

KNOWLEDGE REPONERE

**(A WEEKLY BULLETIN)
(29 MAY-2 JUNE, 2017)**

©  **INSOLVENCY PROFESSIONALS AGENCY**

All rights reserved. No part of this Publication may be translated or copied in any form or by any means without the prior written permission of The ICSI Insolvency Professionals Agency.

Disclaimer

Although due care and diligence has been taken in the production of this Knowledge Reponere (A Weekly Bulletin), the ICSI Insolvency Professionals Agency shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Knowledge Reponere (A Weekly Bulletin). Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.

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

KNOWLEDGE REPONERE (A Weekly Bulletin: May 29 – June 2, 2017)

“Education is the manifestation of perfection already in man.” – Swami Vivekanand

Dear Professional Members,

The Insolvency and Bankruptcy Code, 2016 (“Code”) has started taking shape with more than 1000 applications being filed at different National Company Law Tribunal Benches (NCLT) and more than 100 matters being admitted.

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.

It is axiomatic that Insolvency Professionals (“IPs”) form the backbone of the Code with their involvement at every stage. An efficient IP would ensure smooth functioning of the Code. Section 16(3)(a) of the Code contemplates a situation where no proposal for Interim Resolution Professional is made in the application by filed by an operational creditor. In such a situation, Insolvency and Bankruptcy Board of India (“IBBI”) is mandated under section 16(4) to recommend the name of an IP within 10 days from receipt of reference from NCLT. To provide for a procedure for selection of such IPs for recommendation to NCLT, IBBI has issued guidelines titled, ***Insolvency Professionals to act as Interim Resolution Professionals (Recommendation) Guidelines, 2017*** (for short “Guidelines”) dated 25.05.2017. The guidelines provide for the following:

- Identification of an IP by considering, *inter alia*,
 - pending disciplinary proceedings
 - location in vicinity of the registered office of corporate debtor
- Determination of Vicinity by dividing Indian States in various regions
- Expression of Interest by an IP upon invitation of expression of interest by IBBI
- Selection of an IP by IBBI by working out a formula giving weightage to number of ongoing assignments and fees quoted by such an IP.

The guidelines are a welcome measure and ensure that the recommendation of IPs by IBBI to NCLT under section 16(4) of the Code is made in an effective, efficient and speedy manner ensuring transparency and reposing trust on the statutory body by weeding out possibility of favoritism.

In this knowledge bulletin, we provide updates with regard to the recent updates in the field of insolvency, recent cases admitted by National Company Law Tribunal (NCLT), cases filed under Voluntary Liquidation Process, brief note of recent judgment admitted by NCLT, brief note of landmark judgment delivered by National Company Law Appellate Tribunal (NCLAT) under corporate insolvency resolution process and cases rejected by NCLT along with reasons thereof for rejection.

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 more than 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.	TV 18 Broadcast Limited V/s Amrapali Media Vision Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Principal Bench	8.74 Crores
2.	New Tech Forge & Foundry Ltd. V/s. State Bank Of India & Ors.	Section 10 of the Code dealing with initiation of CIRP by corporate debtor..	Ahmedabad Bench	Not mentioned
3.	Jhaveri Trading and Investment Pvt. Ltd. V/s. Oasis Textiles Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Ahmedabad Bench	1.25 Crores
4.	Indus Finance Limited V/s Quantum Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor	Mumbai	93.29 lakhs

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 initiated under the Voluntary Liquidation Process:

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
4.	M/s Thea Jewels Private Limited
5.	M/s Kokuyo Furniture India Private Limited

