

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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(Formerly known as ICSI Insolvency Professionals Agency)

## **KNOWLEDGE REPONERE (1<sup>st</sup> -16<sup>th</sup> September,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**").

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

#### ➤ **India Inc. spent 14% more on legal fees in FY19**

The legal expenses of listed Indian companies increased by 14% to over Rs. 38,660 crores (\$5.6 billion) during FY19 as new laws on insolvency and debt restructuring, among others, came into force over the past five years, according to data compiled by ETIG from their annual reports.

Thus, there is a 49% increase in the legal expenses from Rs 25,832 crores that the companies shelled out five years ago. The legal expenses include spending on litigation and arbitration, professional fees, regulatory filings, penalties and general stamp duty.

Read more at:

[//economictimes.indiatimes.com/articleshow/71121319.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71121319.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

#### ➤ **JSW Steel moves NCLAT for immunity against investigation in BPSL cases**

JSW Steel has approached the NCLAT to seek protection from the ongoing investigation in money laundering cases against former promoters of Bhushan Power & Steel, for which it has emerged as the highest bidder under the insolvency process.

The Jindal group firm is seeking immunity as the Delhi High Court in a recent ruling has held that the Money Laundering laws shall prevail over the Insolvency

and Bankruptcy Code, 2016 (IBC).

Read more at:

[//economictimes.indiatimes.com/articleshow/71115638.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71115638.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

➤ **NCLAT quashes insolvency proceedings against Bharat Road Network**

The NCLAT has set aside insolvency proceedings initiated against M/s Bharat Road Network Ltd, and has further directed the AA (NCLT-Kolkata bench) to close the matter.

The orders were passed by a three-member NCLAT bench, headed by the Chairperson, Hon'ble Justice SJ Mukhopadhaya, who, while passing the orders, observed that the Corporate Debtor (Bharat Road Network) has settled its dues with its Financial Creditor, Religare Finvest, and that the CoC is yet to be formed. Vide the impugned order dt. 28<sup>th</sup> August 2019 passed by the AA, directions were issued for initiation of insolvency proceedings in respect of the CD, and the same was challenged by CD's MD and Shareholder.

Read more at:

[//economictimes.indiatimes.com/articleshow/71049454.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71049454.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

➤ **NCLT Approves Patanjali's Resolution Plan For Ruchi Soya**

The National Company Law Tribunal, Mumbai Bench vide its order dt. 4<sup>th</sup> September, 2019 has approved the resolution plan submitted by the Resolution Applicant, M/s Patanjali Ayurved Ltd. for the debt-ridden Ruchi Soya Industries Ltd. (CD).

Ruchi Soya owes over Rs. 9,345 crores to its FCs, led by State Bank of India, which has an exposure of Rs. 1,800 crores, followed by Central Bank at Rs. 816 crores, Punjab National Bank at Rs. 743 crores, Standard Chartered Bank at Rs. 608 crores and DBS at Rs. 243 crore. The resolution plan stipulates for a 60 per cent haircut to the lenders.

Read more at:

<https://www.bloombergquint.com/insolvency/nclt-approves-patanjali-s-bid-for-ruchi-soya>

### ➤ **CGST Deptt. Files Intervention Plea In Videocon Case**

In the insolvency proceedings initiated in respect of Videocon group of Companies wherein the AA vide its order dt. 8<sup>th</sup> August 2019 had directed for consolidation of proceedings wrt 13 (out of 15) group companies, the Central Goods and Services Tax department has on 17<sup>th</sup> September, 2019 filed an intervention petition seeking to be impleaded as an Operational Creditor in the said proceedings.

Read more at:

<https://www.bloomberquint.com/business/cgst-files-intervention-plea-in-videocon-case>

### **PAST EVENTS**

- **ICSI Institute of Insolvency Professionals, on 11th September, 2019, organised a Webinar on “Verification of Claims under IBC,2016”**



**L-R:** Mr. Kanwal Goyal (Insolvency Professional), CS Vineet Chaudhary (Insolvency Professional and Council Member, ICSI), Shri I. Sreekara Rao (Chief General Manager, IBBI) and Ms. Mitali Shah (Insolvency Professional)

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Bhushan Power and Steel Limited</i>	New Delhi	05.09.2019
2.	<i>In the matter of Sunstar Overseas Limited</i>	New Delhi	12.09.2019

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Frontier Lifeline Private Limited</i>	Chennai	04.09.2019
2.	<i>In the matter of Balajidham Buildestates Pvt. Ltd.</i>	Jaipur	06.09.2019
3.	<i>In the matter of Shreedhar Milk Foods Limited</i>	New Delhi	12.09.2019

## BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Mr. HemangPhophalia v. The Greater Bombay Co-operative Bank Limited and Anr</i>	06.09.2019	NCLAT	An appeal was preferred by Mr. HemangPhophalia, Ex-Director and Shareholder of the M/s Penguin Umbrella Works Private Limited (Corporate Debtor) against the order dated 12 <sup>th</sup> June, 2019 passed by the	<a href="https://ibbi.gov.in/uploads/order/4fde53029a810941667bbe192d4e1a6e.pdf">https://ibbi.gov.in/uploads/order/4fde53029a810941667bbe192d4e1a6e.pdf</a>

Adjudicating Authority initiating the CIRP against M/s Penguin Umbrella Works Private Limited under Section 7 of the Insolvency and Bankruptcy Code, 2016.

