulted in the order for liquidation.

It was submitted that value of assets of Corporate Debtor is about Rs.5 crores and the principal amount due is Rs.19 crores approximately while the Appellant offered to pay Rs.25 crores approximately.

NCLAT directed to post the case 'for admission' on 26th April, 2019 with directions that during the pendency of the Appeal, the Liquidator may continue with the process of liquidation, but will not sell any movable or immovable property nor create any third party rights on the immovable property of the Corporate Debtor. Liquidator was directed



				to ensure that the company remains a going concern and not to terminate the services of the employees.	
4.	<i>Punit Garg v. Ericsson India Private Limited and Anr.</i>	15.03.2019	NCLAT	<p>The role of NCLAT in the facts of the case is only to find out whether the parties have settled the matter in terms of the order dated 30th May, 2018 or have failed to settle. On failure, it is open to the NCLAT to vacate the interim order of stay dated 30th May, 2018.</p> <p>The 'Financial Creditors'/ 'Joint Lenders Forum' and other Banks have failed to recover any amount by selling the mortgaged properties of the 'Corporate Debtors'. The 'Corporate Debtors'- 'Reliance Infratel Ltd.'; 'Reliance Telecom Ltd.' and 'Reliance Communications Ltd.' have failed to pay the total amount of Rs. 550 Crores (jointly). As per the interim order, in case of non-payment of the amount and part of the same, the concerned appeal(s) may be dismissed and NCLAT may direct to complete</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/15th%20Feb%202019%20in%20the%20matter%20of%20Punit%20Garg%20&amp;%20Ors.%20Vs.%20Ericsson%20India%20Pvt.%20Ltd.%20&amp;%20Anr.%20I.A.%20No.%20637,%20638%20&amp;%20642-2019%20In%20CA%20(AT)%20In%20solvency)%20No.%20255-260%20of%202018%2019-03-18%2015:02:31.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/15th%20Feb%202019%20in%20the%20matter%20of%20Punit%20Garg%20&amp;%20Ors.%20Vs.%20Ericsson%20India%20Pvt.%20Ltd.%20&amp;%20Anr.%20I.A.%20No.%20637,%20638%20&amp;%20642-2019%20In%20CA%20(AT)%20In%20solvency)%20No.%20255-260%20of%202018%2019-03-18%2015:02:31.pdf</a>

the 'Corporate Insolvency Resolution Process' and may pass appropriate order.

The Appellate Tribunal directed that the parties should take steps to ensure that settlement in terms of the order dated 30th May, 2018 is made in its letter and spirit to save three 'Corporate Debtors' from the 'Corporate Insolvency Resolution Process' enabling the 'Financial Creditors' i.e. the 'State Bank of India' and other Banks and 'Ericsson India Private Limited'- ('Operational Creditor'), to recover maximum dues.

Under Section 61 of the 'I&B Code', no direction can be given to any party to the settlement (particularly the third party) to perform certain duties to ensure settlement between other parties. However, the order will not come in the way of the Appellants to ask for relief as sought for in this interim application from the Hon'ble Supreme Court, which has the jurisdiction to pass appropriate order under Article 142 of the Constitution of

				India ( <i>Enforcement of decrees and orders of Supreme Court and orders as to discovery, etc.</i> )	
5.	<i>MSTC Limited v. Adhunik Metalliks Ltd. &amp; Ors.</i>	15.03.2019	NCLAT	<p>In the CIRP initiated against 'M/s. Adhunik Metalliks Ltd.'- ('Corporate Debtor'), NCLT, Kolkata, by impugned order dated 17th July, 2018 approved the 'Resolution Plan' under Section 31 (1) of IBC submitted by 'Liberty House Group Pte. Ltd.' ('Liberty House Group' for short), which was approved by the 'Committee of Creditors' with 99.94% voting shares.</p> <p>'Liberty House Group', whose failed to pay the upfront amount within 57 days from the date of the approval of the 'Resolution plan' in terms of plan. 'Liberty House Group' requested NCLT, Kolkata Bench to issue ad interim directions to the 'Committee of Creditors' not to pursue the application for liquidation.</p> <p>'MSTC Limited'(Appellant) had incurred additional expenses of Rs. 14.33 Crores and thereby made a claim of total</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/15th%20Mar%202019%20in%20the%20matter%20of%20MSTC%20Limited%20%20Ors.%20Vs.%20Adhunik%20Metalliks%20Ltd.%20%20Ors.%20CA%20(AT)%20(Insolveny)%20No.%20519-2018,%2053%20%2054-2019-2019-03-18%2015:11:30.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/15th%20Mar%202019%20in%20the%20matter%20of%20MSTC%20Limited%20%20Ors.%20Vs.%20Adhunik%20Metalliks%20Ltd.%20%20Ors.%20CA%20(AT)%20(Insolveny)%20No.%20519-2018,%2053%20%2054-2019-2019-03-18%2015:11:30.pdf</a>

