

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)
(27 -31 MARCH, 2017)



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INSOLVENCY PROFESSIONALS AGENCY

(Section 8 Company registered under the Companies Act, 2013)

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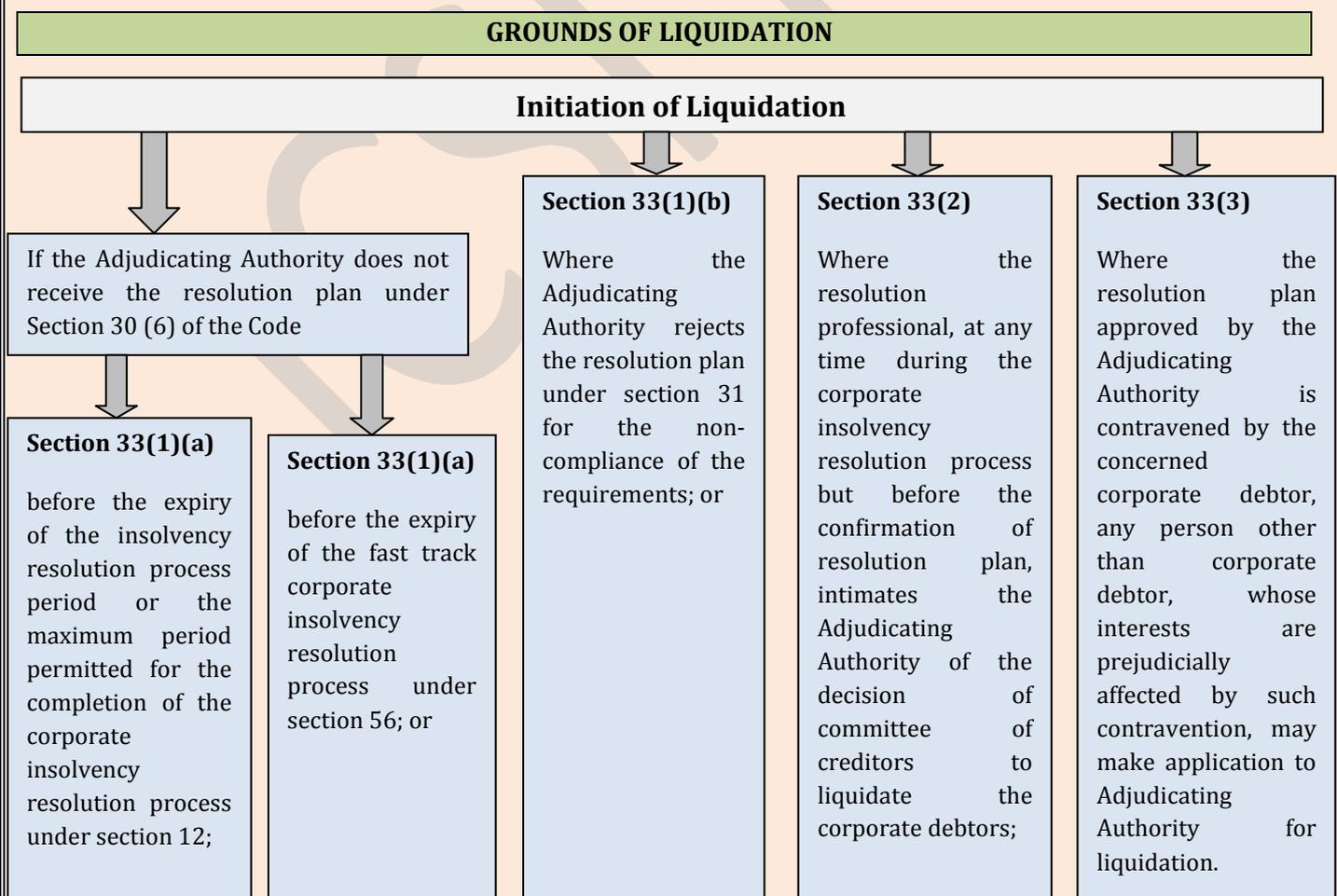
*“That some achieve great success,
is proof to all that others can achieve it as well. – Abraham Lincoln”*

Dear Professional Colleagues,

Effective implementation of the Insolvency and Bankruptcy Law results in high debt recovery rate by banks, release of locked capital and its usage for other productive purposes, better credit discipline, faster resolution, easy exit and so on. The effective Bankruptcy regime in fact leaves positive impact on the overall ecosystem of the country.