NCLAT held that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the 'Corporate Debtor' and the employees of the Banks. The Bank which is the 'Financial Creditor' is a separate entity from the Chief Financial Officer of the 'Corporate Debtor' or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an

				<p>application under Section 7 if the application is complete and there is a debt and default.</p> <p>NCLAT held that application under Sections 7 and 9 will be maintainable against the 'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struck-off.</p>	
2.	<i>Shweta VishwanathS hirke&amp;Ors. v. The Committee of Creditors &amp;Anr.</i>	28.08.2019	NCLAT	<p>A bunch of Appeals, filed respectively by (a) Employees of CD, (b) Andhra Bank (FC) and CD's RP, were taken up for disposal by Hon'ble NCLAT. In the appeals filed, Hon'ble NCLAT's order dt. 8<sup>th</sup> May 2019 was challenged on different grounds. However, the main legal contention raised in the appeals was regarding non-applicability of requirements of section 29A to an application filed u/s 12A. The NCLAT, while noticing that section 29A lays down ineligibility</p>	<p><a href="https://nclat.nic.in/Useradmin/upload/6800044965d6e00f2674eb.pdf">https://nclat.nic.in/Useradmin/upload/6800044965d6e00f2674eb.pdf</a></p>

				<p>conditions for a Resolution Applicant, and that section 12A relates to withdrawal of a CIRP application, concluded that Section 29A is not applicable for consideration of an application filed under Section 12A.</p> <p>With the aforementioned conclusion, orders were passed for setting aside of CIRP proceedings initiated against CD (M/s <i>Sterling Biotech Ltd.</i>) subject to fulfilment of conditions of payment of sum by Promoters/Shareholders to all Stakeholders/FCs and OCs subject to which the resolution was passed by CoC with 90% voting share under section 12A, IBC.</p>	
3.	<i>Jet Airways(India) Ltd. (Offshore Regional Hub / office), Holland v.</i>	04.09.2019	NCLAT	<p>In the Insolvency Proceedings initiated in respect of M/s Jet Airways, Hon'ble NCLAT held that IRP is required to collate the claim of all 'offshore</p>	<p><a href="https://ibbi.gov.in/uploads/order/3754724dc946c5920a7fd43ac1ce04d7.pdf">https://ibbi.gov.in/uploads/order/3754724dc946c5920a7fd43ac1ce04d7.pdf</a></p>

	<i>State Bank of India &amp;Anr.</i>			creditors' or take control and custody of the assets of the Corporate Debtor situated outside India (in Holland) or other places, but for giving it effect, the RP is required to reach an arrangement with the Administrator appointed pursuant to the proceeding initiated at Holland. The question as to whether the Committee of Creditors have any role to play is left open for decision at appropriate stage/in an appropriate case but for the present, the Committee of Creditors was allowed to guide the RP to enable him to prepare a (draft) agreement showing the terms and conditions to take up the matter with the Administrator of Holland for his consent.	
4.	<i>M/s. Bannari Amman Spinning Mills Ltd. v.</i>	03.09.2019	NCLAT	An appeal was filed against AA's order whereby a Section 9 application was	<a href="https://ibbi.gov.in/uploads/order/9f72cbc87ced49733f368">https://ibbi.gov.in/uploads/order/9f72cbc87ced49733f368</a>



	<i>M/s My Choice Knit &amp; Apparels Pvt. Ltd</i>			<p>dismissed.</p> <p>The Appellant had filed an application under Section 9 of IBC for initiation of CIRP against the Respondent (Corporate Debtor). The AA had dismissed the application on the ground that the Corporate Debtor is a Micro, Small and Medium Enterprise (MSME), and the Code provides some safeguards to run its business and also a mechanism is provided in the Code itself to settle their dispute arising out of the business transactions made by the MSME with the other business establishments.</p> <p>The appeal was, thus, allowed.</p>	<a href="#">7f0cbac4555.pdf</a>
5.	<i>Securities and Exchange Board of India, Vs. Assam Company</i>	29.08.2019	NCLAT	<p>An appeal was filed before the Hon'ble NCLAT impugning order dated 20th September, 2018 passed by the NCLT, Guwahati Bench in</p>	<a href="https://ibbi.gov.in/uploads/order/c7bf0f8c88b8e51bf3683b0a5740bf44.pdf">https://ibbi.gov.in/uploads/order/c7bf0f8c88b8e51bf3683b0a5740bf44.pdf</a>

*India Ltd.  
&Anr*

which the AA had approved the Resolution Plan submitted by BRS Ventures Investment Ltd. The Appellant has challenged the order of approval of the resolution plan which was approved by 100% voting share of the CoC. The Resolution Plan involved delisting of shares of the CD to which SEBI (the appellant) objected stating that the CD was a shell company which was undergoing an investigation by Forensic Auditor on an interim order of WTM of SEBI.

Taking account of the facts and circumstances of the case, Hon'ble NCLAT declined to interfere with the impugned order and held that the order passed by the NCLT/ NCLAT will not come in the way of the SEBI or any competent authority taking steps against erstwhile promoters, directors or officers

				or others, if any, or all of them had violated any of the provisions under the SEBI Act or rule framed there under or any other law.	
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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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