

# **KNOWLEDGE REPONERE**

**(A WEEKLY BULLETIN)  
(10-14 JULY, 2017)**

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# INSOLVENCY PROFESSIONALS AGENCY

## KNOWLEDGE REPONERE (A Weekly Bulletin: 10-14 July, 2017)

*“Success is the result of perfection, handwork,  
learning from failure, loyalty and persistence.” – Colin Powell*

**Dear Professional Members,**

The first order under Insolvency and Bankruptcy Code, 2016 (“Code”) in the matter of “Innoventive Industries Limited” issued on January 17, 2017 by National Company Law Tribunal (NCLT), Mumbai Bench created anxiety and curiosity amongst stakeholders as to how the Code will shape up and what cementing is further required for betterment. In short span of six months of the Code, more than 150 corporate insolvency resolution process cases come to be admitted by various NCLT benches.

As the corporate insolvency resolution period of 180 days is getting over with respect to the applications that were initially admitted in the month of January 2017, an inquisitiveness on the status of the said applications automatically arises. It is reported in the Business Standard dated 17 July 2017, that in respect of the four of the earliest cases admitted under the Code i.e **UB Engineering, Innoventive Industries, NICCO Corporation and Synergies Dooray**, the first 3 cases have sought extension, whereas the last one will undergo liquidation. The next ninety days will also be critical time.

### 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.	Bank of India vs. M/s. Tirupati Infracorps Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial	Principal Bench	86.79 Crores

		creditor.		
2.	State Bank of India vs. Jyoti Structures Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Mumbai	1700 Crores
3.	Brian Lau vs. M/s. S3 Electrical And Electronics Private Limited	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Principal Bench	Amount not mentioned in Order
4.	M/s Abhi Agro Industries Private Limited vs. M/s. Swadisht Oils Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	28.59 Lakhs
5.	M/s. Jai Lakshmi Solvents Private Limited vs. M/s. Swadisht Oils Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	24.66 Lakhs
6.	M/s. Arohul Foods Private Limited vs. M/s. Swadisht Oils Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	24.75 Lakhs
7.	M/s. Rungta Industries Private Limited vs. M/s. Swadisht Oils Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Allahabad	14.97 Lakhs
8.	M/s. J.R Agro Industries Private Limited vs. M/s. Swadisht Oils Private	Section 9 of the Code dealing with initiation of CIRP by operational	Allahabad	5.08 Crores

	Limited	creditor.		
9.	M/s. Alpha & Omega Diagnostis (India) Limited vs. Asset Reconstruction Company of India Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	4.43 Crore
10.	M/s. DCS International Private Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Bengaluru	10.65 Crores
11.	M/s. Vedika Nutcraft Private Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	New Delhi	59 Crores
12.	M/s. Thirupur Surya Textiles Pvt. Ltd.	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Chennai	Amount not mentioned in Order
13.	M/s. Rashid Ismail Tharadra	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Mumbai	67.84 Crores
14.	M/s. Shivek Labs Limited	Section 10 of the Code dealing with initiation of CIRP by Corporate Debtor.	Chandigarh	117.22 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 31<sup>st</sup> March, 2017 which became effective on 1<sup>st</sup> April, 2017. The latest cases admitted by NCLT under the voluntary liquidation are:

S. No.	Case Title
1.	Shree Autotech Forge Private Limited
2.	M/s. Hsbc Golbal Shared Services (India) Private Limited
3.	M/s. Wadia Bsn India Limited
4.	M/s. Online Scripts India Private Limited
5.	M/s. Raay Hospitality Private Limited
6.	M/s. Super Traditional Metal Crafts (Bombay)
7.	M/s. Cupid Annibis Jewellery Private Limited

## 3) NCLT Case Briefs

### **PUNJAB NATIONAL BANK vs. CHARBHUJA INDUSTRIES PVT. LTD.**

<b>Applicant</b>	Punjab National Bank (Financial Creditor)
<b>Respondent</b>	Charbhujia Industries Pvt. Ltd. (Corporate Debtor)
<b>Relevant Section under which case was filed before NCLT</b>	Section 7 of the Code dealing with the initiation of Corporate Insolvency Resolution Process by Financial Creditor.
<b>Amount of Default (Rs.)</b>	20,68,35,759

- The present application was filed by Financial Creditor - Punjab National Bank under Section 7 of the Code before the Adjudicating Authority, Mumbai Bench for initiation of Insolvency Resolution Process against the corporate debtor upon its failure to pay the outstanding debt amounting to Rs. 20,68,35,759/-.
- Applicant provided loan facilities to corporate debtor along with other banks viz. State Bank of India Consortium. For this loan, the corporate debtor created a charge on January

27, 2012 and thereafter modified it on February 14, 2014 on the induction of SBM Bank (Mauritius) Ltd. in the consortium.

