

KNOWLEDGE REPONERE

**(A WEEKLY BULLETIN)
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INSOLVENCY PROFESSIONALS AGENCY

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“Education is not learning of facts, but the training of the mind to think.” – Albert Einstein

Dear Professional Members,

Ministry of Corporate Affairs (MCA) in exercise of the powers conferred under sub-section (1) of the Section 242 of the Insolvency and Bankruptcy Code, 2016 (Code), has notified the **Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017** in light of the difficulties which have arisen regarding:

- Review or monitoring of the schemes sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 in view of the repeal of the Sick Industrial Companies (Special Provisions) Act, 1985;
- Substitution of clause (b) of Section 4 of the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 and;
- Omission of Sections 253 to 269 of the Companies Act, 2013.

The Insolvency and Bankruptcy Code (Removal of Difficulties) Order, 2017 provides that in the Code, in Eighth Schedule, relating to amendment to the Sick Industrial Companies (Special Provisions) Repeal Act, 2003 in Section 4(b) after the second proviso, the following provisos shall be inserted, namely:—

“Provided also that any scheme sanctioned under sub-section (4) or any scheme under implementation under sub-section (12) of Section 18 of the Sick Industrial Companies (Special Provisions) Act, 1985 shall be deemed to be an approved resolution plan under sub-section (1) of Section 31 of the Insolvency and Bankruptcy Code, 2016 and the same shall be dealt with, in accordance with the provisions of Part II of the said Code.

Provided also that in case, the statutory period within which an appeal was allowed under the Sick Industrial Companies (Special Provisions) Act, 1985 against an order of the Board had not expired as on the date of notification of this Act, an appeal against any such deemed approved resolution plan may be preferred by any person before National Company Law Appellate Tribunal within ninety days from the date of publication of this order.”

This notification would provide some ease to those cases in which the scheme had been approved by BIFR but were transferred to NCLT in view of coming into force of SICA (Special Provisions) Repeal Act, 2003.

In this knowledge bulletin, we provide updates with regard to the recent cases admitted by National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT) under corporate insolvency resolution process and voluntary liquidation, cases rejected and reasons thereof for rejection as well as the recent initiatives of ICSI IPA.

1) Case Updates

The speedy filing of the cases under the Code at various NCLT Benches is taking a new turn every day. Over 1000 applications have been filed so far, out of the filed cases near about 100 cases have been admitted. The details of the newly admitted cases are tabulated below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	M/s. Stewarts and Lloyds of India Ltd.(SLIL)	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	1.28 Crores
2.	Pacific Maintenance Services Pvt. Ltd. V/s. JDS Apparels Private Limited	Section 7 of the Code dealing with initiation of CIRP by operational creditor.	Principal Bench	20.75 Lakhs
3.	M/s. Sole Proprietrix Aesthetique Solutions V/s. M/s.Best Deal TV Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Kolkata	Order not available
4.	M/s. Shirdi Industries Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Mumbai	411.46 Crores

2) Cases filed under Voluntary Liquidation under the Code

The provisions relating to Voluntary Winding Up (Section 59 of the Code and IBBI (Voluntary Liquidation for Corporate Persons), Regulations, 2016) was notified by the Insolvency and Bankruptcy Board of India (IBBI) on 31st March, 2017 which became effective on 1st April, 2017. As on date following cases have been admitted by NCLT under the voluntary liquidation:

S. No.	Case Title
1.	M/s. Axiom Managed Solutions Private Limited
2.	M/s. IL&FS Capital Advisors Limited
3.	M/s. Nilgai Furniture Private Limited

3) NCLT Judgment

PACIFIC MAINTENANCE SERVICES PVT. LTD. v/S. JDS APPARELS PVT. LTD.

