

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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**KNOWLEDGE REPONERE**  
**(29<sup>th</sup> July-30<sup>th</sup> August, 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**").

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## **NEWS UPDATE(S)**

### ➤ **NCLAT orders liquidation of Amtek Auto**

The National Company Law Appellate Tribunal (NCLAT) on 09.08.2019 ordered liquidation of debt-ridden Amtek Auto as it declined lenders' request for extension of the insolvency resolution process deadline.

Amtek Auto was among the first list of the 12 companies that were referred by the Reserve Bank of India (RBI) in 2017 to respective banks for the initiation of insolvency process for defaults.

*Read more at:*

<https://www.livemint.com/companies/news/nclat-orders-liquidation-of-amtek-auto-1565962456479.html>

### ➤ **Jet Airways creditors' claims shoot up to over Rs 30,000 crore**

As per earlier claims, Jet Airways had liabilities of over Rs 26,000 crore. However, now its total liabilities have shot up to Rs 30, 558 crore, reported Business Standard. Of the total claims, Resolution Professional Ashish Chhawcharia has admitted Rs 12,555 crore worth of claims and rejected claims worth over Rs 11,996 crore, the report added. These include Rs 10,224 crore (with interest) worth of lenders' dues; Rs 17,922 crore of operational creditors (excluding employees); Rs 545 crore of employees and workmen; Rs 789 crore of representatives of workmen and employees; and Rs 1,108 crore of other creditors.

In his July estimates, the RP had said it received 16,643 claims worth Rs 24,887 crore, including Rs 8,462 crore by financial creditors, against the company. Jet workers and employees had submitted claims worth Rs 443 crore, of which over Rs 237 crore of worth claims had been accepted by the RP. The NCLT had told the RP to discuss the matter with the Committee of Creditors so the interim funding could be arranged to pay off salaries to the employees.

*Read more at:*

<https://www.businesstoday.in/sectors/aviation/jet-airways-creditors-claims-shoot-up-to-over-rs-30000-crore/story/373250.html>

➤ **SC comes to homebuyers' aid, approves their status as financial creditors**

A bench headed by Justice Rohinton Fali Nariman upheld the amendment that treats homebuyers as financial creditors. The bench said the Real Estate (Regulation and Development) Act, or Rera, has to be read "harmoniously with the Consumer Protection Act and IBC" and, in case of any conflict, IBC will prevail.

*Read more at:*

<https://www.livemint.com/companies/news/sc-comes-to-homebuyers-aid-approves-their-status-as-financial-creditors-1565375288360.html>

➤ **In a first, NCLT starts insolvency proceedings on homebuyer's plea**

In the first case after the Insolvency and Bankruptcy Code was amended and later upheld by the Supreme Court to give home-buyers the status of financial creditors, National Company Law Tribunal has initiated insolvency proceedings against a real estate company on a homebuyer's petition.

*Read more at:*

[//economictimes.indiatimes.com/articleshow/70825286.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](//economictimes.indiatimes.com/articleshow/70825286.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

➤ **NCLAT dismisses govt claims of USD 314 mn from Videocon Industries for Ravva offshore**

The National Company Law Appellate Tribunal (NCLAT) has rejected the oil ministry's plea seeking USD 314 million (around Rs 2,245 crore) from insolvency-bound Videocon Industries in unpaid profit petroleum from the Ravva oil and gas fields in the eastern offshore.

*Read more at:*

[//economictimes.indiatimes.com/articleshow/70932730.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](//economictimes.indiatimes.com/articleshow/70932730.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

## 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 provided in the table below:

S. No.	Cause Title	Relevant Section	NCLT Bench	Amount default mentioned in application (in Rupees)
1.	<i>In the matter of Omni Auto Tech Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Kolkata	64.00 Lakhs
2.	<i>In the matter of Karuturi Global Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Bengaluru	86.60 Crores
3.	<i>In the matter of Bhoomika Media Initiative Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Jaipur	13.82 Lakhs
4.	<i>In the matter of Bohra Pratisthan Pvt. Ltd.</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Jaipur	1.91 Crores
5.	<i>In the matter of KMG A to Z Systems Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	New Delhi	190.94 Crores

6.	<i>In the matter of Adyama Rice Mill Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Kolkata	16.61 Crores
7.	<i>In the matter of Orijean Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Bengaluru	12.28 Lakhs
8.	<i>In the matter of Bohra Industries Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Jaipur	24.61 Crores
9.	<i>In the matter of Cargo Planners Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	1.21 Crore
10.	<i>In the matter of J B Gold Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	New Delhi	9.91 Crores
11.	<i>In the matter of Pelican Rubber Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Hyderabad	7.17 Crores
12.				

