

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)

(19-23 JUNE, 2017 & 26-30 JUNE, 2017)

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“In order to succeed, we must first believe that we can.” – Nikos Kazantzakis

Dear Professional Members,

As per a recent survey conducted by *Moody's*, a Global Rating Agency, the effectiveness of a resolution under the Insolvency and Bankruptcy Code, 2016 (“Code”) is anticipated to be limited because in numerous cases it has been found that the existing management of Corporate Debtor continues to play their role even after transferring the management and control to Interim Resolution Professionals as per the provisions of the Code.

Moody's further reported that the stringent timelines prescribed under the Corporate Insolvency Resolution Process (CIRP) may land many companies into forced liquidation which in turn will have a negative effect on banks, particularly in cases where little collateral is available.

Insolvency Professional feels that the identification of 12 big loan defaulters against whom RBI proposes to initiate Corporate Insolvency Resolution Process shall be the real test of the quality and capabilities of Insolvency Professionals to handle large cases.

In view of the present scenario it is felt that:

- ✓ The available infrastructure may not be adequate to handle the plethora of proceedings that will emerge from RBI's move.
- ✓ There is a growing need to establish more benches of NCLT in order to deal the existing judicial pressure.
- ✓ The Benches operating with single-member should become double-member Bench.
- ✓ There should be Special Benches to efficiently and expeditiously tackle the high profile cases under the Code.

In this knowledge bulletin, we endeavour to enrich our readers with the latest 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 National Company Law Appellate Tribunal (NCLAT) 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 Resolution Process (CIRP) 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. Pine Forest Products and Investment Ltd. V/s. M/s. Zenith Computers Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	1.25 Crores
2.	M/s. State Bank of India V/s. M/s. Summer India Textiles Mills Private Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Chennai	Order not available
3.	M/s. Sakthi Energy Private Limited V/s. M/s. Servalakshmi Paper Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Chennai	Order not available
4.	M/s. Edelweiss Asset Reconstruction Company Limited V/s. M/s. Bharati Defence and Infrastructure Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	599 Crores
5.	M/s. Edelweiss Asset Reconstruction Company Limited V/s. Kohinoor CTNL Infrastructure Company Pvt. Ltd.	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	Order not available
6.	Unity Infraprojects Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Mumbai	384.49 Crores

7.	Vandana Udhyog Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Mumbai	189.53 Crores
8.	M/s. Thirupur Suriya Textiles (P) Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Chennai	Order not available
9.	M/s. Veelsons Energy Systems Private Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Chennai	Order not available

2) NCLAT Case Briefs

P.K. ORES PRIVATE LIMITED VERSUS TRACTORS INDIA PRIVATE LIMITED.

Applicant	P. K. Ores Private Limited (Corporate Debtor)
Respondent	Tractors India Private Limited (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.

- The present appeal was filed by P. K. Ores Private Limited – (Corporate Debtor) against the judgment passed by NCLT, Kolkata Bench, Kolkata (“Adjudicating Authority”) whereby the application filed by Tractors India Private Limited – (Operational Creditor) was admitted.
- The Corporate Debtor assailed the impugned order on the ground that the same has been passed in violation of principles of natural justice, without giving any opportunity of hearing and further, that there was ‘existence of dispute’ which the Corporate Debtor would have brought to notice of the Adjudicating Authority, if given an opportunity.
- The Operational Creditor, however, contended that the Corporate Debtor was served with notice under Section 8 of the Code as well as copy of application under Section 9 of the Code, the Corporate Debtor failed to reply to the notice under Section 8.
- The NCLAT (“Appellate Authority”) perused the record of the Adjudicating Authority and noted that there was no order issuing notice to the Corporate Debtor.

- The Appellate Authority took note of section 424 of the Companies Act, 2013 which mandates that the Adjudicating Authority is supposed to follow the rules of natural justice before passing any order.
- It observed that in the case of *“Innoventive Industries Limited vs. ICICI Bank”*, the Appellate Authority held that a notice is required to be given to a Corporate Debtor before admitting any application for initiation of Corporate Insolvency Resolution Process under Section 7 and 9 of the Code. Since the Adjudicating Authority in the present case had not issued any notice to the Corporate Debtor, it was held that the impugned order was bad in law and thus, liable to be set aside.
- The Appellate Authority also took note of the reply given by the Corporate Debtor in November, 2016 to the letter issued by Operational Creditor in which the former had disputed the satisfactory installation of machinery (Engine) by latter and also stated that various complaints were made regarding rectifying the defects in the machinery.
- The Appellate Authority relying upon the judgment passed by it in *“Kirusa Software (P) Ltd. versus Mobilox Innovations Pvt. Ltd.”* held that the Corporate Debtor had in fact, raised dispute about the quality of goods and brought the same to notice of Operational Creditor. It also claimed damages for inferior quality of goods and its loss much prior to receipt of notice under Section 8 of the Code.
- Accordingly, the Appellate Authority held that there was violation of the principles of natural justice as well existence of dispute and thus, the order passed by Adjudicating Authority was set aside. In effect, the order appointing an Interim Resolution Professional (IRP), order declaring moratorium, freezing of account and other actions taken by IRP pursuant to order of Adjudicating Authority were declared illegal.

PHILIPS INDIA LIMITED VERSUS
GOODWILL HOSPITAL & RESEARCH CENTRE LTD.

Appellant	Philips India Limited (Operational Creditor)
Respondent	Goodwill Hospital & Research Centre Ltd. (Corporate Debtor)
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.

