

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## KNOWLEDGE REPONERE (22<sup>nd</sup> January-14<sup>th</sup> February, 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**").

### PAST EVENTS

- Workshop on "How to tackle hostile situations during CIRP" on 4th February, 2020



**L-R:** Mr. Balwinder Singh, Dr. Mamta Binani, Mr. Anil Goel, Mr. KR Saji Kumar, Dr. Binoy J. Kattadiyil

ICSI Institute of Insolvency Professionals conducted a workshop on 4th February, 2020 on the subject "How to tackle hostile situations during CIRP" wherein eminent personalities spoke on the subject, sharing their thoughts, views and suggestions.

The discussions were led by Mr. Balwinder Singh (Hon'ble Member (Technical), NCLAT), Mr. K.R. Saji Kumar (Executive Director, IBBI), Dr. (hc) Mamta Binani (Insolvency Professional and Senior Mentor, Manta Binani &

Associates),CA Anil Goel(Insolvency Professional and Chairman, AAA Insolvency Professional LLP),whereinDr. Binoy J. Kattadiyil(Managing Director, ICSI IIP) moderated the session. The workshop was attended by more than 80 IPs whose queries were addressed by members of the panel.

## NEWS UPDATE

### ➤ Jet Airways: CoC decides to extend deadline for bids to March 10

The deadline for submitting the bids for Jet Airways, which is undergoing insolvency process, ended on 17<sup>th</sup> February, 2020, and the CoC has decided to extend the deadline to 10<sup>th</sup> March 2020 keeping in view interest expressed by a team from Far East Asia Development Fund of Russia (along with Enso Group). The Insolvency Professional in this case is Ashish Chhawchharia.

To Read More:-

<https://www.livemint.com/companies/news/jet-airways-committee-of-creditors-decides-to-extend-deadline-for-bids-to-10-march-11582042071318.html>

### ➤ After Resolution of Big Steel cases , banks expect low recoveries from IBC

Having resolved big-ticket insolvency cases like those of Essar Steel and Bhushan Steel, bankers are now looking at a recovery rate of not more than 20-30 per cent.

Till December 2019, realisation by financial creditors under the 190 resolution plans is Rs 1.52 trillion, or 43.14 per cent, while claims worth Rs 3.51 trillion were admitted, according to the data from the Insolvency and Bankruptcy Board of India.

To Read More:-

[https://www.business-standard.com/article/companies/after-resolution-of-big-steel-cases-banks-expect-low-recoveries-from-ibc-120022000629\\_1.html](https://www.business-standard.com/article/companies/after-resolution-of-big-steel-cases-banks-expect-low-recoveries-from-ibc-120022000629_1.html)

### ➤ Bhushan Power Acquisition: JSW Steel likely to pay Rs.19,700 Cr by March 15

On Monday, the National Company Law Appellate Tribunal (NCLAT) had permitted JSW Steel to acquire the bankrupt company and granted it immunity from prosecution by the Enforcement Directorate (ED).

JSW Steel is all set to wrap up one of the long-drawn and high profile insolvency resolution cases, as it is likely to pay Rs 19,700 crore to acquire the bankrupt Bhushan Power and Steel Ltd by March 15.

To Read More:-

[https://www.business-standard.com/article/companies/bhushan-power-acquisition-jsw-steel-likely-to-pay-rs-19-700-cr-by-march-15-120022000777\\_1.html](https://www.business-standard.com/article/companies/bhushan-power-acquisition-jsw-steel-likely-to-pay-rs-19-700-cr-by-march-15-120022000777_1.html)

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Noble Explochem Ltd..</i>	Mumbai	22.01.2020
2.	<i>In the matter of SRS Meditech Limited</i>	Chandigarh	28.01.2020
3.	<i>In the matter of Govind Rubber Limited</i>	Mumbai	31.01.2020
4.	<i>In the matter of Sitarganj Fibers Ltd.</i>	Allahabad	07.02.2020

