

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (1st– 15th November, 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**").

As the present Insolvency and Bankruptcy regime in India strengthens with evolution of new case-law, the need for Insolvency Professionals (IPs) to be updated on all latest judgments delivered by the NCLTs/NCLAT/High Court/Supreme Court becomes very crucial and important. Further, with the increasing role of legal search engines given their huge database and use of technology facilitating ease of access by users, a useful substitute to conventional libraries with volumes of journals has been discovered.

Realising usefulness of search engines, and with a view to encourage its professional members to keep themselves abreast of all latest developments in the Insolvency and Bankruptcy law (including international developments), ICSI IIP has carried out discussions with M/s Manupatra Information Solutions (P) Ltd. ('Manupatra' in short). Under the arrangement arrived at, Manupatra has designed a software containing the Case-law database, Legislative database, Notification database and the Business & Policy Database (pertaining to IBC), which shall be made available to the members of ICSI IIP at an yearly subscription charge of 3900 INR (including 18% GST) only.

Further, to make a Payment for subscription to *Manupatra* (pertaining to IBC) through Credit Card/Debit Card (Except American Express Cards) please follow the below mentioned link:

<http://www.manupatrafast.in/Regs/ApiaymentProceed.aspx?pr=general&styp=>

For any further information, feel free to mail us at mandavi.bhargava@icsi.edu.

We encourage all our professional members to make best use of this opportunity.

REGULATORY UPDATES

✚ Notification of Financial Service Providers under Section 227 of the Insolvency and Bankruptcy Code, 2016

The key highlights of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 are as follows:

- ❖ The CIRP of an FSP shall be initiated only on an application by the appropriate regulator.
- ❖ On admission of the application, the Adjudicating Authority shall appoint the individual, who has been proposed by the appropriate regulator in the application for initiation of CIRP, as the Administrator.
- ❖ The Administrator shall have the same duties, functions, obligations, responsibilities, rights, and powers of an insolvency professional or liquidator, as the case may be. He shall be appointed or replaced by the Adjudicating Authority on an application made by the appropriate regulator in this behalf.
- ❖ The appropriate regulator may constitute an Advisory Committee of three or more experts to advise the Administrator in the operations of the FSP during the CIRP.
- ❖ An interim moratorium shall commence on and from the date of filing of the application for initiation of CIRP by the appropriate regulator till its admission or rejection by the Adjudicating Authority.
- ❖ The provisions of interim-moratorium or moratorium shall not apply to any third-party assets or properties in custody or possession of the FSP, including any funds, securities and other assets required to be held in trust for the benefit of third parties.
- ❖ The Administrator shall take control and custody of third-party assets or properties in custody or possession of the FSP and deal with them in the manner, to be notified by the Central Government under section 227.
- ❖ The license or registration which authorises the FSP to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the CIRP.
- ❖ Upon approval of the resolution plan by the Committee of Creditors, the Administrator shall seek 'no objection' from the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of FSP after approval of the resolution plan. The appropriate regulator shall issue 'no objection' on the basis of the 'fit and

proper' criteria applicable to the business of the FSP without prejudice to the provision of Section 29A of the Code.

- ❖ The FSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings.
- ❖ The Adjudicating Authority shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP.

✚ **Notification of Provisions of Insolvency and Bankruptcy Code and Rules of Insolvency and Bankruptcy of Personal Guarantors to Corporate Debtors vide notification dated 15th November, 2019**

1. Notification of the provisions of the Code relating to Insolvency and Bankruptcy framework for personal guarantors to Corporate Debtor:

▪ **clause (e) of section 2 : Applicability of the provisions of the Code**

As per Section 2(e) 'The provisions of the Code shall apply to- personal guarantors to Corporate Debtors;'

▪ **Section 78 (except with regard to fresh start process) and Section 79: Application and Definitions**

Section 78 (except fresh start process) which contains the application of Part III of the code and Section 79 comprising of definitions shall become effective.