- The total amount disbursed to corporate debtor was Rs. 14.50 crores. On account of failure of debtor to repay the loan as per the terms agreed terms and conditions, the debt was declared as NPA on November 18, 2015 bringing the outstanding amount to be paid by the debtor to Rs. 20,68,35,759/- plus interest from December 27, 2016 till the date of realisation.
- The applicant filed an application with DRT-I, Mumbai on December 27, 2016 for the recovery of alleged amount. The applicant filed necessary records and documents proving its debt.
- The applicant thereafter files the application before Adjudicating Authority providing various documents along with the statement of account of debtor.
- In its defence before NCLT, the debtor filed a letter dated June 13, 2017 issued by SBI in which, SBI called the debtor to submit resolution plan to resolve its NPA account of debtor.

### **Decision of NCLT**

The Adjudicating Authority observed that:

1. The letter sent by SBI to the corporate debtor is a mere arrangement of meeting for resolution plan and that could not stall the proceedings under this Code.
2. The statement of account, as produced before the Adjudicating Authority by the applicant, even though being different from the default amount (as on 27.12.2016) mentioned in the Form, would not preclude the initiation of the proceedings under section 7 of Code as it would again be verified by the insolvency resolution professional at the time of claim verification and that section 7 of the Code does not require crystallisation of the default amount;
3. Accordingly, the application was admitted and all the necessary directions under the Code were made and an interim resolution professional was appointed.

### **STATE BANK OF INDIA vs. JYOTI STRUCTURES LIMITED**

<b>Applicant</b>	State Bank of India (Financial Creditor)
<b>Respondent</b>	Jyoti Structures Limited (Corporate Debtor)
<b>Relevant Section under which case was filed before NCLT</b>	Section 7 of the Code dealing with the initiation of Corporate Insolvency Resolution Process by Financial Creditor.
<b>Amount of Default (Rs.)</b>	1745.39 Crores

- On March 15, 2012, SBI (“applicant”) granted loan facility of Rs. 1,227.25 crores to the debtor. When the debtor defaulted in repaying the loan, same was restructured on September 29, 2014 in pursuance of Master Restructuring Agreement under the Corporate Restructuring Scheme of Reserve Bank of India (RBI).
- Certain additional facilities were also granted to the debtor under the said restructuring agreement. Likewise, State Bank of Hyderabad had also granted loan facility to the debtor. However, the restructuring agreement failed to work. With effect from April 01, 2017, State Bank of Hyderabad (“SBH”) got merged with the applicant. Accordingly, the present application under Section 7 of the Code came to be filed on the ground that, as on June 20, 2017, the debtor failed to repay the outstanding balance of Rs. 1745.39 crores indebted to applicant as well as erstwhile SBH.
- **Applicant’s submissions**
  - Applicant sought to establish factum of default by filing Status Classification Report of the Debtor dated 22.06.2017 issued by Central Repository of Information of Large Credits (CRILC) disclosing its account as ‘Doubtful Debt.
  - Further, the applicant filed certificate under section 2A of Bankers Book Evidence Act along with the Statement of Account of the CD maintained by it
  - The applicant also issued a notice dated 17.05.2017 to the debtor for repayment of the amounts granted under the loan facilities.
- **Debtor’s stand**
  - The debtor admitted that Master Restructuring Agreement was entered into on September 29, 2014 and also confirmed its indebtedness to the applicant.
  - However, the debtor submitted that there are prospective investors to take over the debtor as a going concern and the debtor may be permitted to place this information before the Insolvency Resolution Professional (“IRP”).
- **Decision of the Adjudicating Authority**
  - The Adjudicating Authority observed that the promoters of the debtor were not prohibited from raising the contention before the IRP that there are many prospective investors who want to take over the debtor as a going concern.
  - After considering the documents placed on record by the applicant and the indebtedness admitted by the debtor, the Adjudicating Authority admitted the application.



- Accordingly, the Adjudicating Authority ordered moratorium in terms of section 14 of the Code, directed to cause public announcement and appointed an IRP.

