

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## **KNOWLEDGE REPONERE (13<sup>th</sup> July- 28<sup>th</sup> July, 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**").

### **Brief of Amendments to CIRP Regulations, 2016 and Liquidation Process Regulations, 2016**

Insolvency and Bankruptcy Board of India on **25<sup>th</sup> July, 2019** has amended several regulations including the following:

- I. Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016  
([https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/Liquidation%20Regulations%2025072019%20final%20English\\_2019-07-25%2020:13:32.pdf](https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/Liquidation%20Regulations%2025072019%20final%20English_2019-07-25%2020:13:32.pdf))
- II. Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016  
([https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/CIRP%2025072019\\_2019-07-25%2020:15:02.pdf](https://www.ibbi.gov.in/webadmin/pdf/whatsnew/2019/Jul/CIRP%2025072019_2019-07-25%2020:15:02.pdf))

**The salient features of the amendment in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2019 are:**

- 1. Regulation 30A-Withdrawal of application** has been amended to bring in more clarity on the procedure of withdraw of application in the following:
  - before constitution of committee of creditors (CoC),
  - after constitution of CoC but before issue of invitation for expression of interest, and
  - after issue of invitation for expression of interest.

**2. Regulation 39B, 39C and 39 D have been inserted** which provide that while approving a resolution plan or deciding to liquidate the corporate debtor, the oC may:

- (i) approve a plan providing for contribution for meeting the liquidation costs,
- (ii) recommend sale of the corporate debtor or sale of business of the corporate debtor as a going concern, and
- (iii) fix, in consultation with the RP, the fee payable to the liquidator, if an order for liquidation is passed by the Adjudicating Authority

### **The salient features of the amendment in IBBI (Liquidation Process) Regulations, 2016**

**1.** The amendments specify the process for the following:

- (a) sale of corporate debtor as going concern, and
- (b) sale of business of corporate debtor as going concern under liquidation.

It further provides that where a corporate debtor is sold as a going concern, the liquidation process shall be closed without dissolution of the corporate debtor.

**2. Model timeline for Liquidation process:** The amendments require completion of liquidation process within one year of its commencement. It also states maximum timeline of 90 days for deciding whether to go for a going-concern sale. 90 days starts running from the commencement of liquidation.

**3. Regulation 2A has been inserted** states that where the liquidation costs are estimated by the liquidator to exceed the realizations, the liquidator may call upon the financial creditors, being financial institutions, to contribute the excess of the liquidation costs over the liquid assets of the corporate debtor, in proportion to their share in the "financial debts". However, such contribution along with interest at bank rate thereon shall form part of liquidation cost, which is paid in priority.

**4.** The composition of the **Stakeholder consultation committee** is now well-defined. The consultation committee will have representatives from secured creditors, unsecured financial creditors, employees and workmen, operational creditors, government and

shareholders to advise the liquidator on matters relating to sale. However, the advice of this committee is not binding on the liquidator.

**5. Amendment in Regulation 16** of Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016 provides that a stakeholder may submit its claim or update its claim submitted during the corporate insolvency resolution process, as on the liquidation commencement date.

**6. Insertion of Regulation 21A** wherein a secured creditor shall inform the liquidator of its decision to relinquish its security interest to liquidation estate or to realise its security interest within 30 days from the liquidation commencement date.

**7. FORM H - Compliance Certificate:** The amendments have introduced a comprehensive compliance certificate to be submitted along with the final report to the Adjudicating Authority.

The amended regulations are effective from **25<sup>th</sup> July, 2019**.

### **PAST EVENT(S)**

- **Launch of time based/event based reporting platform on 8th July, 2019**



ICSI Institute of Insolvency Professionals (ICSI IIP) in pursuance of one of its objectives to help the Insolvency Professionals comply with their obligations has developed a consolidated and structured **“time based/event based reporting platform”** for submission of all the information and records of the CIRP (dealt with by them) in terms of clause 1.9(A) of the Monitoring Policy of ICSI IIP read with clause 18(b) of IBBI (Model Bye-Laws and Governing Board of IPA)

Regulations, 2016 and clause 19 of first schedule of Code of conduct of the IBBI (Insolvency Professionals) Regulations, 2016.

The platform was launched by **Dr. (CS) M. S Sahoo, Chairperson, IBBI** in the presence of Dr.Navrang Saini, WTM, IBBI, Dr. (Ms.) MukulitaVijayawargiya, WTM, IBBI, Dr. Mamta Suri, ED, IBBI, Mr.RiteshKavdia, ED, IBBI, Mr.Debajyoti Ray Chaudhuri CGM IBBI, Ms. (CS) Alka Kapoor, CEO, ICSI IIP, Ms. Lakshmi Arun, Head, Education and Training, ICSI IIP, Mr. Sunil Pant, CEO, IIIP ICAI and Dr.S. K. Gupta, MD & CEO, IPA, ICAI at **IBBI office** on **8<sup>th</sup> July, 2019**.

The platform is available at ICSI IIP's website at <http://portal.icsiip.com/Login.aspx?ReturnUrl=%2f>.

