

**KNOWLEDGE
REPONERE
(16-23 APRIL, 2018)**

 **INSTITUTE OF INSOLVENCY PROFESSIONALS**

A wholly owned subsidiary of ICSI and registered with IBBI
(Formerly known as ICSI Insolvency Professionals Agency)

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Dear Professional Members,

Greetings!

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

When the Insolvency and Bankruptcy Code 2016 was enacted, it did not restrict or bar any person from submitting a resolution plan as Section 5(25) of the Code initially allowed ‘any person’ to submit a resolution plan. Insolvency Resolution is at the cost of creditors incurring loss in the form of hair-cuts, ranging from 20% to 90% as reported. The government felt a moral threat in the form of defaulting promoters buying back the assets of the corporate debtor, at steep discounts in the form of haircuts incurred by the creditors. . This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. It prompted the Government to bar certain persons and entities from participating in insolvency proceedings. Accordingly Insolvency and Bankruptcy Ordinance 2017 came in to force with effect from November 23, 2017 and Insolvency and Bankruptcy Code (Amendment) Act 2018 which also deemed to have come into force with effect from November 23, 2017. The ineligibility provisions includes classification of non-performing assets, wilful defaulter by RBI, disqualification to act as director, conviction of offence, prohibition by SEBI in trading in securities etc. Recently the resolution plan of Electro steel Limited was approved after passing through the test of eligibility.

I. ELECTROSTEELS LIMITED- THE FIRST ONE TO GO FOR RESOLUTION AMONG BIG 12 NPA ACCOUNTS

Electrosteel Steels Limited (“Electrosteel”) has become the first one to go for resolution among the top 12 loan defaulters account identified by Reserve Bank of India (RBI). Vedanta Limited has emerged as the highest bidder for taking over the Electrosteel and the Resolution Plan submitted by Vedanta limited has been approved by the Committee of Creditors with a voting share of 100% and has come into force with an immediate effect as per order dated 20.04.2018.

The defaulting amount in case of Electrosteel was Rs. 13,000 crores which is inclusive of interest and penalties. There is a haircut of 55% for the lenders among lenders State Bank of India is the lead banker.

Mr. Dhaivat Anjaria was Interim Resolution Professional as well as Resolution Professional for Electrosteel.

Two interim applications were filed by the aggrieved parties namely Renaissance Steel India Private Limited (RSIPL) and SRG Earth Resources Private Limited an Operational Creditor objecting the

Resolution Plan proposed by Vedanta. One of the main objections was that Vedanta limited is *not eligible under section 29A (d)* of the Code. RSIPL being an unsuccessful bidder questioned the eligibility of Vedanta Limited under Section 29A (d) of the code independently. Since KCM, a subsidiary of Vedanta Resources Plc, which is subsidiary of Vedanta Limited, was found convicted.

NCLT observed that an offence punishable with imprisonment or fine is less serious offence than an offence punishable with imprisonment and fine. The KCM in this case was found guilty of an offence punishable with imprisonment or fine for a term not exceeding 3 years or both. It was held Vedanta Ltd. cannot be said to be ineligible to submit a Resolution Plan.

II. IMPORTANT UPDATES BY INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

IBBI issued an order against an Insolvency Professional

- Disciplinary Committee of IBBI has issued an ex-parte interim order against an Insolvency Professional named as Mr. Mukesh Mohan.
- Ex-Parte Interim Order provides that :
 - Mr. Mohan has inserted the requirement of the certificate of CA in the Expression of Interest (EoI) without the approval of CoC in the matter of Carnation Auto India Private Limited.
 - Mr. Mohan has sought approval of the EoI only from one of the creditors.

The complete order in this respect can be accessed at:

<http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/18th%20Apr%202018%20in%20the%20matter%20of%20Mr.%20Mukesh%20Mohan,%20Insolvency%20Professional%202018-04-23%2017:51:02.pdf>

III. POLICY UPDATES BY INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (IBBI)

A. Pre-registration Educational Course under Regulation 5(b) of the IBBI (Insolvency Professionals) Regulations, 2016

Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Amendment) Regulations, 2018 effective from 1st April, 2018 has mandated that an individual shall be eligible for registration as an Insolvency Professional if he/she has passed the Limited Insolvency Examination within the last 12 months from the date of applying for registration and has also completed a Pre-Registration Educational Course from an Insolvency Professional Agency.