▪ **Sections 94 to 187 [both inclusive];**

Sections 94 to 187 have been notified. It comprises of following chapters:

- *Insolvency Resolution Process*
- *Bankruptcy Order for Individuals and Partnership Firms*
- *Administration and Distribution of the Estate of the Bankrupt*
- *Adjudicating Authority for Individuals and Partnership Firms*
- *Offences and Penalties*

▪ **clause (g) to clause (i) of sub-section (2) of section 239**

As per Section 239(1) The Central Government may, by notification, make rules for carrying out the provisions of the Code.

Central Government may make rules in the matters stated in clause (g) to clause (i) of Section 239(2).

▪ **clause (m) to clause (zc) of sub-section (2) of section 239;**

As per Section 239(1) The Central Government may, by notification, make rules for carrying out the provisions of the Code.

Central Government may make rules in the matters stated in clause (m) to clause (zc) of Section 239(2).

▪ **clause (zn) to clause (zs) of sub-section (2) of section 240;**

As per Section 240(1) The Board may, by notification, make regulations consistent with the Code and the rules made thereunder, to carry out the provisions of this Code.

Regulations made by the Board to carry out the provisions of the code may provide for all or any of the following matters stated in clause (zn) to clause (zs) of Section 240 (2)

▪ **Section 249.**

As per Section 249, 'The Recovery of Debts due to Banks and Financial Institutions Act, 1993 shall be amended in the manner specified in the Fifth Schedule.

2. Notification of the Rules relating to Insolvency and Bankruptcy framework for personal guarantors to Corporate Debtor:

The Key Highlights of the Insolvency/ Bankruptcy Rules are:

- ❖ The rules shall apply to insolvency resolution process for personal guarantors to corporate debtors and shall come into force from the 1st day of December, 2019.
- ❖ **"Adjudicating Authority"** for the for the purpose of section 60 i.e. for Corporate persons and personal guarantors means National Company Law Tribunal and cases other than section 60 it will be Debt Recovery Tribunals.
- ❖ **"Guarantor"** has been defined as *'a debtor who is a personal guarantor to a corporate debtor and in respect of whom guarantee has been invoked by the creditor and remains unpaid in full or part';*
- ❖ **Excluded assets** as defined in Section 79(14) shall comprise of-
 - the value of unencumbered personal ornaments shall not exceed one lakh rupees;

- the value of unencumbered single dwelling unit owned by the debtor in urban area shall not exceed twenty lakh rupees; and in rural area shall not exceed ten lakh rupees
- ❖ The rules have notified forms w.r.t. filing of application by guarantor and creditor, serving of demand notice, withdrawal of application, issue of public notice, submitting of financial statements by the bankrupt, submission of proof of claims etc.
- ❖ Adjudicating Authority may permit withdrawal of application filed by guarantor or creditor:
 - before its admission, on a request made by the applicant;
 - after its admission, on the request made by the applicant, if ninety per cent. of the creditors agree to such withdrawal.
- ❖ The bankrupt before entering into any financial or commercial transaction of one lakh rupees and above shall inform all the parties involved in such transaction that he is undergoing bankruptcy process.

NEWS UPDATE(S)

- **Essar order a breather for 535 corporate debtors facing liquidation by December**

The Supreme Court judgment on Essar Steel has come as a breather for 535 other corporate debtors facing liquidation by December. These companies had crossed 270 days deadline for a resolution under the Insolvency and Bankruptcy Code. While the time limit for resolution is 330 days, if debts are not resolved within this timeframe, the only option left is liquidation.

Under the new ruling, NCLT can grant an extension.

Read more at:

[//economictimes.indiatimes.com/articleshow/72102060.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://economictimes.indiatimes.com/articleshow/72102060.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **Aviva Life Insurance faces insolvency proceedings over 'not paying landlord'**

Aviva Life Insurance has become the first financial company to be admitted into Insolvency and Bankruptcy Code (IBC) proceedings after the National Company Law Tribunal (NCLT) upheld a landlord's claim accusing the insurer of failing to

meet its payment obligations and ordered the commencement of the company's insolvency process.