### **NEWS UPDATE(S)**

- **Rajya Sabha passes IBC amendment, restoring primacy of lenders in insolvency cases**

The Rajya Sabha on 29<sup>th</sup> July.2019 approved amending the three-year-old Insolvency and Bankruptcy Code (IBC), providing clarity about preference to secured lenders over operational creditors and giving lenders explicit authority over distribution of proceeds of auction of loan defaulting companies. Replying to a debate on the Insolvency and Bankruptcy Code (Amendment) Bill 2019, Finance Minister Nirmala Sitharaman said the changes being brought in now are in response to events that eroded legislative intent of IBC.

*Read more at:*

[//economictimes.indiatimes.com/articleshow/70436874.cms?from=mdr&utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/70436874.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **Lenders' Group allows Jet to raise up to Rs 70. crore**

The Committee of Creditors (CoC) constituted in case of Jet Airways has approved raising interim loan of upto Rs. 70 crores to keep the grounded airline alive for three months. The Bankers also approved the contours of a fresh bidding process for the Carrier, fresh initial bids for which would be sought from potential investors.

The lenders also confirmed the appointment of Grant Thornton's Ashish Chhawchharia, an interim resolution professional appointed by NCLT (Mumbai Bench), as the resolution professional for the airline.

*Read more at:*

[//economictimes.indiatimes.com/articleshow/70302713.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/70302713.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 Cedar Infonet Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	New Delhi	20.53 Crores
2.	<i>In the matter of Shree Meenakshi Food Products Pvt. Ltd.</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	27.22 Lakhs
3.	<i>In the matter of Sai Lilagar Power Generation Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Hyderabad	383.05 Crores

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Orchid Pharma Limited</i>	Chennai	27.06.2019
2.	<i>In the matter of AML Steel and Power Limited</i>	Chennai	27.06.2019

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of D N Sircar S K Das Pvt. Ltd.</i>	Kolkata	05.07.2019
2.	<i>In the matter of Vishal Global Limited</i>	New Delhi	08.07.2019
3.	<i>In the matter of Sri Karunambikai Mills Private Limited</i>	Chennai	09.07.2019
4.	<i>In the matter of SR Breweries Private Limited</i>	Cuttack	16.07.2019
5.	<i>In the matter of Tecpro Engineeris Limited</i>	New Delhi	17.07.2019
6.	<i>In the matter of Sri Lakshmi Hotels Private Limited</i>	Chennai	17.07.2019
7.	<i>In the matter of Mansi Oils &amp; Grains Pvt. Ltd.</i>	Kolkata	19.07.2019

### BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>In the matter of Bikram Chatterji &amp; Ors. Vs. Union of India &amp; Ors.</i>	23.07.2019	Supreme Court	Hon'ble Supreme Court, vide its judgment dt. 23rd July 2019, passed in the matter titled as Bikram Chaterjee & Ors. v. Union of India & Ors. (pertaining to the Amrapali Group) took cognizance of the serious fraud played upon the Home Buyers by the Builder. Coming	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/23rd%20July%202019%20in%20the%20matter%20of%20Bikram%20Chatterji%20&amp;%20Ors.%20Vs.%20Union%20of%20India%20&amp;%20Ors.%20Writ%2">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/23rd%20July%202019%20in%20the%20matter%20of%20Bikram%20Chatterji%20&amp;%20Ors.%20Vs.%20Union%20of%20India%20&amp;%20Ors.%20Writ%2</a>

				<p>down heavily on the perpetrators, Hon'ble Court, in an unprecedented move, cancelled the RERA registration granted to Amrapali. Further, in order to secure Home Buyers' interest, the Apex Court directed National Building Construction Corporation (NBCC) to complete the construction of the projects.</p> <p>With this move, the Apex Court has displayed the deterrent effect of the law and also set an example for all cases pertaining to errant developers who are habituated to circumventing the law</p>	<p><a href="#">0Petition%20(C)%20No.%20940-2017-2019-07-25%2020:21:04.pdf</a></p>
2.	<i>Insolvency and Bankruptcy Board of India v. Shri Rishi Prakash Vats</i>	11.07.2019	NCLAT	<p>An appeal was filed by the Chief Regulatory Body under the IBC, the IBBI (<i>Insolvency and Bankruptcy Board of India</i>) impugning Hon'ble NCLT's (New Delhi Bench) order wherein Disciplinary proceedings initiated in respect of an RP at the instance of the</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/Insolvency%20and%20Bankruptcy%20Board%20of%20India%20(IBBI)%20Vs%20Shri%20Rishi%20Prakash%20Vats%20&amp;%20Ors.%20CA">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/Insolvency%20and%20Bankruptcy%20Board%20of%20India%20(IBBI)%20Vs%20Shri%20Rishi%20Prakash%20Vats%20&amp;%20Ors.%20CA</a></p>

Adjudicating Authority itself were quashed.

The contention raised was as regards NCLT's jurisdiction to quash proceedings once initiated by IBBI.

