

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)
(3 -7 APRIL, 2017)



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*“The country doesn’t deserve anything less than success from us.
Let us aim for success.” - Dr. APJ Abdul Kalam*

Dear Professional Colleagues,

As you may be aware, as on date the debt amount of Rs.5,000 Crores has been identified as the amount in default as per the applications admitted under Insolvency and Bankruptcy Code, 2016 (“Code”). The effective functioning of the corporate insolvency resolution process and the liquidation process requires an efficient and sound information infrastructure to be in place. Credit information is the base for Insolvency Resolution Process. It is identified by the Bankruptcy Law Reform Committee Report that considerable amount of time is lost in obtaining credit information which further delays the insolvency resolution process and liquidation process. To speeden up the insolvency resolution process, by facilitating the credit information, the Code came out with an exclusive and distinctive concept of “Information Utilities”. Information Utilities will create, accept, authenticate, store and standardise the financial information.

The concept of development of the information utilities has been introduced for the first time in India. The provisions of the Code relating to the Information Utilities and Voluntary Winding Up (Section 59 of the Insolvency and Bankruptcy Code, 2016) have also been notified by the Insolvency and Bankruptcy Board of India on 31st March, 2017 which became effective on 1st April, 2017.

1) Insolvency and Bankruptcy Board of India (IBBI) notifies Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017

IBBI vide notification dated 31st March, 2017 notified IBBI (Information Utilities) Regulations, 2017. These Regulations became effective from 1st April, 2017. The Regulations provide for a framework and technical standards for registration and regulation of the Information Utilities (IU). The key highlights of the Regulations are as follows:

- An IU shall be a Public Company with a minimum net worth of Rs. 50 Crores.
- Application for registration as an IU shall be made to the IBBI with a non refundable fee of Rs. 5 Lakhs.
- The certificate of registration of an IU shall have a validity period of 5 years.
- The fee for renewal of certificate of registration of an IU is Rs. 5 Lakhs.

- After the grant of certificate of registration, an IU shall abide by the Code, its bye-laws and Regulations.
- No person shall at any time, directly or indirectly, either by itself or together with persons acting in concert, acquire or hold more than 10% of the paid-up equity share capital or total voting power of an IU. However, government company, stock exchange, depository, bank, public financial institution and insurance company can directly or indirectly, either by themselves or together in concert, acquire or hold up to 25% of the paid-up equity share capital or total voting power of an IU.
- More than half of the directors of the Governing Board of an IU utility shall be Independent Directors at the time of their appointment and at all times during their tenure as directors.
- The Directors of the Governing Board of an IU shall elect an Independent Director as the Chairperson of the Governing Board.
- IBBI may lay down technical standards, through guidelines for the performance of core services and other services under these Regulations. The technical standards are with respect to the registration of users, submission, authentication and verification of information etc.
- An information utility for the conduct of its operations shall have bye-laws consistent with the Code.
- An IU shall provide core services and other services as provided under the Regulations.
- A person has to register with an IU for submission or access of stored information.
- An IU shall store all information in a facility located in India.
- An IU shall provide a functionality to enable users to access information stored with any information utility, which they are entitled to access.
- The functionality of an IU shall ensure privacy and confidentiality of information.

2) Case Updates

The cases filed under the Code at various National Company Law Tribunal (NCLT) Benches, have reached near around 230 out of which 25 cases have been admitted so far. In our previous weekly updates we have provided the details of 22 cases which were admitted. The details of 4 cases admitted subsequently are tabulated below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default mentioned in application (in Rupees)
1.	M/s. Hotel Gaudavan Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Principal Bench, New Delhi	40 Crores

2.	JODPL Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Allahabad	Amount not mentioned in order
3.	JEKPL Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Allahabad	Amount not mentioned in order

