

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPOINERE (06th – 21st January, 2020)

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**").

EVENTS Held (during the Period)

- ICSI IIP organized a Webinar on recently promulgated "IBC Amendment (Ordinance), 2019" and the "IBBI (Liquidation Process) (Amendment) Regulations, 2020", on 16th January, 2020.



[L-R: Shri K R Saji Kumar, Executive Director, IBBI; Mr. Vinod Kothari, Managing Partner, (Vinod Kothari Consultants) and Dr. Binoy J Kattadiyil, Managing Director, ICSI IIP]

REGULATORY UPDATE

- IBBI notifies the *Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020*.

The Insolvency and Bankruptcy Board of India has introduced several amendments to *The Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016* vide the *Insolvency and Bankruptcy Board of India (Liquidation Process) (Amendment) Regulations, 2020* on January 6, 2020.

Read more at:

(<https://ibbi.gov.in/uploads/legalframework/8e241a378e16b2821da63658bad6f0a4.pdf>)

- IBBI amends the *Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017*.

The Insolvency and Bankruptcy Board of India (IBBI) has notified the *Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2020* on January 15, 2020.

Read more at:

(<https://ibbi.gov.in/uploads/legalframework/2020-01-20-134419-un9k7-f6996ec4d38ae089cd00027bc4071649.pdf>)

NEWS UPDATE

- In a first, IBC process ordered for failing to pay an insolvency services company.

The NCLT(Hyderabad) bench ordered commencement of proceedings in respect of Sri Yadadri Life Sciences (SYLS) for the alleged default in payments to Adroit Financial Services (AFS) who had earlier provided its advisory services on insolvency resolution and services towards capital restructuring and settlement of debt through a one-time settlement (OTS) with its lender. While admitting the petition, NCLT observed that there is debt and default of operational debt.

Read more at:

https://economictimes.indiatimes.com/news/economy/policy/nclat-orders-insolvency-for-insolvency-company/articleshow/73164928.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

- CBI arrests insolvency resolution professional appointed by NCLT.

CBI has arrested an insolvency resolution professional (IRP) appointed by the NCLT and another person for allegedly receiving a bribe of Rs 3.5 lakh from a consultant (to the Corporate Debtor) by threatening him with a criminal case.

Read more at:

<https://economictimes.indiatimes.com/news/politics-and-nation/cbi-arrests-insolvency-resolution-professional-appointed-by-nclt/articleshow/73232225.cms>

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Exclusive Fibers Limited</i>	New Delhi	07.01.2020
2.	<i>In the matter of Gagan Distillers And Beverages Pvt. Ltd.</i>	New Delhi	08.01.2020
3.	<i>In the matter of Shubham Industries Limited</i>	Cuttack	10.01.2020
4.	<i>In the matter of Archana Motors Private Limited</i>	Kerala	10.01.2020

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Mr. M. Ravindranath Reddy v. Mr G. Kishan & Ors.</i>	17.01.2020	NCLAT	<p>This appeal was preferred against the order dated 21st January 2019 passed by the NCLT, Hyderabad Bench, whereby the petition filed under Section 9 of the Code was admitted against the Corporate Debtor.</p> <p>The admission was challenged on two</p>	https://ibi.gov.in/uploads/order/52c68bc0ae6b34160150d012e7f52f65.pdf

grounds, viz., (i) whether the petition filed u/s 9 of the Insolvency and Bankruptcy Code 2016 is not maintainable on account of 'pre-existing dispute'; and (ii) whether a landlord by providing lease, will be treated as providing services to the corporate debtor, and hence, an operational creditor within the meaning of Section 5(20) read with Section 5(21) of the Insolvency and Bankruptcy Code, 2016.

Hon'ble NCLAT while deciding on the first issue stated that in the present case, there was a pre-existing dispute, which is proved by the issuance of notice under Section 106 of the Transfer of Property Act, 1882, much before the issuance of demand notice, under Section 8 of the Code. Based on the above, the application filed under Section 9 of the Code could not have been admitted.