Read more at:

[//economictimes.indiatimes.com/articleshow/72000087.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://economictimes.indiatimes.com/articleshow/72000087.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Ushdev International Limited</i>	Mumbai	07.11.2019

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Case Cold Roll Forming Limited</i>	New Delhi	05.11.2019
2.	<i>In the matter of Jejani Pulp and Paper Private Limited</i>	Mumbai	06.11.2019
3.	<i>In the matter of Saraswati Sales Private Limited</i>	Kolkata	07.11.2019
4.	<i>In the matter of U.P. Infraestate Private Limited</i>	Allahabad	08.11.2019
5.	<i>In the matter of Prism Infracon Limited</i>	Kolkata	08.11.2019

BRIEF OF JUDGEMENTS

S. No	Case Detail	Date of Order	Courts	Brief	Case link
1.	<i>Rahul Jain v. Rave Scans Pvt. Ltd. and Ors</i>	08.11.2019	Supreme Court	<p>The financial creditor (M/s Hero Fincorp Ltd.) appealed against the NCLT's order, on grounds of discrimination between financial creditors, which resulted in the NCLAT modifying NCLT's final order.</p> <p>The question urged by the appellant is whether the finding that the financial creditor was discriminated against, leading the NCLAT to modify the adjudicating authority's directions, and consequently imposing greater financial burdens on the resolution applicant.</p> <p>The Apex Court while discussing the applicability of amendment to Regulation 38 of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which provides for the Resolution Plan justifying the amounts allotted to all financial and Operational Creditors, observed that ,</p> <p>"Given that the resolution</p>	https://ibbi.gov.in//upload/order/b8ddf48dc769a0f2d85747a8e87decf2.pdf

				<p>process began well before the amended regulation came into force (in fact, January, 2017) and the resolution plan was prepared and approved before that event, the wide observations of the NCLAT, requiring the appellant to match the payout (offered to other financial creditors) to Hero, was not justified.”</p> <p>The Hon’ble Supreme Court concluded that since the Resolution Plan had attained finality except for the objections of the appellant, NCLAT’s orders for modifying the plan was not justified and hence the order of NCLAT was set aside and the order of NCLT approving the Resolution Plan was restored.</p>	
2.	<i>Jaiprakash Associates Ltd & Anr. v. IDBI Bank Ltd. & Anr.</i>	06.11.2019	Supreme Court	<p>A group of homebuyers moved the apex court in 2017, saying around 23,000 people had booked flats and were paying installments, but their homes were not ready. On August 22, 2019, the court had ordered status quo for a week on the insolvency proceeding after the Jaypee Group challenged</p>	

an order of the NCLAT that allowed fresh bidding for Jaypee Infratech. The NCLAT had barred the parent company, Jaypee Associates, from bidding.

The Supreme Court has held that the Jaypee Infratech resolution process should be completed within 90 days and allowed only the government's construction arm NBCC and Suraksha Realty to submit their revised proposals before the Committee of Creditors. The Hon'ble Court directed that the IRP shall not entertain any expression of interest (improved) resolution plan individually or jointly, much less ineligible in terms of Section 29A of the Code.

The 90-day extension from 06.11.2019 has been granted in the interest of all stakeholders under Article 142 of the Constitution. The Supreme Court has given both NBCC and Suraksha Realty 45 days to submit their revised bid and another 45 days to the

				<p>insolvency and resolution professional to process the fresh bids.</p> <p>The Apex Court concluded by directing the Resolution Professional that the pendency of any other application before the NCLT or NCLAT, including any interim direction given by them shall not be an impediment for the RP to receive and process the revised resolution plan from the two mentioned bidders and the RP has to take the CIRP to its logical end as per the provisions of the Code and the extended timeline prescribed in terms of this order.</p>	
3.	<i>Ruchita Modi v. Mrs. Kanchan Ostwal and Ors.</i>	04.11.2019	NCLAT	<p>In an ongoing CIRP, a deed of settlement was finalised between the Operational Creditor and the Corporate Debtor which henceforth resulted in withdrawal of the Section 9 application. The IRP fee was calculated to be Rs. 1,50,000. NCLAT directed the Corporate Debtor to contact the IRP and pay the fees as calculated after deducting the amount</p>	<p>https://ibbi.gov.in//upload/s/order/e61215fef696e0dbb64e085106d61849.pdf</p>

