

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)

(24-28 APRIL, 2017 AND 1-5 MAY, 2017)

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Published by:

 **INSOLVENCY PROFESSIONALS AGENCY**

1st Floor, ICSI House, 22, Institutional Area, Lodi Road

New Delhi-110003

Phones: 011-4534 1099/33

Email: info@icsiipa.com

INSOLVENCY PROFESSIONALS AGENCY

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“Learning is not just knowing what to do, but doing what we already know.” – Nourma F Fauziyah

ICSI PRESIDENT’S MESSAGE

Dear Professional Members,

The Insolvency and Bankruptcy Code, 2016 (“Code”) has provided enormous opportunities to the professionals across India to take the profession of an insolvency practitioner to the new heights. An Insolvency Professional (IP) is not just a Resolution Professional or a Liquidator under the provisions of the Code, but has following versatile roles to play which need to be performed simultaneously with the job of being a Resolution Professional/Liquidator:

- ✓ An IP is an **officer of the court** and he should act as an extended arm of the court while navigating the resolution/liquidation process under the Court.
- ✓ An IP is an **agent of the company** in which he/she is appointed by the virtue of the provisions of the Code because the management of the corporate debtor in which he/she is appointed vests in his hands.
- ✓ An IP also has to play a crucial role of being a **trustee of the corporate debtor** by ensuring that the assets that vests in his hands are safe and their value remains preserved.
- ✓ An IP throughout its tenure shall act in the **fiduciary capacity** and shall maintain the confidentiality of the information that lies with him.

The Code has unfolded numerous avenues for the Insolvency Professionals to scale greater heights in their profession and devise best practices whilst dealing with the insolvency and bankruptcy cases. The Code casts a duty on the Insolvency Professionals to discharge their roles with utmost professionalism, objectivity, honesty, integrity and confidentiality vis-à-vis their client’s information in order to ensure the successful implementation of the Code.

I believe that the Professional Members registered as Insolvency Professionals will work sincerely towards achieving the purposes and objectives of the Code and will develop best practices whilst dealing with the insolvency and bankruptcy cases.

CS (Dr.) Shyam Agrawal
President, ICSI

In this knowledge bulletin, we provide updates with regard to the recent filed and admitted cases, cases rejected and reasons thereof for rejection as well as the recent initiatives of ICSI IPA.

1) Case Updates

As on date around 400 cases have been filed under the Code at various National Company Law Tribunal (NCLT) Benches, of which 53 cases have been admitted so far. In our previous weekly updates we provided the details of the 43 cases which were admitted. The details of 10 cases admitted subsequently are tabulated below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount default mentioned application (in Rupees)	in as in
1.	M/s. Peter Beck and Partners V/s. M/s. Sharon Bio-Medicine Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	Amount not mentioned in order.	
2.	M/s. Navplast Traders & Others. V/s. M/s. RG.Shaw & Sons P. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Kolkata	3.17 Crores	
3.	Hero Fincorp Ltd. V/s. Steel Konnect (India) Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Ahmedabad	7 Crores	
4.	M/s. Parker Hannifin India Ltd. V/s. M/s. Prowess International Private Ltd.	Section 8 & 9 of the Code dealing with initiation of CIRP by operational creditor.	Kolkata	45.73 Lakhs	
5.	M/s. Subodha Entertainments Company V/s. M/s. Jackonblock Facility Services Private Limited	Section 8 & 9 of the Code dealing with initiation of CIRP by operational creditor.	Bengaluru	4.5 Lakhs	
6.	M/s. Alcon Laboratories (India) Private Limited V/s. M/s. Vasan Health Care Private Limited	Section 8 & 9 of the Code dealing with initiation of CIRP by operational creditor.	Chennai	94.74 Crores	

7.	Falcon Tyres Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Bengaluru	Order not available
8.	M/s. 24X7 Learning Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Bengaluru	Order not available
9.	M/s. Raman Ispat Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Allahabad	7.6 Crores
10.	M/s. Cluth Auto Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Principal Bench	12.88 Crores