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Sevenhills Healthcare Private Limited</i>	Hyderabad	26.07.2019
2.	<i>In the matter of Lanco Teesta Hydro Power Limited</i>	Hyderabad	26.07.2019
3.	<i>In the matter of MIC Electronics Limited</i>	Hyderabad	31.07.2019
4.	<i>In the matter of Khandoba Prasanna Sakhar Karkhana Ltd.</i>	Mumbai	01.08.2019
5.	<i>In the matter of Rustagi Impex Private Limited</i>	New Delhi	06.08.2019

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Nadia Health Care Private Ltd.</i>	Kolkata	30.07.2019
2.	<i>In the matter of Dream Systems Private Limited</i>	Chennai	30.07.2019
3.	<i>In the matter of Varrsana Ispat Ltd.</i>	Cuttack	07.08.2019
4.	<i>In the matter of World Consulting &amp; Research Corporation Pvt. Ltd.</i>	New Delhi	07.08.2019
5.	<i>In the matter of Win Wind Power Energy Private Limited</i>	Chennai	08.08.2019
6.	<i>In the matter of Mohan Gems &amp; Jewels Private Limited</i>	New Delhi	09.08.2019

## BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Pioneer Urban Land and Infrastructure Limited &amp; Anr. v. Union of India &amp; Ors.</i>	09.08.2019	Supreme Court	<p>A bunch of Writ Petitions were filed before Hon'ble SC challenging constitutional validity of the amendment made to IBC where under allottees of real estate projects were declared as deemed "Financial Creditors", thus, enabling them to trigger the Code under section 7, IBC against the Real Estate Developer. In addition, they were made entitled to be represented in the Committee of Creditors.</p> <p>Constitutional Challenge to the Amendment Act was <i>inter alia</i> on the grounds that it violates provisions of Article 14, 19(1)(g) (r/w 19(6)) and 300-A of the Constitution of India.</p> <p>The Apex Court, however, after careful analysis of the Amendment Act came to the finding</p>	<a href="https://ibbi.gov.in/uploads/watsnew/9cb1453bf7337c6eb76ac1aa331bd2ad.pdf">https://ibbi.gov.in/uploads/watsnew/9cb1453bf7337c6eb76ac1aa331bd2ad.pdf</a>

				<p>inter alia including, that, the amendment does not impinge upon aforementioned provisions of the Constitution of India, that the RERA is to be read harmoniously with the IBC and in case of any conflict in their provisions, IBC is to prevail, and that section 5(8)(f) being a residuary provision, always subsumed within it allottees of flats/apartments.</p> <p>The writs were accordingly disposed-off upholding the constitutional validity of the Amendment Act.</p>	
2.	<i>SSMP Industries Ltd v. Perkan Food Processors Pvt. Ltd</i>	18.07.2019	High Court, Delhi	<p>M/s SSMP Industries Ltd (Plaintiff) filed a suit seeking recovery of Rs.1,61,47,336.44 from Perkan Food Processors Pvt. Ltd (Defendant). The Defendant filed its counter claim in the suit for a sum of Rs.59,51,548/-. In the meantime, the Plaintiff went into Insolvency.</p>	<p><a href="https://ibbi.gov.in/uploads/order/2019-07-27-203333">https://ibbi.gov.in/uploads/order/2019-07-27-203333</a> In the <a href="#">matter of SS MP Industries Ltd. Vs Perkan Food Processor Pvt. Ltd C S (COMM) 470 - 2016 &amp; 73-2017.pdf</a></p>



The question arose as to whether the adjudication of the counter claim would be liable to be stayed in view of Section 14 of the Code.

Based on an earlier decision of Delhi HC in *Power Grid Corporation of India v. Jyoti Structures Ltd*, the Hon'ble High Court observed that until and unless the proceeding has the effect of endangering, diminishing, dissipating or adversely impacting the assets of Corporate Debtor, adjudication of the counter claim would not be prohibited under Section 14(1)(a) of the Code. Further the Court also referred to the case of *Jharkhand Bijli*, wherein Hon'ble NCLAT had, in similar circumstances, held that until and unless the counter claim is itself determined, the claim and the counter claim deserve to be heard together and there is

				<p>no bar on the same in the Code.</p> <p>Hon'ble High Court of Delhi held that the nature of a counter claim is such that it requires proper pleadings to be filed, defenses and stands of both parties to be considered, evidence to be recorded and then issues have to be adjudicated. Till the defense is adjudicated, there is no threat to the assets of the corporate debtor and the continuation of the counter claim would not adversely impact the assets of the corporate debtor. Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered.</p>	
3.	<i>ICICI Bank Ltd. Vs Mr.</i>	22.08.2019	NCLAT	In the ongoing CIRP against M/s. Ruchi	<a href="https://ibbi.gov.in/uploads/o">https://ibbi.gov.in/uploads/o</a>