The CD in the case was *M/s Rana Global Ltd.* and *vide* its order dt. 26<sup>th</sup>April 2018, Hon'ble NCLT had noted delay in carrying out of CIRP proceedings and accordingly brought it to IBBI's notice for appropriate action. Consequently, Disciplinary proceedings were initiated by IBBI against the RP. Thereafter, while the Disciplinary proceedings (before IBBI) were pending, the AA, on an application made by the IRP had expunged its remarks and informed the IBBI of the same. Thereafter, *vide* the impugned order, the disciplinary proceedings before

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IBBI were quashed by the AA.

Aggrieved by the impugned order, the IBBI had approached the NCLAT and the Appellate Authority *vide* its order dt. 11<sup>th</sup> July 2019 remitted the matter back to IBBI for passing appropriate order taking into consideration NCLT's orders expunging remarks against the RP.

NCLAT concluded thus, "*once a disciplinary proceeding is initiated by the IBBI on the basis of evidence on record, it is for the Disciplinary Authority, i.e., IBBI to close the proceeding or pass appropriate orders in accordance with law. Such power having been vested with IBBI and in absence of any power with the Adjudicating Authority/ (National Company Law Tribunal), the Adjudicating*

				<p><u>Authority cannot quash the proceeding, even if proceeding is initiated at the instance and recommendation made by the Adjudicating Authority/ National Company Law Tribunal.”</u></p> <p>The appeal was, thus, disposed-off and the matter was remitted to the IBBI to pass appropriate order taking into consideration the orders passed by the AA.</p>	
3.	<p><i>Jaypee Greens Krescent Home Buyers Welfare Association &amp;Ors. v. JaypeeInfratech Ltd. Through Anuj Jain, Interim Resolution Profession</i></p>	17.07.2019	NCLAT	<p>The appeal was filed seeking exclusion of time during the ongoing CIRP in respect of M/s Jaypee Infratech Ltd. (CD). The Appellate Authority took a view that, in the CIRP Process initiated in respect of Infrastructure Companies, since the assets are meant for allottees and not for the Corporate Debtor, the resolution plan should be for the allottees and other</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/17th%20July%202019%20In%20the%20matter%20of%20IDBI%20Bank%20Limited%20VS%20Mr.%20Anuj%20Jain,%20Interim%20Resolution%20Professional%20Jaypee%20Infratech%20Limited%20[CA(AT)(Insolvency)]%20536-">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/17th%20July%202019%20In%20the%20matter%20of%20IDBI%20Bank%20Limited%20VS%20Mr.%20Anuj%20Jain,%20Interim%20Resolution%20Professional%20Jaypee%20Infratech%20Limited%20[CA(AT)(Insolvency)]%20536-</a></p>

stakeholders.

In the matter, *there was some confusion about the counting of voting shares of the allottees, as 'explanation' below Section 5 (8) of the Code was introduced subsequently. For clarification of the same, an application was filed before the Adjudicating Authority on 17.09.2018 and after difference of opinion and subsequent decision by National Company Law Tribunal the voting share of allottees was decided on 04.06.2019. In between the aforesaid period, the Committee of Creditors could not approve any resolution plan. Accordingly, a request was made for exclusion of period from 17<sup>th</sup> Sep 2018 to 4<sup>th</sup> June 2019 from CIRP period.*

Hon'ble NCLAT passed the following orders in the matter:  
"Having heard

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				learned counsel appearing on behalf of the lenders (Banks and Financial Institutions) we allow the learned counsel of the lenders (Banks and Financial Institutions) to file an affidavit by 19th July, 2019, showing terms and conditions, as may be imposed, if fresh resolution plans are allowed to be accepted, after exclusion of the aforesaid period.”	
4.	<i>State Bank of India v. Sri Lakshmikant ha Spinners Ltd.</i>	16.07.2019	NCLAT	<p>The appeal was filed based on the fact that though the application under Section 7 was filed in July 2018, but for more than one year, it has been adjourned 15 times and no order passed on merits on the ground that the Corporate Debtor was asking time for settlement and no terms of settlement reached between the parties.</p> <p>NCLAT directed the Adjudicating Authority (National Company Law</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/16th%20July%202019%20In%20the%20matter%20of%20State%20Bank%20of%20India.%20VS%20Sri%20LakshmiKantha%20Spinners%20Ltd.%20[CA(AT)(Insolvency)%20718-2019]_2019-07-18%2012:43:11.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/16th%20July%202019%20In%20the%20matter%20of%20State%20Bank%20of%20India.%20VS%20Sri%20LakshmiKantha%20Spinners%20Ltd.%20[CA(AT)(Insolvency)%20718-2019]_2019-07-18%2012:43:11.pdf</a>

				<p>Tribunal, Hyderabad Bench) to pass appropriate order on application under Section 7 preferred by the Appellant after hearing the parties within four weeks from the date of receipt of the order. It was further directed that if the order is not passed within the aforesaid period, the Appellate Tribunal may bring it to the notice of the Hon'ble President of National Company Law Tribunal, Principal Bench, New Delhi for appropriate order.</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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