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Petron Engineering Construction Ltd.</i>	Mumbai (Special) Bench	23.01.2020
2.	<i>In the matter of Shri Narsing Dev Sugar Private Limited</i>	Allahabad	23.01.2020
3.	<i>In the matter of Global Syntex (Bhilawara) Ltd.</i>	Jaipur	24.01.2020
4.	<i>In the matter of Jai Bhole Nath Enterprises Pvt. Ltd.</i>	Chandigarh	27.01.2020

5.	<i>In the matter of Shree Vaishno Devi Mills Private Ltd.</i>	Chennai	27.01.2020
6.	<i>In the matter of Yash Smelter Pvt. Ltd.</i>	Kolkata	27.01.2020
7.	<i>In the matter of Seitz India Pvt. Ltd.</i>	New Delhi	28.01.2020
8.	<i>In the matter of Speciality Polymers Pvt. Ltd.</i>	Mumbai	29.01.2020
9.	<i>In the matter of Maximum Agency Pvt. Ltd.</i>	Kolkata	31.01.2020

### BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Maharashtra Seamless Ltd. (MSL) v Padmanabhan Venkatesh and others</i>	22.01.2020	Supreme Court	<p>The Hon'ble Apex Court was deciding on the legality of an order of the NCLAT wherein the resolution applicant (MSL) was directed to modify the resolution Plan on the ground that it was below the liquidation value and that it was discriminatory to the operational creditors. The Resolution Applicant also sought withdrawal under Section 12A citing financial difficulties.</p> <p>Hon'ble Supreme Court observed that,</p> <p><i>"No provision in the Code or Regulations</i></p>	<a href="https://ibbi.gov.in//uploads/order/55e89c436edcc6a95f8fe35cd9d28197.pdf">https://ibbi.gov.in//uploads/order/55e89c436edcc6a95f8fe35cd9d28197.pdf</a>

*has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.*

*...It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."*

Additionally, the Apex Court also added,

				<p><i>"The exit route prescribed in Section 12-A is not applicable to a Resolution Applicant. The procedure envisaged in the said provision only applies to applicants invoking Sections 7, 9 and 10 of the code. In this case, having appealed against the NCLAT order with the object of implementing the resolution plan, MSL cannot be permitted to take a contrary stand in an application filed in connection with the very same appeal."</i></p> <p>Hon'ble Supreme Court dissolved the interim orders and disposed off connected applications.</p>	
2.	<i>Navin Raheja Vs. Shilpa Jain and Others</i>	22.01.2020	NCLAT	<p>In the present matter, the question that arose for consideration was whether the 'Corporate Debtor' can be held to have committed default, if apartment/flat/ premises is otherwise ready but offer of possession was delayed due to the reasons beyond the control of 'Corporate Debtor' such as absence of clearance by the Competent Authorities/</p>	<p><a href="https://ibbi.gov.in//uploads/order/e234f5a3df0cb9e1f13b590fb5859054.pdf">https://ibbi.gov.in//uploads/order/e234f5a3df0cb9e1f13b590fb5859054.pdf</a></p>

				<p>Government(s), etc.</p> <p>On filing of the application under Section 7, the Corporate Debtor took specific plea that the notice of possession was issued as back as on 15.11.2016 and in spite of repeated request to take possession, the allottees have refused to take possession. Further, the 'Corporate Debtor' stated that as far as the processing of its application for obtaining an Occupation Certificate was concerned, the same was under the control of the concerned Government/ Competent Authority and any delay on account of the actions inactions and omissions on the part of the Government/ or Authority it was beyond the reasonable control of the 'Corporate Debtor'/ Promoter. In the circumstances, in terms of Clause 4.2 of the Flat Buyer's Agreement a 'force majeure' condition will be applicable.</p> <p>Hon'ble NCLAT</p>	
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observed that,

*"46. Apart from the fact that the 'Corporate Debtor' has offered the possession of flat on 15th November, 2016 and obtained completion certificate immediate thereafter. Therefore, delay in granting approval by the Competent Authority cannot be taken into consideration to hold that the 'Corporate Debtor' defaulted in delivering the possession. The Adjudicating Authority failed to appreciate the fact and also ignored the decision of the Hon'ble Supreme Court though rendered prior to the admission of the application which is binding on all the Court(s) and Tribunal(s).*

*...55. If the delay is not due to the 'Corporate Debtor' but force majeure, as noticed above, it cannot be alleged that the 'Corporate Debtor' defaulted in delivering the possession."*

The appeal was thus allowed.