In this context, I urge to all members to propagate the effectiveness of the Code amongst its stakeholders especially the Bankers. We look forward to your support in the advocacy and awareness initiatives of IICSI IPA amongst various stakeholders.

1) Liquidation Process And Payment Waterfall Mechanism During Liquidation



WHO CAN BE APPOINTED AS A LIQUIDATOR?

(i) Who can be appointed as a liquidator?

Section 34(1)

the resolution professional appointed under Corporate Insolvency Resolution Process (Chapter-II) shall continue as a liquidator.

Replacement of Resolution Professional (RP) with new liquidator

Section 34(4)(a)

If the resolution plan was rejected for failure to meet the requirements mentioned in Section 30(2) (i.e confirmation of resolution plan by resolution professional pursuant to certain conditions)

OR

Section 34(4)(b)

If Board recommends the replacement for reasons to be recorded in writing

(ii) Within what time the appointment is to be made?

a. In case of Insolvency Resolution Professional continuing as liquidator— Immediately on the direction issued by the Adjudicating Authority.

Section 34(6)

b. In case of replacement— Within 10 days of the direction issued by the Adjudicating Authority.

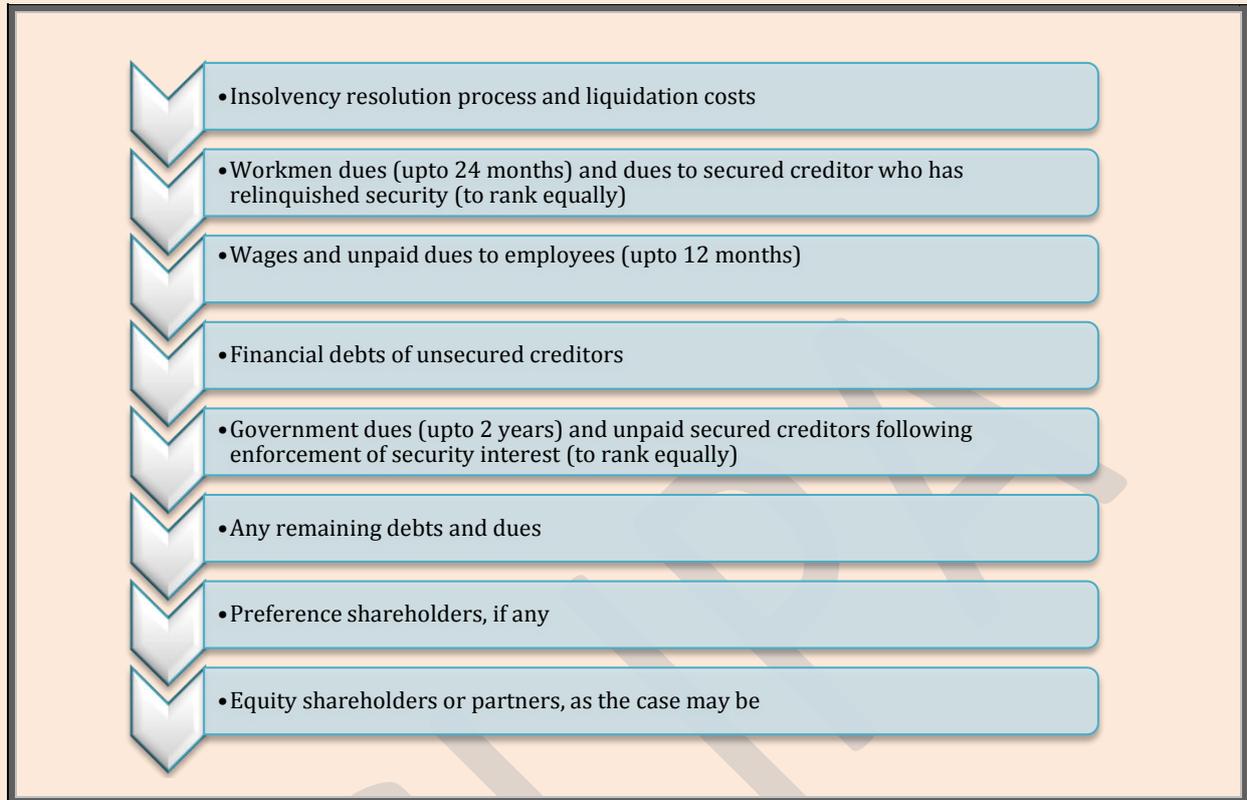
LIQUIDATION PROCESS

The liquidation process broadly involves:-

- Appointment of liquidator
- Formation of liquidation estate
- Verification /admission/rejection of claims
- Consolidation of claims
- Payment waterfall for distribution of assets
- Dissolution of corporate debtor (to be completed within 2 years)