	<i>Shailendra Ajmera RP of Ruchi Soya Industries Limited</i>			<p>Soya Industries Limited (Corporate Debtor), the Resolution Professional filed an application under Section 43(1) of the Code for seeking reversal of the amounts debited from the account of the Corporate Debtor maintained with the ICICI Bank Limited before the insolvency commencement date and alleged to have been utilised against the payment of dues made by the Corporate Debtor in favour of the ICICI Bank Limited pursuant to Letter of Credit (LoC) issued by the ICICI Bank. NCLAT allowed the appeal filed by ICICI Bank, setting aside the order of NCLT that had upheld the RP's claim of preferential treatment of its claims being done by the Corporate Debtor.</p>	<a href="https://ibbi.gov.in/uploads/orders/849aed18e03e5917631d69b9343979f5.pdf">rder/849aed18e03e5917631d69b9343979f5.pdf</a>
4.	<i>Excel Metal Processors Limited Vs Benteler</i>	21.08.2019	NCLAT	<p>The Appellant raised the question of jurisdiction of the NCLT, Mumbai Bench</p>	<a href="https://ibbi.gov.in/uploads/orders/4384c6a0705053a3e2cf7">https://ibbi.gov.in/uploads/orders/4384c6a0705053a3e2cf7</a>

	<i>Trading International GMBH and Anr.</i>			<p>in entertaining the application under Section 9 of the Code based on the Agreement reached between the parties, that as per the Agreement and as the Office of the Respondent – Benteler Trading International GMBH is in Germany, any suit or case is maintainable only in the Court at Germany.</p> <p>NCLAT dismissing the appeal held that since the office of the corporate debtor was in Mumbai, NCLT, Mumbai Bench had the jurisdiction to entertain an application under Section 9 and the Appellant could not derive advantage of the terms of the agreement reached between the parties.</p>	<a href="#">47a60f6c692.pdf</a>
5.	<i>Jet Airways (India) Limited (Offshore Regional Hub) v. State Bank</i>	21.08.2019	NCLAT	<p>Appeal was made on behalf of the Administrator in the insolvency of Jet Airways (India) Limited (Offshore Regional Hub)</p>	<a href="https://ibbi.gov.in/uploads/order/5d9bf359db703c5f541a1e761949bc98.pdf">https://ibbi.gov.in/uploads/order/5d9bf359db703c5f541a1e761949bc98.pdf</a>

	<i>of India &amp; Anr.</i>			wherein even though the Resolution Professional is co-operating with them, the CoC is not. CoC was directed by NCLAT to file an affidavit whether they will cooperate with Administrator of the Offshore Regional Hub and will intend to give same treatment as given to the similarly situated Foreign Creditors, who otherwise, are also eligible to file claim before the RP who may collate with the Administrator (Offshore Regional Hub) and forward it. The CoC was also directed to inform as to who will bear the fee and cost of foreign administrator for when they have joint proceedings.	
6.	<i>L&amp;T Infrastructure Finance Company Ltd. Vs Gwalior Bypass Project Ltd.</i>	19.08.2019	NCLAT	An appeal was preferred before the NCLAT, impugning order dated 29th May, 2019 passed by the Adjudicating Authority wherein Adjudicating Authority admitted the application under	<a href="https://ibbi.gov.in/uploads/order/7f7e911872b263d3a1f3e9f18be58ae1.pdf">https://ibbi.gov.in/uploads/order/7f7e911872b263d3a1f3e9f18be58ae1.pdf</a>

				<p>Section 7 preferred by the ICICI Bank Limited and initiated CIRP against Corporate Debtor.</p> <p>NCLAT held that L&amp;T not being a Member/ Shareholder of the Corporate Debtor, Gwalior Bypass has no right to intervene for opposing admission of the application under Section 7 preferred by the ICICI Bank against the Corporate Debtor.</p> <p>NCLAT dismissed further held that if the Appellant claims to be one of the Financial Creditor, it can file claim before the Resolution Professional, but it cannot challenge the order of admission in absence of any challenge by the Corporate Debtor, on the ground that it has first charge on the asset of the Corporate Debtor or has superior claim over the claim of the other Financial Creditors.</p>	
7.	<i>Committee</i>	16.08.2019	NCLAT	In this appeal	<a href="https://ibbi.go">https://ibbi.go</a>

