

KNOWLEDGE REPONERE

**(A WEEKLY BULLETIN)
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INSOLVENCY PROFESSIONALS AGENCY

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“Arise! Awake! and stop not until the goal is reached.” – Swami Vivekananda

Dear Professional Members,

In a major boost to the banking industry, the Reserve Bank of India (RBI) has identified 12 big loan defaulters for commencement of bankruptcy proceedings against them and their names would be made public soon. Each of the defaulters identified by RBI owes more than Rs 5,000 Crores to banks and accounts for 25 per cent of the total NPAs in the banking sector. RBI assures that their names will be referred to respective banks for filing of insolvency proceedings and proceedings in respect of these defaulters will be dealt by the National Company Law Tribunal (NCLT) on priority basis.

Such strong action of RBI will facilitate the faster resolution of bad loans and will also help government to arrive at a more appropriate amount required by Public Sector Undertakings (PSUs) banks towards their capitalization.

Besides RBI, Credit Suisse, a Swiss multinational financial sector company, headquartered in Zürich, has also tracked few large companies that are also highly indebted.

Credit Suisse calls these companies ‘**House of Debt**’ and according to it, the Debt to EBITDA (Earnings Before Interest, Tax, Depreciation and Amortisation) Ratio for many of these companies is more than 10 times. This shows these firms will struggle to service their debt to banks and many of them have already caused bad debts in banks. As per the reports, RBI will also direct insolvency proceedings against some of these highly indebted companies.

It is believed that the resolution of bad loans would not only boost the country’s economy but also help government to arrive at a more appropriate amount required by PSU banks towards their capitalisation.

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 adjudicated by NCLT or NCLAT, notification of Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 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. BMM Ispat Private Limited V/s. M/s. A J Casting Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	New Delhi	2.91 Crores
2.	Harshad V Vora V/s. Bhagwan Motors Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Ahmedabad	41.84 Lakhs
3.	Rungta Industries Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	14.97 Lakhs
4.	Lakshmi Solvent Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	24.66 Lakhs
5.	Arohul Foods Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	24.75 Lakhs
6.	Abhi Agro Industries Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	28.59 Lakhs
7.	J. R. Agro Industries Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by	Allahabad	5.08 Crores

		operational creditor.		
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2) NCLT Case Briefs

DIAMOND POWER TRANSFORMERS LIMITED V /S INDIAN OVERSEAS BANK & ORS.

Applicant	Diamond Power Transformers Limited (Corporate Debtor)
Respondent	Indian Overseas Bank & Ors.
Relevant Section	Section 10 of the Code dealing with the initiation of corporate insolvency resolution process by Corporate Debtor..
Amount of Default	Rs. 113.84 Crores

- Diamond Power Transformers Limited ('Corporate Debtor' or 'CD') filed the present application under section 10 of I&B Code, 2016.
- CD is a company incorporated under Companies Act, 1956. It had availed financial assistance from Indian Overseas Bank, UCO Bank and SICOM and owes an amount of Rs. 46.98 Crores, Rs. 35.86 Crores and Rs. 31.00 Crores respectively totalling to Rs. 113.84 Crores to the above financial creditors.
- While obtaining financial assistance from SICOM, CD had mortgaged properties in its favour. SICOM issued notice under section 13(2) of SARFAESI Act, 2002 on ground of default in payment of dues by CD against which CD filed an application in DRT and at the time of filing of application under I&B Code, proceedings under DRT were pending.
- The Adjudicating Authority directed the CD to file papers relating to DRT which were pending against SICOM and the same were filed.
- CD contended that it had defaulted in payment to three secured creditors above mentioned. Apart from above financial creditors, CD also filed copy of notice issued by one operational creditor viz. Amba Shipping & Logistics Pvt. Ltd. claiming an amount of around 13 lakhs towards supply of goods to CD.
- Along with the application, CD filed audited financial statement for last two financial years and the current financial year as well as gave list of liabilities and its net worth.
- The application by CD was resisted by SICOM on the ground that CD had taken a stand before DRT that it had not committed any default whereas, SICOM had taken a plea before DRT and DRAT that CD had in fact, committed default.

- The Adjudicating Authority observed that perhaps to stall the proceedings before the DRT, CD took the stand of no-default but now the CD is taking the plea of default which is also the stand of SICOM before DRT.
- Further, it is clear from the application that the amounts due to Banks are more in volume than the amount due to SICOM. The contention of SICOM that the application be dismissed since CD is taking different stand in different courts cannot be given importance since the present application is filed after the filing of proceedings in DRT accompanied by a Board Resolution of CD.
- Accordingly, the Adjudicating Authority admitted the application.

3) NCLAT Case Briefs

M/S MCL GLOBAL STEEL PVT. LTD. VS. M/S ESSAR PROJECTS INDIA LTD.

