

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (30th March-5th April, 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

- ❖ **IBBI (in association with SBI) has announced a workshop titled 'Committee of Creditors (CoC) : An Institution of Public trust' on 22nd April 2019, in Kolkata**

The workshop is intended for the Top Management and Senior Level Officers (GM and above) of major schedule commercial banks, which constitute the most important policy determinants affecting the approach of major financial creditors towards their role in CoC.

For more information, please visit the link below:

<https://www.ibbi.gov.in/uploads/events/Revised%20IBBI%20CoC%20Brochure-Kolkata.pdf>

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 follows:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default mentioned in application (in Rupees)
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1.	<i>In the matter of Jalan Transolutions (India) Ltd.</i>	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	75.82 Lakhs
2.	<i>In the matter of Kasim Coal and Logistics Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chennai	13.02 Lakhs

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Enviiro Bulkk Handling Systems Pvt. Ltd.</i>	Mumbai	27.03.2019

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Dhanalakshmi Paper Mills Private Limited</i>	Chennai	26.03.2019
2.	<i>In the matter of Jyoti Structures Limited</i>	Mumbai	27.03.2019

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Dharani Sugars and Chemicals Ltd. v.</i>	02.04.2019	Supreme Court	The Hon'ble Supreme Court of India declared the circular dated 12th February,	https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/2nd%20Apr

	<p>Union of India</p>			<p>2018 issued by RBI as <i>ultra vires</i> of section 35AA of the Banking Regulation Act, 1949. Consequently, all actions taken under the said circular, including actions by which the Code has been triggered must fall along with the said circular. As a result, all cases where debtors have been proceeded against by financial creditors under section 7 of the Code, only because of the operation of the impugned circular, have been declared <i>asnon-est</i>. The Apex Court observed, "<i>Stressed assets can be resolved either through the Code or otherwise. When resolution through the Code is to be effected, the specific power granted by</i></p>	<p>r%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&%20Ors.%20Transferred%20Case%20(Civii)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018%202019-04-02%2016:39:21.pdf</p>
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				<p><i>section 35AA can alone be availed by the RBI. When resolution de hors the Code is to be effected, the general powers under sections 35A and 35AB are to be used. Any other interpretation would make section 35AA otiose."</i></p>	
2.	<p><i>The Deputy Director Directorate Of Enforcement Delhi v. Axis Bank & Ors.</i></p>	02.04.2019	High Court	<p>It was held by the High Court that the provisions of banking legislations and the <i>Insolvency and Bankruptcy Code, 2016 (IBC)</i> do not prevail over those of the <i>Prevention of Money Laundering Act, 2002 (PMLA)</i> when it comes to attachment of properties obtained as "proceeds of crime".<i>The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBA), The Securitisation and Reconstruction of</i></p>	<p>https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/RKG02042019CRLA14320182019-04-03%2013:20:34.pdf</p>

Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and the IBC should instead be enforced in harmony with the PMLA, the Court held.

High Court observed that “..the said laws (or similar other laws, some referred to above) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other, with regard to assets respecting which there is material available to show the same to have been “derived or obtained” as a result of “criminal activity relating to a scheduled offence” rendering the same “proceeds of crime”, within the mischief of PMLA.”

3.	<p><i>Aasaan Global Trade v. Mr. Vasudevan and Ors.</i></p> <p><i>(In the matter of Tiffins Barytes Asbestos and Paints Ltd.)</i></p>	27.03.2019	NCLT, Chennai	<p>While determining whether the money advanced was not for the time value of money but as sale price for sale of Iron Ore and Red Oxide was operational debt or financial debt, the Tribunal observed, "If the very nature of debt as per the terms and conditions of the Agreements/Memorandum of Understanding is of 'Operational Debt', the same will not get change when it is enforced through the awards passed by the Arbitral Awards/MoUs signed between the parties for the purpose of settlement, because, the Awards of the Arbitral Tribunal and the MoU between the parties does not determine the</p>	<p>https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/27th%20Mar%202019%20in%20the%20matter%20of%20Tiffins%20Barytes%20Asbestos%20&%20Paints%20Ltd.%20MA-573-2018%20In%20CP-39-IB-2018%2019-04-04%2017:13:02.pdf</p>
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				<i>nature of debt in question".</i> The debt in the present case was not considered Financial Debt.	
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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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