3.	S.A. Pharmache m Pvt. Ltd. Vs. Alok Industries Ltd. & Ors	22.01.2020	NCLAT	<p>The issue that arose for consideration was that the Operational Creditors supplied goods during the CIRP to keep the Company as a going concern. It was after the approval of the Resolution Plan that for the first time that the Appellant(s) came to know a sum had been set aside for payment of CIRP and thereafter on the basis of verbal information, it had an apprehension that the amounts due against the goods supplied during the CIRP period, 'Interim Resolution Professional' cost would not be paid to him and in fact the payments made against Pre-CIRP invoices would be set-off against the same.</p> <p>Hon'ble NCLAT observed that,</p> <p><i>"After the plan has reached finality, it is binding on all the stakeholders including the 'Operational Creditors', 'Financial Creditors' and others. How the distribution is to be made on the basis of the approved plan is for the Monitoring Committee</i></p>	<a href="https://nclat.nic.in/Us eradmin/upload/3824256395e29a004cdd53.pdf">https://nclat.nic.in/Us eradmin/upload/3824256395e29a004cdd53.pdf</a>
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				<p>to see. No individual decision can be given either by the Adjudicating Authority or by this Appellate Tribunal on the basis of individual claim of one or other 'Operational Creditors', 'Financial Creditors' and others after such approval, once the matter is brought to the notice of the Adjudicating Authority and this Appellate Tribunal by the 'Resolution Professional' on behalf of the Monitoring Committee that the 'Corporate Insolvency Resolution Process Costs' have been paid.</p> <p>7. The 'Resolution Plan' once approved and reached finality, all the dues stand cleared in terms of the plan and now no issue can be raised before any Court of Law or Tribunal."</p> <p>The appeal was thus dismissed.</p>	
4.	<i>Sesh Nath Singh Vs. Baidyabati Sheoraphuli Cooperative Bank Ltd</i>	22.01.2020	NCLAT	<p>The issue raised was that the admitted Section 7 application was barred by limitation on account of Corporate Debtor being declared NPA on 31.03.2013 whereas</p>	<p><a href="https://ibbi.gov.in//uploads/order/85d4095f5b04189e026c37437ef03aaa.pdf">https://ibbi.gov.in//uploads/order/85d4095f5b04189e026c37437ef03aaa.pdf</a></p>

the application u/s 7 of IBC has been filed on 27.08.2018 i.e. after about 5 years and 5 months from the date of accrual of cause of action.

The facts of the case suggest that the account was declared NPA on 31.03.2013. Thereafter, the Respondent exercised his remedy under the existing law within the prescribed limit i.e. on 18.1.2014 demand notice under Section 13(2) of SARFEASI Act was issued to the corporate debtor and thereafter the respondent actually prosecuted the application under the SARFEASI Act and ultimately he has got the possession order on 11.5.2017 issued by the District Magistrate, Hooghly. In the meanwhile the appellant/corporate debtor has filed the Writ Petition under Article 226 before the Hon'ble Kolkata High Court on 19.12.2014 and on 24.7.2017 the Hon'ble High Court of Kolkata ordered not to proceed under SARFEASI Act.