PAYMENT WATERFALL

The proceeds from the sale of liquidation assets shall be distributed in the following order:



2) Case Updates

As on date, the cases filed under the Code at various National Company Law Tribunal (NCLT) Benches have crossed 100 out of which 22 cases have been admitted so far, of which **6 cases are registered under Section 7 of the Code, 2 case is registered under Section 8 of the Code and 14 cases are registered under Section 10 of the Code. AS ON DATE THE DEBT AMOUNT OF RS.4,800 CRORES HAVE BEEN IDENTIFIED AS AMOUNT IN DEFAULT.**

In our previous weekly update we provided the details of the 19 cases which were admitted. The details of the recently admitted cases is as under:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	Blossoms Oils & Fats Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Hyderabad	318.288 Crores

2.	Shree Rajeshwar Weaving Mills Pvt. Ltd.	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Mumbai	1.58 Crores
3.	Essar Projects India Ltd. V/s. MCL Global Steel Pvt. Ltd	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	9.1 Crores

The brief details of some of the admitted cases are tabulated below:

Case Title	Blossoms Oils & Fats Limited
NCLT Bench	Hyderabad
Relevant Section	Section 10 of the Code dealing with the initiation of corporate insolvency resolution process by Corporate Debtor.
Petitioner	Blossoms Oils & Fats Limited (Debtor)
Respondent	Indian Overseas Bank (IOB) and Indian Bank (Creditor)
Amount in default (Rs.)	318.28 Crores
Brief of the case	<ul style="list-style-type: none"> • Blossoms Oils and Fats Limited (Company) was incorporated in 1989 with a nominal capital of Rs. 4,900 Lakhs with an object to extract, manufacture, process and trade variety of oils. • As on 31.01.2016 the Company owed Rs. 285.56 Crores to secured creditors and Rs. 32.72 Crores to unsecured creditors, the total amount in default amounting to Rs. 318.28 Crores. • IOB issued a demand notice dated 21.12.2015 to the Company for Rs. 269.66 Crores u/s 13 (2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, 2002). • Indian Bank issued a demand notice dated 15.03.2016 to the Company for Rs. 42.88 Crores u/s 13 (2) of the SARFAESI Act, 2002. • After serving the demand notice to the Company, IOB filed an application before Debt Recovery Tribunal (DRT), Hyderabad on 08.03.2016. • The Company became sick and filed an application with Board for Industrial and Financial Reconstruction (BIFR) u/s 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985. • As per the BIFR, the Company's Net Worth was fully eroded due to the accumulated losses amounting to Rs. 47 Crores. • Pursuant to the abetment of cases from the BIFR from 01.12.2016, the Company filed an application

	<p>in this regard with the jurisdictional NCLT Bench submitting the name of an Insolvency Professional proposed to be appointed as an Interim Resolution Professional subsequent to the admission of the application.</p> <ul style="list-style-type: none"> • Taking in consideration the provisions of Section 10,12,13,14,15,16,17,18,19,20,21,22 and 25 of the Code, the petition was admitted on 22.03.2017 by the NCLT, Insolvency Professional whose name was proposed by the petitioner was appointed as an Interim Resolution Professional and moratorium period for 180 days from the date of commencement of insolvency resolution process was declared.
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Case Title	M/s. Essar Projects India Ltd. V/s. M/s. MCL Global Steel Pvt. Ltd.
NCLT Bench	Mumbai
Relevant Section	Section 8 and 9 of the Code dealing with the initiation of corporate insolvency resolution process by Operational Creditor.
Petitioner	M/s. Essar Projects India Ltd. (Operational Creditor)
Respondent	M/s. MCL Global Steel Pvt. Ltd. (Corporate Debtor)
Amount in default (Rs.)	9.10 Crores (approximately)
Brief of the case	<ul style="list-style-type: none"> • M/s. MCL Global Steel Pvt. Ltd. (MCL) entered into a Memorandum of Understanding on 27.06.2013 with M/s. Essar Projects India Ltd. (EPIL) to appoint the latter to carry out construction work of a steel plant in Madhya Pradesh. • EPIL raised invoices for the work completed till 30.11.2014 from which an amount of Rs. 9,10,60,788 (Principal = Rs. 6,72,03,097 and Interest = Rs. 2,38,57,691) currently remained outstanding and which were admitted by MCL and no dispute in respect of the same were raised by MCL. • EPIL sent a demand notice to MCL on 28.12.2016 for repayment of the dues u/s 8 of the Insolvency and Bankruptcy Code, 2016 (“Code”). • In response to the demand notice, MCL replied on 03.01.2017 that notice is false and misleading as there is a dispute with regard to the quality and timeliness of construction. • As per NCLT order, the reply of MCL has raised the dispute with regards to the existence of debt, which was never raised before EPIL issued demand notice and at the time when