**M/s. SUNLINE SUPPLIERS PRIVATE LIMITED**  
**vs.**  
**M/s. INFINITY FAB ENGINEERING COMPANY PRIVATE LIMITED**

<b>Applicant</b>	M/s Sunline Suppliers Private Limited (Operational Creditor)
<b>Respondent</b>	M/s Infinity Fab Engineering Company Private Limited (Corporate Debtor)
<b>Relevant Section under which case was filed before NCLT</b>	Section 8 and 9 of the Code dealing with the initiation of corporate insolvency resolution process by Operational Creditor.
<b>Amount of Default (Rs.)</b>	11,25,821

- Operational Creditor (“applicant”) filed the present application under Section 9 of the Code claiming an amount of Rs. 11,25,821/- along with interest at 24% p.a. from Corporate Debtor on ground of failure to pay for supply of industrial hardware and tools (for short “goods”) from 05.06.2015.
- Applicant issued notice dated 21.12.2016 under Section 8 of the Code which was received by debtor on 23.12.2016. Thereafter, application under section 9 was filed before NCLT, Mumbai Bench which was withdrawn on the ground of lack of jurisdiction with liberty to file before appropriate Bench. Accordingly, the present application was filed before Adjudicating Authority, Bengaluru Bench.

**Objections of Debtor**

- Since the proceedings initiated after issuance of notice dated 21.12.2016 under Section 8 of the Code were terminated on withdrawal of application before Mumbai Bench, another notice under section 8 ought to have been issued before filing present application. As the same was not done, application was not maintainable.
- No certificate is given by applicant’s banker that unpaid debt has not been paid
- Claim is time-barred
- Suppression of fact of Pre-existing dispute, as debtor had issued notice dated 17.11.2016 for initiation of arbitration proceedings and further that demand notice dated 21.12.2016 was replied by debtor vide reply dated 28.12.2016. Dispute existed on the ground that payment had to be made subject to the applicant furnishing Material Testing Certificate (“MTC”) which was not given by applicant.

### **Applicant's reply to debtor's objections**

- There is no time limit prescribed under the Code for filing application for initiation of insolvency proceedings after expiry of 10 days. Thus, there was no requirement for issuance of another notice under Section 8.
- The Bank Certificate was enclosed which discloses fact of non-payment from debtor.
- The claim is not time barred since the claim of the applicant is only with regard to non-receipt of payment for bills issued after 05.06.2015.
- The notice dated 17.11.2016 by debtor (via email) was not received prior to 21.12.2016 by applicant. The same is not in conformity with Section 2(h) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 which defines 'electronic means'.
- Further, there was no reply at all received to the demand notice dated 21.12.2016 issued by applicant. The alleged reply dated 28.12.2016 is fabricated. The applicant denied the signatures on this reply.
- Applicant challenged receipt of notice of arbitration and receipt of the e-mail dated November 17, 2016 and December 28, 2016. It contended that the MTCs required to be furnished as per purchased orders were duly furnished and that the e-mails filed with the reply affidavit were related to the period prior to the date of unpaid invoices.

### **Observations by the Adjudicating Authority and the decision**

- It is not in dispute that demand notice dated 21.12.2016 was issued to debtor and was in fact, delivered by hand on Debtor Company on 23.12.2016. Admittedly, no payment was made by debtor pursuant to issuance of above notice. Thus, non-payment of debt is not disputed.
- Debtor's stand is that there was a 'dispute' in existence as it issued notice of arbitration dated 17.11.2016 via email and also replied to demand notice dated 21.12.2016 vide reply dated 28.12.2016.
  - The email dated 17.11.2016 cannot be relied upon as the same is not an authenticated document. It is a mere Photostat copy. There is no proof of confirmation of delivery of email to applicant. There must be a confirmation that emailed dated 17.11.2016 referring for arbitration was sent to applicant. There is no such certification by debtor. There is no seal of company about delivery of the notice and letter on applicant. They are not certified as true copies by any authorized person of debtor. Thus,

debtor failed to establish that email dated 17.11.2016 was issued to applicant.

- Interestingly, there was no arbitration agreement/clause between the parties which could have been referred to by the debtor.
  - The debtor raised the 'dispute' on ground of non supply of MTCs by applicant. The debtor had never informed the applicant that goods were received without MTC. There is no communication by debtor raising protest regarding quality of goods or that goods they are sub-standard.
  - The alleged reply dated 28.12.2016 has been disputed by applicant since there is a signature of one person at the end of each page, however, it is not known as to whose signature it is and how this person is connected to applicant.
  - Thus, the debtor failed to establish that there was any dispute prior to demand notice.
- Since the claim of the applicant is that from 05.06.2015 onwards the debtor failed to pay the bills for the supplies made, the claim is not time barred.
  - Accordingly, the Adjudicating Authority admitted the application and ordered moratorium period to have effect from the date of the order and appointed an interim resolution Professional.

#### 4) **Rejected Cases**

Recently the few cases have been rejected by NCLT on specific grounds while majority have been rejected on routine grounds such as non presence of parties at the time of hearing, mutual consent between the parties to withdraw the case, inadequate documents etc.