				<p>Thereafter, the Respondent has filed the application under Section 7 of I&amp;B Code on 27.08.2018.</p> <p>Hon'ble NCLAT held that,</p> <p><i>"10. We have carefully examined the issue of limitation. The Respondent has bonafidely prosecuted within limitation period under SARFEASI Act. Therefore, the Respondent is entitled for the exclusion of time period under Section 14(2) of Limitation Act i.e. the period of 3 years and 6 months. After exclusion of this period the application filed under Section 7 of I&amp;B Code is within limitation period."</i></p> <p>Hon'ble NCLAT dismissed the appeal.</p>	
5	<i>Mrs. Anuja Beri Vs. I.E. Trading Company Pvt. Ltd. &amp; Ors</i>	28.01.2020	NCLAT	<p>The CoC in its 3rd meeting held on 20th October, 2018 recommended liquidation of the CD. This was done with 100% voting share after taking into consideration that the CD did not have any employees or business operations for last</p>	<p><a href="https://nclat.nic.in/Us eradmin/upload/12315075285e32d1f064bc1.pdf">https://nclat.nic.in/Us eradmin/upload/12315075285e32d1f064bc1.pdf</a></p>

more than 5 years and there is no operating revenue. NCLT, New Delhi Bench- IV accepted the application of the Resolution Professional and ordered for liquidation of the CD.

The present appeal by the Appellant is that they are eligible to submit an arrangement / compromise in terms of provisions of Section 230 and 232 of the Companies Act.

Hon'ble NCLAT held that,

*"It is well settled by now that even at the liquidation stage recourse can be had to provisions of Section 230 and 232 of the Companies Act, 2013 for an arrangement / compromise which may save / protect the 'Corporate Debtor' and turn it around as a Commercially viable Company. If the Appellant is eligible, he will be entitled to float proposal for such arrangement / compromise."*

Since the liquidator submitted that the Appellant is eligible for

				<p>submitting a plan, NCLAT advised the Appellant to submit a compromise/arrangement plan within timelines.</p> <p>Hon'ble NCLAT disposed off the appeal.</p>	
6.	<i>Kundan Care Products Ltd v. Mr. Surya Kanta Satapathy &amp; Ors</i>	30.01.2020	NCLAT	<p>In the present matter, the resolution plan submitted by Fortis Chemicals Pvt. Ltd. was approved by the Adjudicating Authority. The appeal was raised by another Resolution Applicant on the contention that the evaluation process was conducted by the 'Resolution Professional' in a closed, non transparent manner without affording an opportunity of hearing to the Appellant.</p> <p>Hon'ble NCLAT observed that,</p> <p><i>"9. It is a settled law that the 'Resolution Applicant' has no right for renegotiation or further negotiation. After submission of the 'Resolution Plan', if it is found in order and in accordance with Section 30(2), it is</i></p>	<a href="https://nclat.nic.in/Us eradmin/upload/9928830555e33dcef899e1.pdf">https://nclat.nic.in/Us eradmin/upload/9928830555e33dcef899e1.pdf</a>

				<p><i>required to be placed before the 'Committee of Creditors. The process of evaluation is guided by the said criteria as set out in the 'Request for Resolution Plan'. If the evaluation criteria suggest that only top three 'Resolution Applicants' should be negotiated, the Appellant who ranked 6th among the 'Resolution Applicants' cannot have any right to participate for re-negotiation over the decision of the 'Committee of Creditors'."</i></p> <p>Hon'ble NCLAT concluded that the resolution plan can only be challenged under the grounds laid down in Section 61(3) of the Code and thus dismissed the appeal.</p>	
7.	<i>Vijay Pal Garg &amp; Ors. Vs. Pooja Bahry (Liquidator in the matter of Gee Ispat Private Limited</i>	04.02.2020	NCLAT	<p>The contentions that were raised were that since Section 210(2) of the Companies Act is invoked, for the purpose of exercise of jurisdiction as per Section 210(2) of the Companies Act, 2013, the meaning of term 'Court' or the 'Tribunal'</p>	<p><a href="https://nclat.nic.in/Us eradmin/upload/9329120515e3949b9b9259.pdf">https://nclat.nic.in/Us eradmin/upload/9329120515e3949b9b9259.pdf</a></p>

has to be considered in terms of the definition specified under the Companies Act, 2013. Hon'ble NCLAT while deciding, stated that the term 'Adjudicating Authority', as defined in Section 5(1) of IBC cannot come within the ambit of court as defined in Section 2(29) of the Companies Act, 2013.