In reference to the above amendment a Circular dated 23rd April, 2018 has been issued by IBBI specifying the **course content of mandatory 50 hours Pre-Registration Educational Course** to be delivered by Insolvency Professional Agency.

The link to the Circular can be accessed at:

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/Pre%20registration%20training%20circular%202023.04.2018_2018-04-23%2020:56:22.pdf

B. Commencement of Disciplinary Proceeding

IBBI has come out with a Circular dated 23rd April, 2018 in the context of Disciplinary Proceeding.

As per the Circular it will be deemed that a disciplinary proceeding is pending against an Insolvency Professional from the time an IP been issued a show cause notice by IBBI till its disposal by the Disciplinary Committee of IBBI.

Also an insolvency professional who has been issued a show cause notice shall not accept any fresh assignment as interim resolution professional, resolution professional, liquidator, or a bankruptcy trustee under the Code.

The link to the Circular can be accessed at:

http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Apr/Circular%20Disciplinary%20Proceeding%20_2018-04-23%2020:57:14.pdf

IV. ADMITTED CASES

Cases under the Code are being filed expeditiously across the various benches of NCLT. It is therefore imperative for our readers to be cognizant of the developments taking place. 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.	Light Speed Trade & Consultancy Private Limited v/s. Jinprabhu Infrastructure Developments limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Kolkata	9.65 Lakhs
2.	State Bank of India v/s. SEL Manufacturing Company Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chandigarh	1136 Crores
3.	M/s. Baddi Foils Private Limited v/s. Biotropic Pharma Private	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Principal Bench	24.09 Lakhs

	Limited			
4.	Gajanan Paper Mills Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	3.37 Crores
5.	BMSS Steel Industries Pvt. Ltd. v/s. Shrid Metal Technologies Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Mumbai	22.07 Lakhs
6.	Sanghvi Movers Limited v/s. Leption Projects Private Limited	Section 9 of the Code dealing with initiation of CIRP by operational creditor.	Principal Bench	4.17 Lakhs

V. RESOLUTION PLANS APPROVED

List of Companies that have undergone Resolution in April, 2018

S. No	Case Title	Bench	Date of Order
1	Electrosteels Steel Limited	Kolkata Bench	17.04.2018
2	RBL Bank Limited	Kolkata Bench	18.04.2018

VI. UPDATES ON PRONOUNCEMENT

NCLT Judgment: Exclusion of time spent from counting of statutory period prescribed under Section 12 of the Code

Mamta Binani
Resolution Professional
for Deccan chronicle Holdings Ltd

...Applicant

And

Canara Bank

...Applicant- Financial Creditor

V/s.

M/s Deccan Chronicle Holdings Ltd

... Respondent- Corporate Debtor

Date of Judgment: 26th March 2018

Brief Facts:

- A Company Petition was filed under Section 7 of the Code by Canara Bank, Financial Creditor against M/s Deccan Chronicle Holdings Ltd, Corporate Debtor, (DHCL) for initiating Corporate Insolvency Resolution Process (CIRP).
- During the CIRP, various applications were filed before NCLT viz. application by SREI Infrastructure Ltd for restraining Interim Resolution Professional (IRP) or the Resolution Professionals (RP) from conducting meeting of Committee of Creditors (CoC) and inclusion of its name in CoC; application by IRP based on instructions of CoC for grant of additional time of 90 days beyond the original period of 180 days; application for replacement of IRP with Ms. Mamta Binani as the RP.
- Thereafter, based on instructions from CoC, RP filed application before NCLT to exempt time period spent for 89 days (from 21/08/17 to 16/11/17) on various litigations (as discussed above), time gap between change of IRP etc from the statutory period of 270 days (including extension of 90 days) under section 12 of the Code.
- Briefly stated, the two main issues that arose in this case were:
 1. Whether time limits as prescribed for completion of insolvency resolution process, under the provisions of Section 12 of the Code can be extended beyond 270 days (including extension of 90 days).
 2. If not, whether time taken to clear various legal hurdles/ normal delays including passing and communicating of orders that occurred in CIRP can be excluded from counting of statutory period prescribed under Section 12 of the Code.

