

KNOWLEDGE REPONERE

**(A WEEKLY BULLETIN)
(5-9 JUNE, 2017)**

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INSOLVENCY PROFESSIONALS AGENCY

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“The future depends on what you do today.” – Mahatma Gandhi

Dear Professional Members,

As per a recent research, banks in India have been financing the distressed firms in order to delay the identification of bad loans. Extension of credit to the business units that are undergoing financial crunch may be critical to keep them operational. However, lending to the entities that are highly distressed and have diminutive or no capability to repay these loans tantamounts to throwing good money after bad which in turn will reduce the supply of bank credit to healthy firms and will also delay the resolution of financially unviable firms and will consequently augment the eventual losses faced by banks.

The finding that banks have been throwing good money after bad is particularly important against the backdrop of the recent Banking Regulation (Amendment) Ordinance, 2017. The Ordinance empowers the Reserve Bank of India (RBI) to direct banks to initiate restructuring mechanisms against defaulting firms.

In order to overcome the widespread situation of insolvency and bankruptcy of corporate entities, any devised restructuring mechanism in order to be successful should have following three components:

- 1) Designing of an effective structure to ensure the independent assessment of firm viability prior to its restructuring. This component failed in Corporate Debt Restructuring (CDR) mechanism which was initiated in 2001 by the Reserve Bank of India (RBI) where banks which were affected by CDR mechanism were also the decision makers.
- 2) The prevailing regulatory framework should also provide for the viable evaluation of the distressed firms.
- 3) There should be a formal insolvency process in place to carry out restructuring process.

However in India, out of the abovementioned three components only the last component is in place in the form of the Insolvency and Bankruptcy Code, 2016 (“Code”). To ensure the efficacy of any restructuring mechanism, banks may now be directed by the RBI to pursue, the other two elements are also fundamental and need to be pursued.

In this knowledge bulletin, we provide updates in the field of insolvency, recent cases admitted by National Company Law Tribunal (NCLT), brief note on some of the recent cases admitted by NCLT, preparation of top loans defaulter’s list by RBI 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. The newly admitted cases with regard to corporate insolvency and resolution process under the Code are as below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	M/s. Indian Overseas Bank & Others V/s M/s. Diamond Power Transformers Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Ahmedabad	113 Crores
2.	M/s. Burn Standard Company Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Kolkata	8.1 Crores
3.	M/s. Chivas Trading Pvt. Ltd. V/s. M/s. Abhayam Trading Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Chennai	Order not available
4.	M/s. Advantage Projects & Consultants Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor	Principal Bench, New Delhi	Order not available
5.	M/s. LML Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Allahabad	351.20 Crores
6.	M/s. Educomp Solutions Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Principal Bench, New Delhi	2,785 Crores
7.	M/s. Kei Industries Limited V/s. M/s. Shipra	Section 9 of the Code dealing with	New Delhi	8.66 akhs

	Infraprojects Limited	Private	initiation of CIRP by operational creditor.		
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2) NCLT Case Briefs

TV 18 BROADCAST LIMITED Vs AMRAPALI MEDIA VISION PRIVATE LIMITED (Under Section 9 of the Code)

- TV 18 Broadcast Limited (“Operational Creditor” or “OC”) is a company engaged in the business of media and entertainment and had been providing advertising services to Amrapali Media Vision Private Limited (“Corporate Debtor” or “CD”) by airing their advertising campaigns on its channels CNN-IBN & IBN-7 while the CD is engaged in the business of real estate projects.
- As a consideration, the CD agreed to pay the part consideration in cash and part consideration by allotting immovable property. However the CD had failed to make the agreed payment and allotment; the total default being Rs. 8,74,50,296/-.
- The OC filed the application along with the copy of the invoices delivery receipts from 30.11.2011 to 31.07.2014. The OC also maintained a ledge account reflecting statement of debit and credit in the running account with the CD which reflected the above outstanding amount.
- The OC served a notice under Section 8 of the Code on 16.03.2017 to which no dispute was raised by the CD. However, during the hearing, the CD issued a proposal letter to OC giving an estimated timeline for handing over the properties to be given under the agreement but the same was rejected by OC as it did not provide any specific date by which the said properties are proposed to be transferred.
- The Adjudicating Authority held that the OC is legally entitled to claim its dues for the services provided and to initiate the Insolvency Resolution Process against the CD.
- Accordingly, it ordered moratorium period with effect from May 30, 2017 and appointed an Interim Resolution Professional.