Hon'ble NCLAT held that,

*"44. Be that as it may, this Tribunal on a careful consideration of respective contentions and also keeping in mind a prime fact that the Tribunal/Adjudicating Authority is guided by the Principles of Natural justice and is to follow the procedure prescribed u/s 213(b) of the Companies Act comes to an 'irresistible' and inescapable conclusion that the Adjudicating Authority (Tribunal) in Law is not empowered to order an investigation directly, to be carried out by the Central Government. An Adjudicating Authority (Tribunal) as*



*a competent / Appropriate authority in terms of Section 213 of the Companies Act has an option to issue notice in regard to the charges/allegations levelled against the promoters and others (including the Appellants) of course after following the due procedure enshrined u/s 213 of the Companies Act, 2013. In case an exfacie/prima facie case is made out, then, the Tribunal is empowered to refer the matter to the Central Government for an investigation by the Inspectors and upon such investigation, if any action is required to be taken and if the Central Government subjectively opines that the subject matter in issue needs an investigation, through the Serious Fraud Investigation Office, it may proceed in accordance with Law."*

Hon'ble NCLAT disposed off the appeal and directed the office of Registry to forward a copy of this order to MCA for follow up

				action.	
8.	<i>Maharashtra State Electricity Transmission Company Limited (MSETCL) Vs. Sri City Private Limited</i>	03.02.2020	NCLAT	<p>The contention of the Appellant was that in the approved Resolution Plan there is an arbitrary provision of ending the agreement between the Appellant and the Corporate Debtor which was against the provisions of Electricity Act, 2003 and Electricity Regulatory Commission Act, 1998. The contention was that Maharashtra Electricity Regulatory Commission is the only and appropriate forum to adjudicate matters pertaining Energy Agreements including termination of the Agreement.</p> <p>Hon'ble NCLAT relied on Section 238 of the Code and the Supreme Court judgment in the case of <i>Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta</i>, to hold that,</p> <p><u>"...the Successful Resolution Applicant is entitled to take over with a clean state and could not be forced to continue with such</u></p>	<a href="https://ibbi.gov.in//uploads/order/8e9999985da156a080eb63f741b3a910.pdf">https://ibbi.gov.in//uploads/order/8e9999985da156a080eb63f741b3a910.pdf</a>

long term arrangement.  
It is slate the CoC in its  
commercial wisdom  
accepted the plan so as  
not to saddle  
the Respondents No.1  
& 2 with a liability of  
such long term  
Agreement.

5. We find ourselves in agreement with submission made by the Learned Counsel for the Respondents. Keeping in view the judgment in the matter of "Essar Steel India Limited" (supra) and provisions of Section 238 of IBC, we find that the Resolution Plan, which has been accepted cannot be found fault where COC in its wisdom accepted the Plan which terminated the long time agreement. The plan made provision that the Bulk Power Transmission Agreement with Maharashtra State Electricity Transmission Company Limited - Corporate Debtor shall be terminated without any obligation, liabilities or penalties, to or on the Corporate Debtor or the Resolution Applicant. We do not find any fault on

				<p><i>this count. There is no substance in the Appeal."</i></p> <p>Hon'ble NCLAT dismissed the appeal.</p>	
9.	<p>Sh G Eswara Rao Vs. Stressed Assets Stabilisation Fund</p>	07.02.2020	NCLAT	<p>An application under Section 7 of the Code was filed by Stressed Assets Stabilisation Fund, the Adjudicating Authority by impugned order dated 01.10.2019 initiated CIRP against Saritha Synthetics and Industries Ltd. (Corporate Debtor). The Appellant Mr. G Eswara Rao, Shareholder, Director challenged the order on the ground that Application under Section 7 of the Code was barred by limitation.</p> <p>The question raised was whether the order of Decree passed by the DRT-I, Hyderabad on 17.08.2018 can be taken into consideration to hold that application under Section 7 of the Code is within period of three years as prescribed under Article 137 of Limitation Act, 1963.</p>	<p><a href="https://ibbi.gov.in/uploads/order/cd6e643f6ba549bf9356ec534d3a4dd3.pdf">https://ibbi.gov.in/uploads/order/cd6e643f6ba549bf9356ec534d3a4dd3.pdf</a></p>