Hon'ble NCLAT, while deciding on the

				<p>second issue, stated that, to decide three conditions should be fulfilled, namely, (i) the amount falls within the definition of "claim" as defined under Section 3(6) of the Code, (ii) such a claim should come within the confines of the definition of a 'debt' as defined under Section 3(11), meaning it should be by way of a liability or obligation due from any person and (iii) such a "debt" should fall strictly within the scope of an "Operational Debt" as defined under Section 5(21) of the Code. Thus, this was not considered an operational debt.</p> <p>The appeal was allowed and the impugned order of NCLT was set aside.</p>	
2.	<i>Vivek Jha v. Daimler Financial Services India Private Ltd. & Anr.</i>	13.01.2020	NCLAT	<p>The relevant facts in this appeal matter were that the Appellant (Corporate Debtor) had made a payment of three Lakhs through a Cheque on 18.03.2015 and the said payment was made after the issuance of Loan</p>	<p>https://ibi.gov.in/uploads/order/4be4f6cb3f6bf87d9440ac9492c1077c.pdf</p>

Recall notice dated 06.05.2014 and later a demand notice dated 17.08.2017 was issued by the Respondent to the Appellant(Corporate Debtor) and co-borrower in respect of the loan agreement dated 28.03.2018 where the Corporate Debtor had agreed to pay Rs. 1,08,755/- per month beginning from 30.03.2013 to 30.03.2016. The application u/s 7 of the Code was filed by the Respondent before the Adjudicating Authority on 16.12.2017. The application was ultimately admitted by Adjudicating Authority (NCLT) Mumbai Bench.

The appellant made the claim that the appeal was barred by law of limitation and to that end NCLAT stated that if a suit is filed within three years from the last acknowledgement, the same is not barred by law of limitation as per decision rendered in *Union of India Vs. M.C. Pandey AIR 2009*

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				<p>(UTR). Further, an 'Acknowledgement' must be made before the expiration of the limitation period as per Section 18 of the Limitation Act, 1963. An Acknowledgement of Liability not only saves limitation period but also confers on an individual a 'cause of action' to him, to lay his claim.</p> <p>NCLAT held that the claim of the Respondent is not barred by the plea of Limitation. Consequently, the Appeal failed and the same was dismissed but without costs.</p>	
3.	<i>Raman Agarwal v. Mohit Chawla & Ors. Resolution Professional J.R Agro Tech Pvt. Ltd</i>	10.01.2020	NCLAT	<p>An appeal was preferred by Raman Agarwal (Appellant) against the impugned order dated 27th November, 2019 limited to CA No. 543 of 2019 wherein the Appellant/Promoter/Shareholder raised objection with regard to the maintainability of the application filed by the Resolution Professional / Liquidator under Sections, 43, 45 and 66 of the Insolvency and Bankruptcy Code,</p>	<p>https://ibi.gov.in/uploads/order/514b664a73ed60cbc8d50ea6ff173c6c.pdf</p>

2016.

The objection of the Appellant was that the application under Sections 43, 45 and 66 is not maintainable as no preferential transactions or under value transactions were made by the Corporate Debtor.

Hon'ble NCLAT allowed the Adjudicating Authority (National Company Law Tribunal), Chandigarh Bench, to pass appropriate order on the application filed under Sections 43, 45 and 66 of the Code, after giving opportunity to the parties to file their respective replies, including the Appellant. Further, it directed that it shall be open to the Appellant to show that the transactions were not preferential transactions or under-valued transactions, based on the record.

Hon'ble NCLAT accordingly held as follows:

"At this stage, we may mention that there is no provision to file any

				<p><i>company application under the 'National Company Law Tribunal Rules, 2016'. Henceforth, the Adjudicating Authority (National Company Law Tribunal) of the country will never entertain the company applications in insolvency matters as Interlocutory Applications are maintainable under the 'I&B Code'."</i></p> <p>Hon'ble NCLAT disposed off the Appeal with aforesaid observations.</p>	
4.	<p><i>Committee of Creditors, Smartec Build Systems Pvt. Ltd. v. B. Santosh Babu&Ors</i></p>	10.01.2020	NCLAT	<p>Committee of Creditors of M/s. Smartec Build Systems Pvt. Ltd. preferred an appeal against impugned order 13th November, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench wherein the Adjudicating Authority while passed the order of liquidation, directed the Committee of Creditors to pay the fees and cost incurred by the Interim Resolution</p>	<p>https://ibi.gov.in/uploads/order/c98db1934f7ee5868b600c21e1ec672e.pdf</p>

Professional.