The briefs of few of the newly admitted cases are tabulated below:

Case Title	M/s. Peter Beck and Partners V/s. M/s. Sharon Bio-Medicine Limited
NCLT Bench	Mumbai
Relevant Section	Section 7 of the Code dealing with the initiation of corporate insolvency resolution process by Financial Creditor.
Petitioner	<ul style="list-style-type: none"> • Culross Opportunities SP (Financial Creditor-P1) • Peter Beck and Partners (Financial Creditor-P2)
Respondent	M/s. Sharon Bio-Medicine Limited (Corporate Debtor)
Amount in default (Rs.)	Interest amount on the issued bonds. (Amount not specified in the order)
Brief of the case	<ul style="list-style-type: none"> • The Board of Directors of the Corporate Debtor authorised the issue of USD 1,50,00,000 zero percent convertible bonds on 15.02.2007 which was approved by the shareholders of the Corporate Debtor on 15.03.2009. • The Petitioner holds 86.06% share of the issued bonds (P1 holds 18.18% and P2 holds 67.88%). • Petitioners submitted that a Trust Deed was executed between the Corporate Debtor and Deutsche Trustee Company Ltd. on 27.07.2007 constituting USD 1,50,00,000 zero percent unsecured foreign currency convertible bonds, convertible into the equity shares of the Corporate Debtor. • Petitioner further submitted that the Corporate Debtor executed a Supplement Trust Deed on 05.02.2014 for USD 1,65,00,000 zero percent convertible bonds. • The terms of the Supplement Trust Deed stated that bond holders gave their consent to the bond issuer to execute necessary amendments in Principal Trust Deed

	<p>and to subscribe new bonds which will be issued by the Corporate Debtor in lieu of the interest outstanding on the bonds issued as per the terms of Principal Trust Deed (as the Corporate Debtor fails to pay interest on the bonds issued as per Principal Trust Deed).</p> <ul style="list-style-type: none"> • The terms of Supplement Trust Deed provides for the first interest payment on the bonds on 01.06.2014 which also the Corporate Debtor failed to pay. • Financial Statement of Corporate Debtor confirms the existence of financial debt in respect of the outstanding interest payment on the issued bond. • Petitioner further provided that the maturity date of Bonds was 30.11.2012 and Supplement Trust Deed was executed on 05.02.2014 before the limitation period of the bond is over. The first interest payment fell due on 01.06.2014 and Petitioner filed the petition on 31.03.2017, hence the debt has not become time barred as per the provisions of the Limitation Act, 1963. • Petitioner even served demand notice to the Corporate Debtor in respect of the payment of the outstanding interest. But the Corporate Debtor neither made any payment nor replied to the demand notice issued by the bondholders. • Taking in consideration the facts of the cases, NCLT Bench ordered the admission of the case, appointment of Interim Resolution Professional and declaration of moratorium.
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Case Title	M/s. Subodha Entertainments Company V/s. M/s. Jackonblock Facility Services Private Limited
NCLT Bench	Bengaluru
Relevant Section	Section 9 of the Code dealing with the initiation of corporate insolvency resolution process by Operational Creditor.
Petitioner	M/s. Subodha Entertainments Company (Operational Creditor)
Respondent	M/s. Jackonblock Facility Services Private Limited (Corporate Debtor)
Amount in default (Rs.)	Rs. 4,50,778
Brief of the case	<ul style="list-style-type: none"> • The Petitioner entered into an agreement with the Respondent regarding providing of services pursuant to the purchase order executed by the Respondent. • Petitioner provided services worth Rs. 4,50,778 to the Respondent in respect of which no payment was made by the Respondent. • The Petitioner sent two reminder letters regarding the payment of outstanding amount to the Corporate