3) NCLT Judgment

P & S JEWELLERY LIMITED

NCLT Bench	Mumbai Bench, New Delhi
Relevant Section	Section 10 of the Code dealing with initiation of corporate insolvency resolution process by Debtor himself.
Petitioner	P & S Jewellery Ltd. (Operational Debtor)
Respondent	Not applicable
Amount in default (Rs.)	Rs. 1341,58,47,967/-
Brief of the case	<ul style="list-style-type: none"> • Corporate Debtor/Applicant filed the application for initiation of corporate insolvency resolution process under section 10 of the Insolvency and Bankruptcy Code, 2016 on the ground that it had committed default in repayment of financial assistance obtained by it. • The applicant had both financial creditors as well as operational creditors. Financial creditors, which were various banks, had principal outstanding amount of Rs.634,10,82,097/- while operational creditors had credit balance of Rs. 707,47,65,870/- totalling to Rs.1341,58,47,967/-. • The applicant was registered as a sick industrial company with Board for Industrial and Financial Reconstruction (“BIFR”) as Case No. 42/2015. With the coming into force of Sick Industrial Companies (Special Provisions) Repeal Act, 2003, the reference before BIFR was abated and the present application was filed. • It was observed that the provisions of the Code are in no way in conflict with the provisions of SARFAESI Act, 2002. • The Bench, considering the fact of default discernable from the documents annexed, held that the present application deserved to be admitted. Accordingly, the Bench admitted the application, declared moratorium under section 14 of the Code and appointed Mr. Vipul K Choksi as the Interim Resolution Professional.

4) NCLAT landmark order

KIRUSA SOFTWARE PRIVATE LTD. V/S MOBILOX INNOVATIONS PRIVATE LTD.

- In this case, an appeal was preferred before the NCLAT by the operational creditor when the application filed by operational creditor was dismissed by NCLT, Mumbai Bench on 27.01.2017 on the ground that the operational creditor had received notice of dispute disputing the debt allegedly owed to operational creditor.
- Issue raised before NCLAT in this case was:
 - *What does “dispute” and “existence of dispute” means for the purpose of determination of a petition under section 9 of the Insolvency and Bankruptcy Code, 2016?*
- The Appellate Tribunal held that:
 - The term ‘dispute’ cannot be restricted merely to a pending suit or arbitration proceedings, the word ‘includes’ ought to be read as “means and includes”, including proceedings initiated or pending before consumer court, tribunal, labour court or mediation, conciliation etc.
 - Mere raising a dispute for the sake of dispute, unrelated or related to clause (a) or (b) or (c) of sub-section 6 of section 5, if not raised prior to application and not pending before any competent court of law or authority cannot be relied upon to hold that there is a ‘dispute’ raised by corporate debtor. It must be raised in a court of law or authority and proposed to be moved before the court of law or authority and not any got up or malafide dispute just to stall the insolvency resolution process.
 - The expression used in sub-section (2) of section 8 of the Code ‘*existence of dispute, if any*’ is disjunctive from the expression ‘*record of the pendency of the suit or arbitration proceedings*’.
 - There are two ways in which a demand of an operational creditor can be disputed
 - By bringing to the notice of operational creditor, ‘existence of a dispute’. In this case, the notice of dispute will bring to the notice of the creditor, an existence of a dispute’ under the Code. This would mean disputes as to existence of debt or default etc. or
 - By simply bringing to the notice of an operational creditor, record of the pendency of a suit or arbitral proceedings in relation to a dispute. In this case, the dispute in the suit/arbitral proceedings should relate to matters (a) – (c) in sub-section 6 of Section 5 and this case, showing a record of pendency of a suit or arbitral proceedings on a dispute is enough.

5) Rejected Cases

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

S. No	Case Title	Reason for rejection
1.	Sports and Leisure Apperal Ltd. V/s. M/s Bhasin Infotech and Infrastructure 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 application was dismissed by NCLT on the ground that the 'assured returns' does not fall within the ambit of operational debt as it does not arise from making a provision for goods or services including employment.
2.	Ashlay Infrastructure Pvt. Ltd. V/s M/s LDS Engineers Pvt. Ltd.	<ul style="list-style-type: none">• The matter was filed before the NCLT, New Delhi Bench, under Section 9 of the Code dealing with the initiation of corporate insolvency process by Operational Creditor.• In the instant case, the last payment for a works contract order was received on January 08, 2014 while the last invoice was raised on March 01, 2014. Hence the application was dismissed by NCLT on the ground that the debt has become time-barred and thus is not a recoverable debt in the eyes of law.

Wish you good luck in all your endeavors!!

CS ALKA KAPOOR
CHIEF EXECUTIVE OFFICER
(Designate)
011-45341099