S. No	Case Title	Reasons for rejection
1.	S2 Infotech International Limited vs. M/s. Intarvo Technologies Pvt. Ltd.	<ul style="list-style-type: none"> <li>• The matter was filed before the NCLT, New Delhi Bench.</li> <li>• The Applicant (Operational Creditor) and Respondent (Corporate Debtor) had entered into an agreement on 25.08.2014 where Applicant was service provider for employing supplementation in the office of Respondent.</li> <li>• As per the terms of Agreement, every payment had to be made by the Respondent within 30 days from the date of raising of invoice.</li> </ul>

		<ul style="list-style-type: none"> <li>• However, there was a default on part of Respondent in discharging payment of Rs. 8,28,394 to the Applicant.</li> <li>• Despite several reminders, Respondent failed to discharge the payment and consequently Applicant issued a notice u/s 8 of the Code thereby demanding the outstanding amount which despite serving of the notice remains unpaid.</li> <li>• Accordingly the hearing in respect of the matter started at NCLT but no one appeared from Corporate Debtor side at the time of hearing.</li> <li>• However, as per the NCLT Order, the application was dismissed on the grounds that the <i>Applicant failed to comply with the mandatory requirements of the Code like serving of notice of default as well as notice of application to the Corporate Debtor regarding the initiation of matter before NCLT.</i></li> <li>• Moreover, <i>Applicant also failed to annex the requisite documents along with the application which was filed before NCLT as required under the provisions of the Code</i> like copy of certificate from financial institution maintaining the accounts of the Operational Creditor thereby confirming that no payment is unpaid on behalf of Operational Creditor to anyone.</li> <li>• Therefore, the application was dismissed in initial stage itself on account of non-compliance of procedural formalities.</li> </ul>
2.	M/s. Sri Pitambara Enterprises vs. M/s. Valeda Herbals Pvt. Ltd.	<ul style="list-style-type: none"> <li>• The matter was filed before the, NCLT, New Delhi Bench.</li> <li>• The Applicant (Operational Creditor) and Respondent (Corporate Debtor) had entered into an agreement on 12.11.2013 where Operational Creditor was appointed as stockiest by the Corporate Debtor wherein the</li> </ul>

		<p>Corporate Debtor would supply products to the Operational Creditor and Operational Creditor would supply those products further to distributors.</p> <ul style="list-style-type: none"><li>• As per the terms of agreement, Applicant paid Rs. 6,00,000 in advance to the Respondent for the products.</li><li>• Applicant submitted that all the expenses towards promotion and marketing of the products were to be borne out by the Corporate Debtor.</li><li>• However due to low quality of products and lack of marketing there was a steep decline in the demand of the products and consequently the stock begin piling up at the retail counters. Taking in consideration the prevailing situation, Applicant asked the Respondent to take back the goods and refund the amount paid to him in advance along with other expenses incurred by the Applicant.</li><li>• Applicant sent a legal notice dated 19.12.2016 to the Respondent for outstanding dues of Rs. 1,70,38,797 payable by the Respondent with 18% interest, in reply to which the Respondent raised a counter claim of Rs. 46,88,832 via legal notice dated 24.01.2017.</li><li>• A demand notice under Section 8 was also issued to the corporate debtor on 13.02.2017, in reply of which the corporate debtor sent a further reply dated 02.03.2017, in which a claim of Rs. 12,87,002/- has been raised by the corporate debtor. However, the operational creditor submitted that the reply cannot be considered as a valid reply because it has been sent by the corporate debtor after 10 days of demand notice.</li><li>• The corporate debtor in their reply filed on 04.07.2017 completely denied the claim of the operational creditor and submitted that the claim of operational creditor is not an</li></ul>
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		<p>admitted debt.</p> <ul style="list-style-type: none"><li>• Applicant further submitted that reply cannot be considered as valid since it has been given by Respondent after expiry of 10 days from the date of serving of demand notice.</li><li>• Respondent doesn't fall under the ambit of the definition of "Corporate Debtor" as contemplated under the Code because Respondent does not owe any debt to applicant.</li><li>• Further, as per the Agreement there is no obligation on part of Respondent to carry out marketing activities of its products and also products are only refundable in case of "damage" or "expiry of shelf life of the product."</li><li>• The claim of the operational creditor is not admitted but disputed by the corporate debtor.</li><li>• As per order, the claims raised by the Applicant are not maintainable and also <i>NCLT is not a forum to examine and adjudicate to which portion of the claims and counter claims are admissible</i> and hence NCLT dismissed the petition.</li></ul>
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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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