	<p>Debtor on 20.06.2016 for Rs. 3,49,221 and on 10.09.2016 for Rs. 4,50,778.</p> <ul style="list-style-type: none"> • Thereafter, Petitioner served notice u/s 8 of the Code to the Corporate Debtor. • Petitioner also enclosed certificates dated 10.03.2017 from its bankers stating that the Petitioner has not received any payment from the Corporate Debtor between 01.04.2016 to 03.03.2017 in respect of the outstanding amount. • Managing Director of Corporate Debtor appeared before the Bench and admitted the liability due to the Petitioner on their part. • Taking in consideration the facts of the cases, NCLT Bench ordered the admission of the case, appointment of Interim Resolution Professional and declaration of moratorium.
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2) 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.	M/s. Fortune Plastech V/s. M/s. Avni Energy Solutions Private Limited	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Bengaluru Bench, New Delhi 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 petition was filed by the Petitioner with the wrong Bench. • Since the Respondent Company is registered in Andhra Pradesh, so as per the jurisdiction the case is to be filed at NCLT, Hyderabad Bench rather than NCLT, Bengaluru Bench. • Therefore, learned counsel of the Petitioner withdrawal the petition with the liberty to file the same before NCLT, Hyderabad Bench.
2.	Mr. Satish Mittal V/s. Ozone Builders & Developers Pvt. Ltd.	<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

		<p>insolvency process by Operational Creditor.</p> <ul style="list-style-type: none"> • The Applicant entered into an agreement with the Respondent regarding the purchase of a plot in the Ozone City which is a residential township of the Respondent. • The Applicant paid Rs. 50,00,000 (Rupees Fifty Lakhs) in advance on the basis of the promise made by the Respondent to allot him the plot within 1 year from the date of payment. • However as per the Applicant, entire amount has to be refunded by the Respondent in case he fails to allot the plot within the stipulated period. • 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. • <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.
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3) ICSI IPA has released the “**Updated Edition**” of its publication named “**Insolvency and Bankruptcy Code, 2016 (with Rules & Regulations)**”. This publication is a compilation of the regulatory aspects of the Code covering the rules, regulations and notifications issued thereunder

including the recently notified provisions relating to Information Utilities and Voluntary liquidation as well as the Report of Bankruptcy Law Reforms Committee.

The cost per book is Rs. 550, however the same is available at a discount of 20% i.e Rs. 440 per book.The book can be purchased through the following modes:

- The book can be purchased from ICSI Headquarters and can also be obtained through post by sending a requisition mentioning your name and complete postal address along with a demand draft of Rs.490/- per book (postage included) for the requisite amount in favour of the “**ICSI Insolvency Professionals Agency**” at the following address:

Rita Aswani, Deputy Director, Stores Department, The Institute of Company Secretaries of India, C-37, Sector-62, Noida-201309, 0120-4522016.

- The book can also be purchased by making online payment and forwarding the requisition (mentioning your name and address) alongwith the payment details at the above mentioned address. The bank details are as follows:

Beneficiary Name- ICSI Insolvency Professionals Agency

Name of the Bank- Canara Bank

Address of Bank- ICSI E/c Lodhi Road, New Delhi

Bank Account No. -8546101101072

IFSC Code- CNRB0008546

- 4) Insolvency and Bankruptcy Board of India (IBBI) has come out with **Draft Regulations on Fast Track Resolution Process for Eligible Corporate Persons** and comments on the same have been invited from all the professionals by the IBBI latest by 8th May, 2017. You may send your comments on the same at mehreen.rahman@icsi.edu.

In respect of the same, ICSI IPA organized an Interactive Meet with Insolvency and Bankruptcy Board of India (IBBI) on 2nd May, 2017 which was chaired by Dr. M. S. Sahoo, Chairperson of the IBBI. Professional Experts from legal and banking sector including SIDBI were part of the meet and inputs were solicited from all of them on the issues pertaining to the proposed draft regulations.

Wish you good luck in all your endeavors!!

CS ALKA KAPOOR

CHIEF EXECUTIVE OFFICER

(Designate)

Tel: 011-45341099