In the matter of	M/s. Hotel Gaudavan Pvt. Ltd.
National Company Law Tribunal Bench (NCLT)	Principal Bench, New Delhi
Relevant Section	Section 7 of the Code dealing with initiation of corporate insolvency resolution process by financial creditor.
Petitioner	Alchemist Asset Reconstruction Company Limited (Financial Creditor)
Respondent	M/s. Hotel Gaudavan Pvt. Ltd. (Corporate Debtor)
Amount in default (Rs.)	40 Crores
Brief of the case	<ul style="list-style-type: none"> • State Bank of India (SBI) sanctioned a term loan of Rs. 24 Crores and a Cash Credit Limit of Rs. 1 Crore to the M/s. Hotel Gaudavan Pvt. Ltd (Corporate Debtor) on 04.01.2008. • Corporate Debtor was irregular in serving the loan (both principal and interest amount).The loan was restructured for repayment on 16.01.2009 but the Corporate Debtor remained a continual defaulter. • SBI issued a demand notice to the Corporate Debtor on 01.11.2012 for an outstanding amount of Rs. 33.93 Crores pursuant to which the SBI filed an application for loan recovery under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 at Debt Recovery Tribunal (DRT), Jaipur. • Subsequent to the filing of application, SBI assigned the debt to the Alchemist Asset Reconstruction Company Limited (Financial Creditor) u/s 5 of the Securities and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. • Another demand notice for the outstanding amount was served to the Corporate Debtor on 01.02.2017. • The Counsel of Financial Creditor submitted that the debt has been repeatedly acknowledged by the Corporate Debtor in its financial statements and qualification opinion in respect of the debt has also been given by the auditor of the Corporate Debtor. • On the basis of the furnished records, it was discovered

	<p>that the Corporate Debtor is heavily indebted to various other Secured and Unsecured Creditors as well.</p> <ul style="list-style-type: none"> • Taking into consideration the above facts, NCLT (Principal Bench) ordered the initiation of corporate insolvency resolution process of the Corporate Debtor and appointed an interim resolution professional.
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3) 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 the rejected and dismissed cases is compiled below:

S. No	Case Title	Reason for rejection
1.	Col. Vinod Awasthy V/s. AMR Infrastructures Limited	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Hyderabad Bench under Section 9 of the Code dealing with the initiation of corporate insolvency process by Operational Creditor. • The application was dismissed by NCLT on the grounds that the petitioner claiming to be the operational creditor was not covered under the definition of “Operational Creditor” as provided under Section 5(20) of the Code. <i>As per the NCLT order, an Operational Creditor means any person to whom a corporate debt is owed and whose liability from the entity comes from a transaction or operation.</i> Under the said case the Operational Creditor had neither supplied any goods nor rendered any services to acquire the status of an Operational Creditor. • Further the assured returns which were claimed to be the debt by the petitioner were not covered under the definition of “Operational Debt” under Section 5(21) of the Code. <i>As per NCLT order, operational debt means a debt arising out from the provisions of goods or services, employment or government dues.</i> Under the said case, the debt had not arisen from any of the aforementioned actions.

2.	M/s. Ishwar Khandelwal V/s. Amrapali Infrastructure Private Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, Principal Bench under Section 9 of the Code dealing with the initiation of corporate insolvency process by Operational Creditor.• As per the application, M/s. Ishwar Khandelwal (Petitioner) owes Rs. 1.87 Crores from the Amrapali Group comprising of 11 companies.• Amrapali Infrastructure Private Limited (Respondent) is one of the group company of the Amrapali Group from whom the Petitioner owes only Rs. 76 Lakhs.• However, as per the facts of the application, Petitioner was enforcing the total outstanding amount of Rs. 1.87 Crores due to him from 11 group companies upon 1 company only i.e the respondent company from which he only owes Rs. 76 Lakhs.• As per the NCLT Order, the aforesaid action of the Petitioner is not in line with the provisions of the Code.• Therefore, the petition was dismissed by NCLT.
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Wish you good luck in all your endeavors!!

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