NCLT Bench	Principal Bench, New Delhi
Relevant Section	Section 9 of the Code dealing with initiation of corporate insolvency resolution process by Operational Creditor.
Petitioner	Pacific Maintenance Services Pvt. Ltd (Operational Creditor)
Respondent	JDS Apparels Pvt. Ltd. (Corporate Debtor)
Amount in default (Rs.)	20.75 Lakhs
Brief of the case	<ul style="list-style-type: none">• Corporate Debtor occupied shops comprising total area of 60,563 square feet at Pacific Mall, Sahibabad, Ghaziabad (U.P).• Operational Creditor is a Mall Maintenance Agency and is engaged in maintenance of the Pacific Mall.• Operational Creditor started raising invoices upon the owners/occupiers of the premises in the normal course of business. The Corporate Debtor however failed to pay an amount worth Rs. 20.75 Lakhs.• Operational Creditor served legal notice to Corporate Debtor u/s 8 of the Code for the payment of outstanding amount within 10 days.• In reply to the legal notice, Corporate Debtor pointed out that due to its weak financial position the same is not able to discharge the outstanding debts.• Taking into consideration the above facts, Tribunal ordered the initiation of corporate insolvency resolution process of the Corporate Debtor and appointed an interim resolution professional.

4) NCLAT landmark order

J K JUTE MILLS COMPANY LTD. V/S. M/S SURENDRA TRADING COMPANY

➤ In this case, an appeal was preferred before the NCLAT by the corporate debtor when the NCLT, Allahabad Bench directed the corporate debtor to maintain status quo on immovable properties.

➤ Issue raised before NCLAT in this case was:

Whether the time limit prescribed in the Code for admitting or rejecting a petition or initiation of insolvency resolution process is mandatory?

➤ The Appellate Tribunal held that:

- The time period of 14 days under Section 7, 9 and 10 which is to be counted from the 'date of receipt of application' means 'date on which the application is listed for admission / order.'

- The nature of provisions, contained in Section 7, 9 and 10 with regard to time limit for admission/rejection of an application by adjudicating authority, being procedural in nature, cannot be treated to be a mandate of law and the object behind these provisions is only to prevent delay in hearing and disposal of cases.
- However, the period of 7 days granted to an applicant to remove defects is mandatory and on failure to observe this, application is fitted to be rejected.
- The time limit of 180 days + 90 days (extension) for completion of insolvency resolution process under section 12 is mandatory.
- Since an Insolvency Professional starts functioning on completion of period of interim Resolution Professional (IRP), the performance of duties of IRP cannot be held to be mandatory though the period is required to be counted for completion of resolution process i.e. 180 days + 90 days (extension).
- It is not mandatory for 'operational creditors' to propose the Resolution Professional to act as an IRP.

5) **Reserve Bank of India (RBI) likely to issue framework for Non Performing Assets (NPAs) Ordinance**

As reported, RBI is likely to issue guidelines in next 15 days for NPA Ordinance in order to accelerate the recovery of bad debts which have crossed Rs. 8 Lakh Crores. The guidelines are expected to include creation of a separate wing to identify and to act upon issues related to NPAs and will define a time frame (estimated 60-90 days) for initiating the resolution process of NPAs. Till date RBI has identified 50 cases for NPA resolution after it has been empowered by the government under Banking Regulation (Amendment) Ordinance 2017 to ask banks to initiate insolvency resolution process.

- 6) Ministry of Corporate Affairs (MCA) has come out with **Draft Companies (Registered Valuers and Valuation) Rules, 2017**. The draft rules are available on mca.gov.in. Suggestion/comments on draft rules along with justification in brief may be send at comments_rv@mca.gov.in latest by 27th June, 2017.

7) **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.	Macquarie Bank Ltd. V/s. Shilpi Cable Technologies 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 insolvency process by Operational Creditor. • The application was dismissed by NCLT on the grounds that same petition has already been filed by the operational creditor against

		the corporate debtor on similar facts and law which had already been admitted by the Tribunal.
2.	Shiv Narain Sarin V/s. Eminent Infradevelopers 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 insolvency process by Operational Creditor. • The petition was dismissed on the grounds that as per the Tribunal neither the petitioner can be regarded as an operational creditor under the provisions of the Code nor the respondent can be regarded as corporate debtor under the Code. • 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 as per Section 5(21) of the Code and as per NCLT order, <i>Operational Debt</i> means a debt arising out from the provisions of goods or services, employment or government dues. Under the said case, the debt had not arisen from any of the aforementioned actions.

Wish you good luck in all your endeavors!!

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