Appellant	M/s. MCL Global Steel Pvt. Ltd. (Corporate Debtor)
Respondent	M/s. Essar Projects India Ltd. (Operational Creditor)
Relevant Section under which case was filed before NCLT	Section 8 and 9 of the Code dealing with the initiation of corporate insolvency resolution process by Operational Creditor.

- In this case, an appeal was filed before the NCLAT by the corporate debtor/appellant against the order of Adjudicating Authority, Mumbai Bench whereby the application preferred by operational creditor/respondent was admitted.
- Briefly stated, corporate debtor had appointed the operational creditor to carry out civil work, structural fabrication and erection of building and sheds as well as the erection of technological equipment as part of construction of 0.2 MTPA Steel Melt Shop Complex at Pithampur, Madhya Pradesh.
- Operational creditor raised invoices for the work successfully completed, however, the corporate debtor failed to make the payment. Operational creditor issued statutory notice under the Code to which the corporate debtor disputed satisfactory completion of the work regarding quality of construction, timeline of construction etc. The adjudicating authority, however, admitted the application.
- The appeal was preferred on two grounds viz.,
 - (i) violation of principles of natural justice and
 - (ii) existence of dispute raised by debtor

➤ **First Issue**

- The operational creditor contended that corporate debtor has no right to be heard before the stage of admission of application under the Code.
- The Appellate Authority noticed that the issue whether prior notice before admission of an application for Corporate Insolvency Resolution Process is required or not was considered in M/s Innoventive Industries Ltd. CA(AT)(Insolvency) No. 1 and 2 of 2017 wherein it was held that adjudicating authority is bound to issue limited notice before admission of application.
- The Appellate Authority accordingly decided the first issue in favour of the corporate debtor holding that there was violation of principles of natural justice as no notice was issued to corporate debtor before admission of application.

➤ **Second Issue**

- The Appellate Authority, relying upon its judgment in *Kirusa Software Pvt. Ltd. vs. Mobilox Innovations Pvt. Ltd.* observed that the appellant had in fact disputed the claim filed by operational creditor by raising disputed claims by way of various emails and reply to section 8 notice. These documents proved that there was ‘a dispute in existence’ in terms of section 8 of the Code.
- The second issue was also decided in favour of the corporate debtor.

- Accordingly, the Appellate Authority allowed the appeal and set aside the order of the Adjudicating Authority. The order of Moratorium, freezing bank accounts, appointment of IRP was also set aside.

4) Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017

IBBI vide notification dated 14th June, 2017 notified Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. These Regulations became effective from 14th June, 2017. The Regulations provide for a framework for fast track insolvency resolution process of corporate persons. The link to the aforesaid Regulations is given below for your kind reference:

http://ibbi.gov.in/Insolvency_and_Bankruptcy_Board_of_India_Fast_TrackInsolvency_Resolution_Process_for_Corporate_Persons_Regulations_2017.pdf

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	Reasons for rejection
1.	Rajesh Steel and Wire Industries V/s. Srinivasa Construction Corporation Private Limited	<ul style="list-style-type: none"> The matter was filed before the NCLT, Mumbai Bench. The application was dismissed by NCLT on the ground that the Petitioner withdrew the petition in order to file the same after the removal of necessary defects.
2.	Gupta Rajbhadur V/s. Larsen and Toubro Limited	<ul style="list-style-type: none"> The matter was filed before the NCLT, Mumbai Bench. The application was dismissed by NCLT on the ground that no one was present from the Petitioner's side at the time of scheduled hearings.
3.	Sports and Leisure Apperal Limited V/s. Bhasin Infotech and Infrastructure Private Limited	<ul style="list-style-type: none"> The matter was filed before the Principal Bench, New Delhi under Section 9 of the Code dealing with the initiation of corporate insolvency process by Operational Creditor. As per the facts of the case, Applicant took on lease 2 shops in a Mall based at Greater Noida in respect of which Applicant deposited Rs. 7.22 Lakhs as a security and entered into a MOU with Corporate Debtor on 24.05.2008. As per the terms of MOU, Corporate Debtor was required to handover the shops to the Applicant on or before January, 2010 and in case of delay the Applicant will be entitled to an interest at the rate of 15% p.a. However if delay will be beyond 6 months, then as per MOU the entire security amount has to be refunded. Operational Debtor failed to allot the shop within 6 months and also failed to refund the amount to applicant along with interest and accordingly Applicant filed the case before NCLT. The application was dismissed by NCLT on the grounds that the Applicant claiming to be the Operational Creditor was not covered under the definition of "Operational

		<p>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.</p> <ul style="list-style-type: none">• Further the security amount along with the interest amount which were claimed to be the debt by the Applicant was 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.
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We hope these updates add value to your knowledge. We shall be happy to receive your feedback in this regard.

Wish you good luck in all your endeavors!!

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