				<p>sum of Rs. 113.64 Crores towards the 'Resolution Process Costs' and not towards claim as an 'Operational Creditor'.</p> <p>NCLAT observed that <i>"..MSTC Limited' is demanding to treat their outstanding claims of Rs. 108.36 Crores which relates to supply made prior to the 'Insolvency Commencement Date'. It was submitted that the aforesaid amount of Rs. 108.36 Crores cannot be treated as 'Resolution Process Cost'."</i></p> <p>NCLAT also directed 'Liberty House Group' another 30 days to make upfront payment in terms of the 'Resolution Plan'. On failure, it would be open to the Adjudicating Authority, Kolkata Bench to pass appropriate order.</p>	
6.	<i>Ms. Rama Subramania mv. M/s Sixth Dimensions Project Solution Limited</i>	13.03.2019	NCLT, Mumbai	<p>CoC moved an application on 19/12/2018 to appoint their own nominee with 100% CoC votes as RP without mentioning any reasons for change of IRP who had conducted first CoC Meeting but the grounds on which the IRP was sought to be</p>	<p><a href="https://nclt.gov.in/sites/default/files/Interim-order-pdf/RAMA%20SUBRAMANIAM%20MA%201626-2018%20IN%20CP%20587-2018%20NCLT%20ON%2013.03.2019%20INTERIM.">https://nclt.gov.in/sites/default/files/Interim-order-pdf/RAMA%20SUBRAMANIAM%20MA%201626-2018%20IN%20CP%20587-2018%20NCLT%20ON%2013.03.2019%20INTERIM.</a></p>

changed is furnished in [pdf](#) the form of an affidavit dated 29.01.2019 even without affording an opportunity to the RP to give his explanation.

Hon'ble NCLT rejected the arbitrariness of one CoC member to change IRP and appoint their own nominee as RP without assigning any reasonable reason.

Bench rejected to change IRP, stating that, *"The change of RP must be rational/tenable/reasonable and not at the whims and fancies of the COC"*.

Tribunal observed that, *"RP is rejected as the to put Bank consisting of 100% COC had thoroughly failed forth any tenable or valid or genuine reasons for the same and we hold that the COC is not vested with the absolute power to change the IRP without any valid or tenable reasons particularly when the Adjudicating Authority after considering the contentions on both sides and expresses an opinion to continue the IRP as RP, and accordingly the present IRP is confirmed as RP"*

				<i>of the Corporate Debtor”.</i>	
7.	<i>Indian Overseas Bank v. Gopala Krishna Raju</i>	14.03.2019	NCLT, Chennai	<p>While disposing of an application filed by Indian Overseas Bank seeking replacement of the IRP, the NCLT, (Chennai Bench) directed the IBBI to remove the name of the said IRP from its panel of Insolvency Professionals. The NCLT took a serious note of non-appearance of the IRP on three continuous occasions for which he was duly informed and directed to appear. After observing that the IRP is flouting the orders of the Tribunal wilfully, intentionally and avoiding personal appearance, the NCLT concluded: <i>This is nothing but the abdication of the duties by the IRP, which is serious in nature. Therefore, the IRP... is held an unfit person for being given any assignment under the provisions of the I&amp;B Code, 2016 as Resolution Professional.</i></p> <p>The NCLT also imposed a cost of Rs. 20,000/- on the said IRP for his wilful disobedience of</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/NCLT%20Chennai_Apna%20Scientific%20Supplies%20Pvt%20Ltd_MA%20154%202019%20in%20CP%20811%20IB%202018_14-03-2019_2019-03-25%2015:45:21.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/NCLT%20Chennai_Apna%20Scientific%20Supplies%20Pvt%20Ltd_MA%20154%202019%20in%20CP%20811%20IB%202018_14-03-2019_2019-03-25%2015:45:21.pdf</a>

				the Tribunal's orders and directed him to hand over all relevant records of the Corporate Debtor to the newly appointed RP within a week's time.	
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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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