Decision of the NCLT and reasons thereof:

- NCLT observed that Adjudicating Authority cannot extend statutory period stipulated under section 12 of the Code i.e. 270 days (including extension of 90 days extension).
- NCLT noted that the initial object of CIRP is to keep the Company under insolvency as a going concern so as to see that there should be viable resolution plan by extending all opportunities to prospecting entrepreneurs to participate in CIRP and for that there should be sufficient time available and this is only possible when CIRP in question runs without any type of legal hurdles; time spent in change of IRP, delay in getting orders etc.

- NCLT relied on the judgment of National Company Law Appellate Tribunal (NCLAT) in *Quantum Limited Vs. Indus Finance Corporation Limited, (Company Appeal (AT) (Insolvency) No. 35 of 2019)*, wherein Hon'ble NCLAT observed that it is the duty of Adjudicating Authority to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation and process of liquidation is last recourse to be adopted on failure of resolution process.
- NCLT noted that in the present case that lot of time lapsed in change of IRP and even the CoC was not able to recommend a suitable RP in accordance with law, forcing the Hon'ble NCLT to select and appoint a new RP. Apart from aforesaid, NCLT noted that DHCL is a prestigious Company on which thousands of employees, workers directly and indirectly depend on it for their livelihood and thus interest of justice and equity and social objective is involved in the issue. Thus, NCLT in the interest of justice and equity and taking into account aforesaid NCLAT judgment excluded the *time taken for various proceedings from counting the statutory period of 270 days (including extension of 90 days)*.
- In view of aforesaid, NCLT, declared that period of 89 days falling between 21.08.17 and 12.11.2017 should not be counted for the purpose of calculating total period and thus it is excluded from the total period of 270 days, as prescribed under Section 12 of IBC, 2016 in this matter.

NCLT Judgment: Exclusion of time spent from counting of statutory period prescribed under Section 12 of the Code

And

Reconsideration of vote in respect of approval of Resolution Plan already finalized is permissible

RBL Bank Limited

... Appellant /Financial Creditor

V/s

MBL Infrastructure Limited

...Respondent/Corporate Debtor

Date of Judgment: 18th April, 2018

Brief Facts:

- A Company Petition was filed under section 7 of the Code by RBL Bank Limited, Financial Creditor (RBL) in respect of MBL Infrastructure Limited, Corporate Debtor (MBL Infra) for initiating CIRP.

- During the CIRP, numerous applications were filed before NCLT viz. application by RP on instructions of CoC to extend the CIRP duration; filing of report by RP about decision of CoC in relation to Resolution Plan with voting share of 68.50%; filing of appeal by dissenting financial creditor challenging the order of NCLT before NCLAT and granting of stay by NCLAT in relation to passing of Resolution Plan with 68.50% voting share and thereafter directions by NCLAT to RP and CoC for considering Resolution Plan and to NCLT for passing appropriate orders in the interest of company and stakeholders but not pass order accepting Resolution Plan; application by Resolution Applicant for directions to dissenting creditors for reconsidering their decision with regard to approval of Resolution Plan resulting in delay in CIRP process by 106 days; application by Resolution Applicant to exclude the time spent to clear various legal hurdles including passing and communicating of orders.
- Further, during the CIRP, two Resolution Plans were submitted, one was proposed by Mr. A.K. Lakhotia and the other by Mr. Venkatesh Lakhotia. It is pertinent to note that when the Resolution Plan proposed by Mr. A.K Lakhotia came up for consideration, it was objected by IDBI and Bank of Baroda (Dissenting Financial Creditors) stating that the Resolution Plan has been filed after the exceeded period of 270 days, which had already expired.
- With the coming up of Insolvency and Bankruptcy Code (Amendment) Ordinance 2017 (Notified on 23.11.2017) laying down certain disqualifications in respect of persons interested in submitted the resolution plans, financial creditors raised concerns questioning the eligibility of the Resolution Applicant under section 29A (c) and (h). However, NCLT being satisfied held that Resolution Applicant is eligible under Section 29A (c) (h) of the amended Code.
- Thereafter, on application by Resolution Applicant (Mr. A.K Lakhotia) for directions to dissenting creditors for reconsidering their decision with regard to approval of Resolution Plan, two of the dissenting financial creditors changed their voting status and gave assent to resolution plan and the plan acquired a voting share of 78.15 % (earlier resolution plan had voting share of 68.50%) and Final report was filed by the Resolution Professional stating that the Resolution Plan was passed by 78.50% votes share of financial creditors, meeting the criteria of section 30(2) of the Code.