The Appellant submitted that the fees and costs of the 'Interim Resolution Professional' is to be borne by the Applicant who filed application under Section 9 of the Code. Hon'ble NCLAT was of the view that such submission cannot be accepted as Operational Creditor who moved application, may not receive any amount during liquidation being not 'Secured Creditor' cannot be asked to pay the dues.

Hon'ble NCLAT further held:

"6. Admittedly, Mr. B. Santosh Babu performed the duty of the 'Interim Resolution Professional' and constituted the 'Committee of Creditors' and thereafter, continued to function even beyond 30 days with designation of the 'Interim Resolution

				<p><i>Professional' and as he moved an application for liquidation (though designated "continue as Interim Resolution Professional"), we agree with the observations made by the Adjudicating Authority that the 'Committee of Creditors' is to pay the fees and cost incurred by Mr. B. Santosh Babu, 'Interim Resolution Professional', who also acted during the resolution process beyond 30 days till the date of liquidation having not allowed to continue as Liquidator."</i></p> <p>Hon'ble NCLAT held that the plea taken by the Committee of Creditors was frivolous and therefore dismissed the appeal with a cost of Rs.1,00,000.</p>	
5.	<i>Landmark Realty v. Siroya Developers Pvt. Ltd.</i>	10.01.2020	NCLAT	The Appellant (Landmark Realty) had earlier filed an application u/s 9 of the Code which was rejected by the Adjudicating Authority	https://ibbi.gov.in/uploads/order/29882afd08615b177b3c0eeaaa1

				<p>on the ground of pre-existence of dispute, i.e. the Appellant has filed Civil Suit for recovery of the money against the Corporate Debtor before Bombay City Civil Court at Dindoshi, Mumbai. The said decision was appealed against before the NCLAT which referred to the decision rendered in the matter of <i>Binani Industries Limited v. Bank of Baroda & Anr. (Company Appeal (AT) (Insolvency) No. 82 of 2018)</i> and held that as admittedly money suit has been filed by the Appellant against the Corporate Debtor prior to the Demand Notice dated 19th January, 2019 and is pending, the Adjudicating Authority rightly rejected the application u/s 9.</p>	6f401.pdf
6.	<p><i>SEW Infrastructure Ltd. v. Mahendra Investment Advisors Pvt. Ltd., CA(AT)(Ins) No. 1500 of 2019</i></p>	09.01.2020	NCLAT	<p>An appeal was preferred by M/s. SEW Infrastructure Ltd. (Appellant) against impugned order dated 24th October, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Hyderabad Bench</p>	https://ibi.gov.in/uploads/order/fb7eb30e756efb933d04073819a7e088.pdf

wherein, Appellant claimed to be Financial Creditor of M/s. Mahendra Investment Advisors Private Limited- (Corporate Debtor) and moved application under Section 7 which was rejected on the ground that the Corporate Debtor was a Guarantor in respect of the loan given to the Principal Borrower- 'M/s. Amrit Jal Ventures Private Limited' and the Appellant claimed amount as Financial Creditor, already moved a petition under Section 7 against Principal Borrower which was duly admitted.

Hon'ble NCLAT relied upon the decision of the Appellate Tribunal in *Dr. Vishnu Kumar Agarwal v. M/s. Piramal Enterprises Ltd.— Company Appeal (AT) (Insolvency) No. 346 of 2018 etc* and held:

"5. Once it is alleged that the 'Principal Borrower' has defaulted, it cannot trigger against both the 'Principal

				<p><i>Borrower' (as 'Corporate Debtor) and 'Corporate Guarantor' (as 'Corporate Debtor'). For same set of claim, two companies cannot go for liquidation which will be against the principles of 'I&B Code'."</i></p> <p>Hon'ble NCLAT dismissed the appeal and did not interfere with the impugned order of rejection of the application under Section 7 passed by NCLT, Hyderabad Bench.</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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