NARMADA CONSTRUCTION (INDORE) PRIVATE LIMITED Vs. AGROH INFRASTRUCTURE DEVELOPER (P) LIMITED (Under Section 9 of the Code)

- M/s. Narmada Construction (Indore) Private Limited (“Operational Creditor” or “OC”) performed road construction work of Bitumen Road of Magarkhedi – Bamandi in district Barwani and of Bitumen Road of Khandwa – Jhedtalai for M/s AGROH INFRASTRUCTURE DEVELOPER (P) LIMITED (“Corporate Debtor” or “CD”).
- The OC contended that the CD had defaulted in payment of Rs. 52,46,145 in respect of road construction work of Bitumen Road of Magarkhedi – Bamandi in district Barwani and in payment of Rs. 2,37,00,047 in respect of road construction work of Bitumen Road of Khandwa – Jhedtalai. Thus, the total amount due to OC from CD was Rs. 2,89,46,192/-.

- The demand notice under section 8 was issued by OC on 04.04.2017. However the CD did not reply to the demand notice. Hence the application was filed by OC on 06.05.2017 which was listed on 11.05.2017.
- Before filing the application, the OC had intimated the CD about filing of the application. During the hearing, on the direction of the Adjudicating Authority, the OC served a notice on the CD intimating the latter about the hearing of the case. The OC also filed copy of certificate from financial institution maintaining accounts of OC as also the evidence relating to default.
- The Adjudicating Authority held that:
 - The OC had provided road construction services to the CD. As a result the amount claimed to be due falls under the category of ‘operational debt’ as per Section 5(21) of the Code.
 - The copies of bank statements of OC and account statements of CD clearly demonstrate that the CD had defaulted in making payment of operational debt.
 - The OC has issued a notice required by Section 8(1) of the Code in response of which neither a dispute was raised nor the amount of claim was settled by the CD.
- As a result application was ordered to be admitted.
- Accordingly, the Adjudicating Authority declared moratorium. However, since the OC had not named the Insolvency Resolution Professional (IRP), the Adjudicating Authority made a reference to IBBI for recommending the name of an IP to act as IRP in terms of section 16(3) of the Code.

3) Preparation of Top Loans Defaulter’s List by RBI

As reported, RBI is preparing a list of borrowers from whom non-Performing Assets (NPAs) of Public Sector Banks (PSBs) could be recovered under the Code. This action of RBI will help beleaguered PSBs in recovering their NPAs, estimated at over Rs 6 Lakhs Crores out of which the majority is blocked in power, steel, textile and infrastructure sector.

Besides this RBI has also constituted an Internal Advisory Committee for identification of accounts which need to be considered for resolution at the earliest.

4) Recent statistics on Loan disbursement and NPAs

- As reported, banks are sitting on unrecognized stressed loans worth Rs 7.7 Lakhs Crores in Corporates and SME sectors and expect around 35 per cent of them to slip into the NPA category in next 12-18 months.
- As per estimates, Rs 2.6 Lakhs Crores of corporate and SME loans, which are 3.2 per cent of total bank credit to be recognized as stressed loans by 2019.
- More than 7.45 Crores entrepreneurs have been given bank loans under the Pradhan Mantri Mudra Yojana out of which 70% beneficiaries are females.

- Out of the total borrowers in India, around 18 % of the borrowers are from the Scheduled Caste Category, 4.5 % are from Scheduled Tribe Category and 34% from Other Backward Classes.

5) Rejected Cases

Out of the cases filed with different NCLT Benches, various cases have been admitted by the Tribunal. The following case was rejected for the reasons stated below:

S. No	Case Title	Reason for rejection
1.	Rohm and Hass Electronic Materials Singapore V/s. Sulakshna Circuit 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 ground that both the parties agreed to the mutual settlement and therefore operational creditor withdrew the application.

Wish you good luck in all your endeavors!!

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