

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPOINERE (2nd March-20th March, 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

- 1. Residential Refresher Course (RRC) organised by ICSI IIP and RIPA from 13th -15th March 2020 at New Delhi**



NEWS UPDATE(S)

- **Covid-19 impact: FM Nirmala Sitharaman raises insolvency threshold of default to Rs 1 crore for MSMEs**

In order to bring some relief to the cash strapped MSME sector amid the Coronavirus pandemic, Finance Minister Nirmala Sitharaman on 24th March 2020

raised the threshold of default to Rs 1 crore from the existing Rs 1 lakh to prevent triggering of insolvency proceedings against MSMEs.

Read more at:

https://economictimes.indiatimes.com/small-biz/sme-sector/govt-raises-insolvency-threshold-to-rs-1-cr-to-help-smes/articleshow/74791431.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=

➤ **NCLT allows 90 days' extension for Jet Airways insolvency process**

The National Company Law Tribunal (NCLT) on 18th March 2020 allowed 90 days' extension for the corporate insolvency resolution process of Jet Airways.

Read more at:

https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/nclt-allows-90-days-extension-for-jet-airways-insolvency-process/articleshow/74695218.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Global Rural Netco Ltd.</i>	Mumbai	02.03.2020
2.	<i>In the matter of Kothari Food & Fragrances Private Limited</i>	Allahabad	02.03.2020
3.	<i>In the matter of S R Foils And Tissue Limited</i>	New delhi	04.03.2020

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Odisha Slurry Pipeline Infrastructure</i>	Cuttack	02.03.2020

	<i>Ltd.</i>		
2.	<i>In the matter of Jaiprakash Associate Ltd. and Ors.</i>	New Delhi	03.03.2020
3.	<i>In the matter of F. M Hammerle Textiles Limited</i>	Chandigarh	13.03.2020

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Case link
1	<i>Rai Bahadur Shree Ram and Company Pvt. Ltd. v. Mr. Bhuvan Madan, RP of Ferro Alloys Corporation Ltd and others</i>	12.03.2020	NCLAT	https://ibbi.gov.in/uploads/order/032053034f863b95911e0a8b6256fae8.pdf

Brief: It was contended that the AA while passing the impugned orders, failed to consider whether the approved Resolution Plan conformed with Section 30 of IBC and its objective i.e. maximization of value of assets of the CD. The impugned orders have also been assailed on the ground of being non-speaking cryptic orders without application of mind.

Hon'ble NCLAT relied on the matter of *K. Sashidhar vs. Indian Overseas Bank and Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others* to observe that the commercial wisdom of the Financial Creditors individually or their collective decision is beyond the pale of challenge before the AA and the same has been made non-justiciable.

Hon'ble NCLAT held that, "*Such commercial wisdom of the Committee of Creditors with requisite voting majority is non-justiciable and the discretion on Adjudicating Authority is circumscribed to scrutiny of Resolution Plan as approved by the requisite majority voting share of the Financial Creditors. The enquiry postulated under Section 31 of the I&B Code is limited to matters covered under Section 30(2) of the I&B Code when the Resolution Plan does not confirm the stated conditions. Therefore, the Appellants cannot question the commercial wisdom of the Committee of Creditors in rejecting the settlement proposal emanating from the Appellants, with the requisite majority and in approving the Resolution Plan of SPTL. No material irregularity in Corporate Insolvency Resolution Process before the Resolution Professional has been demonstrated. Merely because the Adjudicating*

Authority has declined to direct reconsideration of the already rejected settlement proposal of Appellants does not impinge upon the legality and conformity of the approved Resolution Plan with the conditions stated in Section 32 of the I&B Code.”

Hon’ble NCLAT dismissed the appeal.

2	<i>Shrawan Kumar Agrawal Consortium v. Rituraj Steel Private Limited and Ors.</i>	05.03.2020	NCLAT	https://ibbi.gov.in/uploads/order/21503077cb42a1a4211786826a6a9ff3.pdf
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Brief: The appeal was issued against an order of AA whereby they issued directions for fresh bidding within 15 days and filing the re-approved Resolution Plan by 31st December 2019 to conclude the process, ignoring the approval of the Resolution Plan by the CoC with a vote share of 84.70 per cent.

The contention of the Appellant is that after the approval of the resolution plan by the CoC, the RP filed the same before the AA for its approval under Section 31 of the Code. But during the hearing for the approval of Resolution Plan, the two other unsuccessful Resolution Applicants preferred appeals before the AA which made the AA ignore the settled position of law and reverse the commercial decision of CoC.

Hon’ble NCLAT observed that after approval of the Resolution Plan with requisite majority of CoC, the AA has jurisdiction under Section 31(1) of the Code, which is circumscribed by Section 30(2) of the Code. NCLAT while placing reliance on the orders of *K. Sashidhar v. Indian Overseas Bank, (2019) 12 SCC 150* and *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Others (2019) SCC OnLine SC 1478* held that the Adjudicating Authority has a very limited power of judicial scrutiny and the statutory provision does not permit the Adjudicating Authority to interfere with the commercial wisdom of the COC.

Hon’ble NCLAT allowed the appeal and set aside the impugned order.

3.	<i>Bimalkumar Manubhai Savalia v. Bank of India</i>	05.03.2020	NCLAT	https://nclat.nic.in/Useradmin/upload/20416396255e60e9fbc1745.pdf
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An Appeal was preferred by a Shareholder and Director of the Corporate Debtor i.e., M/s Radheshyam Agro Products Pvt. Ltd. challenging the order dated 20th September, 2019 passed by AA.

The contention of the Appellant was that the application filed by the Financial Creditor was time barred. He submitted that the Adjudicating Authority admitted the Application and initiated CIRP of the Corporate Debtor. With regard to the limitation, the Adjudicating Authority observed that the date of mortgage is 18.11.2010, The SARFAESI and DRT started in 2017, One Time Settle (OTS)

revised offer from 12 Crores to 14.56 Cores, vide letter dated 01.06.2016 was submitted by the Corporate Debtor to the Financial Creditor-Bank and the credits have come to the loan account on 31.03.2017. The Adjudicating Authority, by observing above, held that the Application is within limitation taking into account the OTS proposal dated 01.06.2016 and the amounts which have come from the Guarantor into the loan account of the Financial Creditor on 31.03.2017.

Accordingly, the impugned order was set aside and the Corporate Debtor was released from the rigor of Corporate Insolvency Resolution Process and action taken by IRP/RP and Committee of Creditor.

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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