	<p>invoices were raised.</p> <ul style="list-style-type: none">• MCL didn't even issue work completion certificate to EPIL• As per NCLT order, the amount in default in the petition is a debt within the meaning of Section 3(11) of the Code.• FURTHER, AS PER THE ORDER MERE MENTIONING IN THE REPLY THAT DISPUTE IS IN EXISTENCE IN RELATION TO A DEBT IS NOT SUFFICIENT. THE RAISED DISPUTE HAD TO BE PROVED EITHER IN COURT OR ARBITRATION BEFORE MENTIONING ABOUT THE SAME IN REPLY TO THE DEMAND NOTICE RECEIVED U/S 8 OF THE CODE.• Accordingly, the petition was admitted by NCLT and NCLT ordered the appointment of an interim Resolution Professional in the said case.
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3) ARC gets RBI nod for priority funding under the new Insolvency law

As reported, two Asset Reconstruction Companies (ARCs) have written to the Reserve Bank of India (RBI) seeking its permission to allow priority funding for cases under the Code. Priority funding is a funding which involves extending credit to a company on the condition that the lender will be given priority during the amount realisation under the revival or liquidation process of the company.

As per current guidelines, ARCs are not allowed to fund the cases which do not fall in their portfolio. As per the ARCs, priority funding in the form of interim finance can prove beneficial for the companies who are not able to clear their debts for the time being because of the pricing issues.

4) Gujarat NRE Coke files for insolvency

As reported, Gujarat NRE Coke ("Company"), the flagship company of Gujarat NRE Group is the largest producer of coke in India which is used by steel sector. The Company listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) owes Rs. 3,200 Crores to a consortium of 16 banks which includes State Bank of India (SBI).

Company has filed the petition with National Company Law Tribunal (NCLT) under Section 10 of the Code which deals with the initiation of corporate insolvency resolution process by corporate debtor.

5) Rejected Cases

Out of the cases filed with different NCLT Benches, various cases have been rejected and dismissed by the Tribunal. A brief summary of some of the rejected and dismissed cases is compiled below:

S. No	Case Title	Reason for rejection
1.	Dr. BVS Lakshmi V/s. Geometrix Laser Solutions Private Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, Hyderabad Bench under Section 7 of the Code dealing with the initiation of corporate insolvency process by financial creditor.• The petition was dismissed on the following grounds:<ol style="list-style-type: none">1) Petitioner (Dr. BVS Lakshmi) suppressed the material fact in the petition that she was the “Promoter Director” of the Respondent (Geometrix Laser Solutions Private Limited) till 14.03.2007.2) Amount in default claimed by Petitioner was Rs. 91 Lakhs (approximately). However, Petitioner nowhere admitted in the petition that she herself along with her daughter owns Rs. 88 Lakhs (approximately) to the Respondent.3) Petitioner failed to provide the documents in support to the petition which would prove her stand as a Financial Creditor within the meaning of the Code.• Since Petitioner is not bonafide in claiming the relief under the Code, the petition was dismissed by NCLT.

2.	Master Voss International Projects Pvt. Ltd. V/s. HDO Technologies Pvt. Ltd.	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Mumbai Bench. • The petition was dismissed as it was withdrawn by the petitioner on the ground that he sought liberty from the Tribunal to file fresh petition on the same fact and cause of action.
3.	SRS Modern Sales Limited	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Chandigarh Bench under Section 10 of the Code dealing with the initiation of corporate insolvency process by corporate debtor. • The petition was dismissed as it was withdrawn by the Petitioner Counsel on the grounds of presence of various defects in the petition. • In the said matter, Petitioner Counsel prayed for the return of the court fee affixed on the petition.

We look forward to your inputs on the fragments of knowledge shared in this and other weekly bulletins by ICSI IPA.

Wish you good luck in all your endeavours!!

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