

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)

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INSOLVENCY PROFESSIONALS AGENCY

KNOWLEDGE REPONERE (A Weekly Bulletin: November 27-December 01, 2017)

“An Investment in Knowledge pays the best interest” – Benjamin Franklin

Dear Professional Members,

Greetings!

We are pleased to share with you our next issue of weekly bulletin on the Insolvency and Bankruptcy Code, 2016 (“Code”).

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.	Gay Printers V/s. Pawan Buildwell Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	New Delhi	1.56 Crores
2.	L & T Finance Limited V/s. Logix Express Pvt. Ltd.	Section 7 of the Code dealing with initiation of CIRP by financial creditor.	Ahmedabad	82.65 Lakhs
3.	Dish TV India Limited V/s. Macro Commerce Private Limited	Section 9 of the Code dealing with initiation of	Principal Bench	3.71 Crores

		CIRP by operational creditor.		
4.	Kasturi and Sons Limited V/s. Kavya Advertising & Marketing Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Chennai	55.10 Lakhs
5.	BCL Homes Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Chandigarh	37.66 Crores

2) BRIEF OF SOME OF THE DECIDED CASES

National Company Law Tribunal (NCLT) Judgments

Swift Shipping and Freight Logistics Pvt. Ltd.Corporate Applicant

Date of Order: 10.11.2017

Brief facts:

- An application was filed by the Interim Resolution Professional, the applicant (“**IRP**”) for passing of an order of liquidation under section 33 (1) (a) read with section 60 (5) of the Code.
- Earlier, Swift Shipping and Freight Logistics Pvt. Ltd., Corporate Applicant (“**Swift Shipping**”) filed an application under section 10 of the Code for initiation of the corporate insolvency resolution process against itself.
- The said application was admitted by NCLT and the IRP was appointed. The IRP made requisite public announcement on 29.04.2017, thereafter, he appointed two registered valuers.

- When no one came forward with claims, on seeing the name of two creditors in the Books, IRP issued separate notices to those creditors, but no response to those notices were received. Thereafter, IRP himself made an application to HDFC Bank and Standard Chartered Bank for the Bank Statement as of date, to which Standard Chartered Bank gave financial statement for the year 2016-17, but no response was given by HDFC Bank.
- IRP provided requisite information to the two registered valuers in order to enable them to prepare valuation reports.
- IRP, as part of his obligation to keep the Insolvency and Bankruptcy Board of India (“IBBI”) informed about the status of proceedings, sent letters to IBBI from time to time updating about the developments.
- Since no claim came to be filed by any of the two creditors, IRP could not constitute Committee of Creditors (“CoC”) as required under section 21 of the Code and for the same reason, no Resolution Professional could be appointed under section 22 of the Code.

Decision of NCLT and reasons thereof:

- NCLT noted that “in the backdrop of these historical facts, since the Insolvency Resolution Plan period being expired and there being no CoC constituted, there was no occasion for receiving any Resolution Plan under sub-section 6 of section 30...”
- Accordingly, in view of such facts and circumstances, NCLT ordered for liquidation of the Corporate Debtor. Since no CoC had been appointed and the same IRP had been continuing since beginning, the same professional i.e. IRP was appointed as the liquidator.

Date of order: 14.11.2017

Brief facts:

- An application under section 10 of the Code was filed by Keshav Sponge and Energy Pvt. Ltd., Corporate Debtor (“**Keshav Sponge**”) for invoking corporate insolvency resolution process against itself.
- The application was admitted and an IRP was appointed. The IRP convened meeting of CoC on various dates but despite the efforts to formulate the resolution plan before the expiry of 180 days, no resolution plan was approved by CoC. On a unanimous resolution passed by CoC, NCLT extended the resolution period for 90 days up to 13.11.2017.
- During the extended period, the Resolution Professional (“**RP**”) continued with the efforts to find ways and means to revive and re-habilitate the company i.e. Keshav Sponge but CoC did not approve the resolution plan.
- The resolution plan was submitted by the promoter; however, the same was rejected by CoC with liberty to the resolution applicant to give improved resolution plan so that it may be considered before the expiry of the extended period. The minutes of the meeting of CoC dated 07.11.2017 revealed that the resolution plan was not approved by CoC and thus, there was no resolution plan arrived at in the instant case.
- The learned counsel for RP submitted that the resolution plan submitted by promoter shall be re-considered by NCLT and an opportunity be given to the promoter for revival of Keshav Sponge. According to RP, Keshav Sponge is a going concern and based on the promise given by CoC, the promoter had spent Rs. 6 cores for seeing that it remains a going concern. Thus, it was submitted that NCLT should approve the plan in the interest of all stakeholders and in the interest of welfare of workmen around 150 persons and nearly 600 persons who are dependent upon company for their livelihood.

Decision of NCLT and reasons thereof:

- The argument with regard to re-consideration of the resolution plan submitted by promoter was rejected by NCLT for the reason that the CoC unanimously voted against the plan which has been considered by the CoC. Further, inspite of submission of the revised resolution plan, the CoC was not inclined to approve the same and as such, section 33(1) of the Code came into force.
- Accordingly, NCLT ordered liquidation of Keshav Sponge. It was also noted by NCLT that the CoC was not willing to continue the existing resolution professional as the liquidator and proposed the name of Mr. Anil Agarwal by way of a resolution. NCLT observed that since the CoC unanimously approved Mr. Anil Agarwal as the liquidator for initiation of liquidation, RP already appointed was replaced under section 34(4) of the Code and Mr. Anil Agarwal was appointed as liquidator.

3) REJECTED CASES

Out of the cases filed with different NCLT Benches, various cases have been rejected and dismissed by the NCLT. A brief summary of one of the rejected case is given below:

Case Title	Brief Facts and Reasons for rejection
Kanan Graphics Private Limited ...Operational Creditor V/s. Print Plus Private Limited ...Corporate Debtor Date of Judgment: 20.11.2017	<ul style="list-style-type: none">• Kanan Graphics Private Limited, Operational Creditor (“Kanan Graphics”) filed an application under section 9 of the Code for initiating corporate insolvency resolution process against Print Plus Private Limited, Corporate Debtor (“Print Plus”) on account of default in payment by Print Plus for the Technova Plates (“goods”) supplied by Kanan Graphics to Print Plus in the year 2016.• According to Kanan Graphics, Print Plus committed default in repaying the dues of Rs. 12,01,103/- with interest at the rate of

19.50% compounded monthly as provided under the Micro, Small and Medium Enterprises Development Act, 2006 aggregating to Rs. 2,48,424/- as on 21.07.2017.

- Before filing the application under section 9 of the Code, Kanan Graphics issued demand notice on 05.05.2017 under section 8 of the Code, demanding only the principal due of Rs. 12,01,103/- without demanding anything in respect of interest.
- However, when the application was filed by Kanan Graphics, the claim in the application was not only towards the principal amount but also the interest.

Decision of NCLT and reasons thereof:

- NCLT noted that there was variation between the amount demanded in the Demand Notice and the amount specified in the application.
- NCLT also noted that the applicant also failed to mention the date of default in the application which is curable but, in view of non-mention of interest in the demand notice under section 8 of the Code, which is subsequently claimed in the application in variation to the claim in the notice, there was no occasion for Print Plus to have its say on interest claim to the notice under section 8 of the Code.
- In view of incorrect claim referred in the application which was inclusive of interest, NCLT held that it could be held that Print

	Plus had committed default and accordingly the application was dismissed.
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We trust you will find this issue of our weekly bulletin useful and informative.

Wish you good luck in all your endeavors!!

Team ICSI IPA

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