*of Creditors  
of Amtek  
Auto Ltd.  
through  
Corporation  
Bank v. Mr.  
Dinkar  
T.Venkatasu  
bramanian &  
Ors.*

matter, the CoC of Amtek Auto had sought for extension of time to seek fresh resolution plans as the previously approved plan of Liberty House Private Limited were not yet implemented. The stance taken by Liberty House was that implementation shall be done post encashment of bid bond guarantee. Plea was accordingly made seeking extension of 90 days to the Resolution Professional Period to make another attempt for a fresh process rather than forcing the Corporate Debtor into liquidation on account of fraud committed by M/s. Liberty House Group Pte Ltd. the appellant also sought to debar M/s. Liberty House Group Pte Ltd. from applying for a fresh Resolution Plan and further direction to the Insolvency and Bankruptcy Board of India to take steps for initiation of proceeding under

[v.in//uploads/order/a79998d8045856dab6cc2477906b4389.pdf](https://www.indiajudicial.org/v.in//uploads/order/a79998d8045856dab6cc2477906b4389.pdf)

Section 74(3) of the Code for trial and punishment under the said provisions.

*NCLAT held that, "in view of provisions of law, as discussed above, the impugned order dated 13th February, 2019 so far it relates to grant of liberty to the 'Resolution Professional' and the 'Committee of Creditors' to move before the Insolvency and Bankruptcy Board of India or the Central Government is set aside. However, liberty is given to the 'Resolution Professional' or the 'Committee of Creditors' or any creditor to move an application under Section 213 of the Companies Act, 2013 read with Section 74(3) of the 'I&B Code' before the Adjudicating Authority/ National Company Law Tribunal to decide as to whether the matter is required to be referred to the*



				<p><i>Insolvency and Bankruptcy Board of India or the Central Government for taking any action under Section 74(3) and Section 213 read with Section 447 of the Companies Act, 2013. In such case, the Adjudicating Authority will decide the same after notice to the 'Successful Resolution Applicant'/'Corporate Debtor' after following the procedure of Section 213 of the Companies Act, 2013"</i></p> <p>The extension of time was hence not granted.</p> <p><u>Note: A liquidation order has recently been passed for Amtek Auto Ltd.</u></p>	
8.	<i>Sukhbeer Singh v. Dinesh Chandra Agarwal, (Resolution Professional), Maple Realcon Pvt. Ltd. &amp; Ors</i>	07.08.2019	NCLAT	<p>This appeal matter was filed on the ground that the Appellant/Promoters' proposal was not placed before the Committee of Creditors by the Resolution Professional on a</p>	<p><a href="https://ibbi.gov.in/uploads/order/06daadf6be2b87a376bbf9e620217c6f.pdf">https://ibbi.gov.in/uploads/order/06daadf6be2b87a376bbf9e620217c6f.pdf</a></p>

				<p>technical ground that the Promoters cannot file application under Section 12A of the Insolvency and Bankruptcy Code, 2016. Disposing-off the appeal, Hon'ble NCLAT held that, <i>"It is the Promoters, who can settle the matter with all the 'Financial Creditors', 'Operational Creditors' including the Allottees and for that they may give their proposal and the 'Resolution Professional' is bound to place it before the 'Committee of Creditors', which is supposed to consider such application in the light of Section 12-A and the order of this Appellate Tribunal."</i></p> <p>The Resolution Professional was accordingly directed to hold a meeting of the CoC within three weeks to present the proposal of the Promoters.</p>	
9.	<i>Bank of India v. Maxim</i>	06.08.2019	NCLT, Guwahat	In the matter, the Resolution Applicant being promoter of CD	<a href="https://ibbi.gov.in/uploads/order/a05a68c0">https://ibbi.gov.in/uploads/order/a05a68c0</a>

	<p><i>Infrastructure and Real Estate Limited</i></p>		<p>i Bench</p>	<p>were held to be ineligible under Section 29A of the Code. The Promoter received a certificate claiming to be an MSME to escape this ineligibility provision. The question that arose was whether the resolution applicant will be considered a <i>bona fide</i> MSME unit for this purpose simply based on the acknowledgement of the Competent Authority. Hon'ble NCLT held that since the applicant only got acknowledgment from the concerned authorities, <i>i.e.</i>, District Industries and Commerce Centre, Government of Assam and only got the acknowledgment for the project of Corporate Debtor in Guwahati, this must be a clear attempt to submit a resolution plan through back door entry which is not in the spirit of Section 240A of IBC. It was held that true spirit of Section 240A is to protect the</p>	<p><a href="#">a8fef455ef9488db11563be9.pdf</a></p>
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				<p>interest of MSME entrepreneurs who are MSMEs from the beginning.</p> <p>The application was accordingly rejected and the Resolution Applicant was held to be not an MSME for the purposes of claiming eligibility to submit a plan.</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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