Hon'ble NCLAT stated that,

*"24. In the present case, the 'Corporate Debtor' defaulted to pay prior to 2004, due to which O.A. No.193 of 2004 was filed by Respondent ('Financial Creditor'). A Decree passed by the Debts Recovery Tribunal or any suit cannot shift forward the date of default. On the other hand, the judgment and Decree passed by Debts Recovery Tribunal on 17th August, 2018, only suggests that debt become due and payable. It does not shifting forward the date of default as Decree has to be executed within a specified period. It is not that after passing of judgment or Decree, the default takes place immediately, as recovery is permissible, all the debts in terms of judgment and Decree dated 17th August, 2018 with pendent lite and future interest at the rate of 12% per annum could have been executed only through*

				<p><i>an execution case.</i></p> <p><i>...in absence of any acknowledgement under Section 18 of the Limitation Act, 1963, the date of default/ NPA was prior to 2004 and does not shift forward, therefore, the period of limitation for moving application under Section 7 of the I&amp;B Code was for three years, if counted, to be completed in the year 2007. As date of passing of Decree is not the date of default, we hold that the application under Section 7 of the I&amp;B Code was barred by limitation, though the claim may not be barred."</i></p> <p>Hon'ble NCLAT allowed the appeal.</p>	
10	<i>SBI v. Videocon Industries Limited and Ors.</i>	12.02.2020	NCLT, Mumbai Bench	AA had allowed for consolidation of CIRP of 13 companies in the Videocon Group. The prayer was for a direction to the Resolution Professional of the Corporate Debtor, Videocon Industries Ltd to consider and treat all assets, properties (tangible and	<a href="https://images.assettype.com/barandbench/2020-02/89ba6cfa-aea8-4f0d-8a98-a8f6387843a5/State Bank of India MA 23 85 of 202">https://images.assettype.com/barandbench/2020-02/89ba6cfa-aea8-4f0d-8a98-a8f6387843a5/State Bank of India MA 23 85 of 202</a>

			<p>intangible), rights, claims, and benefits of the foreign oil &amp; gas subsidiaries as assets and properties of Videocon Industries Ltd. for the purpose of the CIRP.</p> <p>NCLT relied on the 13 parameters laid down in its order dated 08.08.2019 to determine whether consolidation could be done. These 13 parameters were: <u>Common control,</u> <u>common directors,</u> <u>common assets,</u> <u>common liabilities,</u> <u>inter-dependence,</u> <u>interlacing of finance,</u> <u>pooling of resources,</u> <u>co-existence for survival,</u> <u>Intricate link of subsidiaries,</u> <u>intertwined accounts,</u> <u>Inter-looping of debts,</u> <u>Singleness of economics of units and common financial creditors.</u></p> <p>Hon'ble NCLT held that since these 13 parameters are met and satisfied, the assets are to be considered assets of a single economic entity for effective resolution. It held that,</p>	<p><a href="#">0 in CP I B 02 2018 NCLT ON 12 02 2020 FINAL .pdf</a></p>
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*"As such, to effectively find resolution, and maximize the value of the assets, and keep the corporate persons as a going concern, the foreign Oil and Gas assets cannot be treated separately only for the benefit of the Financial Creditors.*

*...In other words, there shall be compromise rather the rights and interest of important stakeholders like Operational Creditors, employees etc. shall be jeopardized to the greater extent as looking at the cross creation of the security interest in relation to the assets of each of the VIL Group Companies would not be able to independently meet with the claims lodged by all the creditors."*

NCLT allowed the application and concluded that the corporate veil be lifted and the assets of the foreign subsidiaries be treated as assets of the Corporate Debtor, which is under CIRP.



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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