- The present appeal by Operational Creditor - Philips India Limited (“Philips”) was filed against the judgment passed by NCLT, Principal Bench, New Delhi (“Adjudicating Authority”) whereby the application filed by Philips against Goodwill Hospital & Research Centre Ltd. (“Corporate Debtor”) was dismissed.
- Facts in brief
 - Philips, which is engaged in business of manufacturing, distribution and maintenance of various health care equipments had entered into Comprehensive Annual Maintenance

- Contracts dated 02.08.2011 and 11.05.2012 with corporate debtor for maintenance of installed machine in its premises.
- Philips provided maintenance services during the relevant period and fulfilled its obligations whereas, the Corporate Debtor failed to make full payment and the total outstanding dues.
 - Philips filed an application under Section 9 of the Code.
 - The Adjudicating Authority while taking note of definition of ‘dispute’ under section 5(6) of the Code to be inclusive one, was of the opinion that the reply given by Corporate Debtor raising dispute over the satisfactory completion of the work was a ‘dispute’ which was existing and thus, the Adjudicating Authority dismissed the application stating that the remedy of Philips lies elsewhere but not under the Code.
- Aggrieved, Philips filed an appeal before the NCLAT (“Appellate Authority”)
 - The Appellate Authority noted that the question as to what constitutes ‘dispute’ fell for consideration before it in the case of “Kirusa Software (P) Ltd. versus Mobilox Innovations Pvt. Ltd. – Company Appeal (AT)(Insol.) 06/2017.
 - It was observed that the Corporate Debtor in the present case, much prior to issuance of notice under Section 8 of the Code, 2016 had raised disputes relating to quality of service/maintenance pursuant to notice under Section 433(e) and Section 434(1)(a) of Companies Act, 2013 issued by Philips.
 - The Appellate Authority was of the opinion that the objection raised by Corporate Debtor, which was not raised for the first time while replying to notice issued under section 8 by Philips, cannot be termed to be mere objection raised for sake of ‘dispute’ and/or unrelated to clause (a) or (b) or (c) of sub-section (6) of Section 5 of the Code.
 - Accordingly, the Appellate Authority dismissed the appeal and upheld the order of the Adjudicating Authority.

3) 12 top loan defaulter’s identified by Reserve Bank of India (RBI)

- Reserve Bank of India (RBI) has prepared a list of borrowers from whom Non-Performing Assets (NPAs) of Public Sector Banks (PSBs) are to 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.
- The names of top 12 defaulters identified by RBI along with the amount they constitute as an NPA of the Indian economy are as follows:
 - 1) Bhushan Steel (Rs 44,478 Crores)
 - 2) Lanco Infra (Rs 44,365 Crores)
 - 3) Essar Steel (Rs 37,284 Crores)
 - 4) Bhushan Power (Rs 37,248 Crores)
 - 5) Alok Industries (Rs 22,075 Crores)
 - 6) Amtek Auto (Rs 14,075 Crores)

- 7) Monnet Ispat (Rs 12,115 Crores)
- 8) Electrosteel Steels (Rs 10,274 Crores)
- 9) Era Infra (Rs 10,065 Crores)
- 10) Jaypee Infratech (Rs 9,635 Crores)
- 11) ABG Shipyard (Rs 6,953 Crores)
- 12) Jyoti Structures (Rs 5,165 Crores)

Out of the abovementioned defaulters, RBI has already initiated Corporate Insolvency Resolution Process against the six of them.

- State Bank of India (SBI) has referred **Bhushan Steel, Essar Steel and Electrosteel Steels**
- Punjab National Bank (PNB) has referred **Bhushan Power** , IDBI Bank has referred **Lanco Infratech** and
- Corporation Bank has referred **Amtek Auto** to NCLT.

4) **Banks assets quality to improve after FY 2018**

As per the recent research conducted by ICRA Limited, a rating agency the assets quality of Indian banks is expected to progress after FY 2018 as the resolution process to deal with stressed assets and NPAs has been placed under the Code.

ICRA expects that the NPAs of the banking system to touch about Rs 9 Lakh Crores or 10.2 per cent of the total loans against Rs 7.65 Lakh Crores or 9.5 per cent as on March 2017. One of the reasons behind such hike is the failure of the Strategic Debt Restructuring (SDR) Mechanism by banks. However, the latest RBI decision to initiate Corporate Insolvency Resolution Process against the top defaulters under the Code is expected to be a welcome step in bringing relief to banks.

Further, PSBs are also expected to generate relatively healthy return on equity at 10-12 per cent for FY18.

5) **First International Moot Court Competition on Code**

The National Law University, Delhi in collaboration with INSOL India and Society of Insolvency Practitioners of India (SIPI) and Insolvency and Bankruptcy Board of India (IBBI) is organizing First International Moot Court Competition on the Code on 28-29 October 2017 in New Delhi, India. The topic of the Competition is “**Corporate Insolvency Resolution Process (CIRP)**”.

This is a great training platform as well as an opportunity for present and emerging Insolvency Professionals to learn various aspects of the Code both practically and theoretically. I request professional members to participate in this learning venture in huge number and enrich your knowledge from such forum..

For further details regarding the competition, kindly visit ibbi.gov.in.

6) Rejected Cases

Numerous cases have been filed under the Code across different benches of NCLT. However, recently the following cases have been rejected by NCLT:

S. No	Case Title	Reasons for rejection
1.	ABB India Limited V/s. Varun Resources 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 petition against the Corporate Debtor (Varun Resources Limited) for commencement of resolution process has already been admitted by NCLT vide case titled as Indian Bank V/s. Varun Resources Limited.• NCLT ordered Operational Creditor (ABB India Limited) to approach Interim Resolution Professional of the former case in order to submit its claims.
2.	ILSA Shipping & Logistics Pvt. Ltd. V/s. Jyoti Structures 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 and the Respondent had arrived at the mutual terms to resolve the matter.

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!!

CS ALKA KAPOOR
CHIEF EXECUTIVE OFFICER
(Designate)