				<p>already given under the impugned order. The IRP was entitled to move the Adjudicating Authority in case there was any difficulty regarding CIRP costs. The Appellant will be bound to pay the amount as directed by the Adjudicating Authority.</p>	
4.	<i>Apeejay Trust v. Aviva Life Insurance Company India Ltd.</i>	04.11.2019	NCLT, Bench V, New Delhi	<p>A petition u/s 9 of the Code was filed by Apeejay Trust to initiate CIRP against Aviva Life Insurance Company India Ltd. Aviva Life Insurance and Apeejay Trust had entered into an agreement of Leave and License for office premises and other services for the former. However, in spite of several requests, the Corporate Debtor defaulted in making payments towards service tax and license fee to be paid to Apeejay Trust.</p> <p>Aviva Life Insurance raised an objection regarding maintainability of the petition on the ground that they are an insurance company and therefore they are 'Financial Service Provider', the business of which is strictly regulated by 'Financial Sector</p>	<p>https://ibbi.gov.in/upload/s/order/885b648aa53e06bc8061a68846666f9c.pdf</p>

				<p>Regulator' and therefore provisions of IBC cannot lie against them.</p> <p>NCLT observed that definition of financial service under section 3(16) IBC, clearly includes the transactions effecting contract of insurance. However, in the present case, the Operational Creditor did not have any claim in respect of contract of insurance. The claim was in respect of the outstanding license fees and service tax amounts.</p> <p>Thus, NCLT opined:</p> <p><i>"Hence, the Corporate Debtor cannot use the provisions of Section 3 of the Insolvency and Bankruptcy Code, 2016 as a blanket cover to claim an exclusion from IBC proceedings on the ground that it is a financial service provider."</i></p> <p>Hon'ble NCLT admitted the section 9 petition and initiated a corporate insolvency resolution process against the Corporate Debtor, Aviva Life Insurance.</p>	
5.	<i>Suresh Narayan Singh v.</i>	30.10.2019	NCLT, Kolkata	Jharkhand Bijli Vitran Nigam Limited (Applicant) preferred a	http://www.tayo.co.in/pdf/se-

	<p><i>Tayo Rolls Ltd.</i></p>		<p>Bench</p>	<p>company application for replacing the Resolution Professional.</p> <p>The applicant raised an objection with regard to the irregularities in CoC's meetings and reduction of claims by the RP.</p> <p>Further RP submitted that the workers led by one Mr. Akhilesh Kumar Shrivastava intimidated the RP on various occasions and has also been writing derogatory and defamatory posts on websites and social media about the RP, Hon'ble members of NCLT, NCLAT, etc.</p> <p>Hon'ble NCLT, Kolkata Bench was of the view that the reason for filing this application for removal of RP is mainly that their claims have not been admitted in full and all other allegations seem to have been made to support their main grievance of non acceptance of their claim in full.</p> <p>Hon'ble NCLT, Kolkata Bench held:</p> <p><i>"33. Before parting with this case, we are unable to reconcile with the way the Applicants have dealt with the resolution</i></p>	<p>intimation-change-in-rp-mr-5nov19.pdf</p>
--	-------------------------------	--	--------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------

			<p><i>professional who is a lady professional,...We do not approve of such an unwarranted behaviour on the part of any of the applicants or the advocate. We therefore, are of the considered view that C.A(IB) No.840/KB/ 2019 and C.A(IB) No.970 /KB/2019 are liable to be dismissed by imposing a cost of Rs. 1,00,000/- (Rupees One Lakh Only) each, by the applicants to the RP."</i></p> <p>Hon'ble NCLT, allowed replacement of RP as specified under Section 27 of the Code and dismissed the application.</p>	
--	--	--	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--

We trust you will find this issue of our Bulletin useful and informative.

Wish you good luck in all your endeavors!!

Team ICSI IIP

Disclaimer: Although due care and diligence has been taken in the production of this Knowledge Reponere, the ICSI Institute of Insolvency Professionals shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Knowledge Reponere. Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.