Issues involved :

Briefly stated, the two main issues that arose in this case were: (1) Firstly whether NCLT has the power to exclude the time limit prescribed under section 12 of the Code? If not whether the NCLT has power to exclude the duration of stay passed by NCLAT and the period rendered for disposal of interim applications by the NCLT during CIRP (2) Whether reconsideration of vote in respect of approval of Resolution Plan already finalised is permissible under law?

Decision of the NCLT and the reasons thereof:

- NCLT held that the intention behind the enactment is no doubt to have resolution rather liquidation. NCLT relied on decision of NCLAT in Quantum Ltd v Indus Finance Corporation Ltd (CA (AT) (Insolvency) 35. of 2018 wherein NCLAT extended the period of resolution process for 90 days counted from the date of order of NCLAT. NCLT noted that NCLAT held *“The period between 181 days and passing of this order shall not be counted for any purpose and is to be excluded for all purposes and is to be excluded for all purpose”*.
- NCLT also relied on PNB Vs. Bhushan Power & Steel Ltd, decided by the Hon’ble Principal Bench of NCLT wherein it was held that *“In any case the period which is consumed in the litigation would not prima facie be part of the period prescribed for CIRP under the IBC”*.
- NCLT also relied on Rule 15 and 153 of NCLT Rules, 2016 and observed that a tribunal in its discretion from time to time in the interest of justice and for reasons to be recorded, enlarge such period, even though the period fixed by or under these rules or granted by Tribunal may have expired.
- In view of aforesaid, NCLT held that grave injustice would occur if a prayer of extension of time is not allowed for no fault of applicant and observed that Adjudicating Authority can extend the time limit provided under section 12 of the Code. NCLT noted that section 12 of the Code does not specify any restriction upon the Adjudicating Authority in excluding the period taken for inter party litigation before the conclusion of CIRP and observed that what is excluded is extension beyond 270 days.
- NCLT observed that this is a unique case in which CIRP could not be completed within 270 days. NCLT noted that prayer for exclusion of period of 106 days due to pending litigation by the Resolution Applicant Mr. A.K. Lakhotia was due to exceptional circumstances occasioned beyond the control of the Resolution Applicant in this case and approved the Resolution Plan and allowed the Prayer of Resolution Applicant for exclusion of period of 106 days due to pending litigation.
- On the issue whether reconsideration of vote in respect of approval of Resolution Plan already finalised is permissible under law, NCLT observed that the voting right has been exercised by creditors voluntarily without having any kind of compulsion. NCLT noted that financial creditor may change its mind and review its earlier decision upon deliberation with Resolution Applicant and vote in favour when it is put to vote. NCLT also noted that whether or not a member of CoC can change its mind on a decision once it has been adopted, is within their own power and choice. In this regard, NCLT noted that no specific bar in the Code or Regulation was brought before it. In view of aforesaid, NCLT held that reconsideration of Resolution Plan is not bad in law.

- NCLT also rejected the contention that request for reconsideration was not from the side of Creditors but from Resolution Applicant. NCLT observed that CoC could not be convened after 270 days as there is no existence of CoC unless period is extended or time duration for litigation is excluded by NCLT. NCLT also noted that CoC cannot convene meeting and cannot ask its members to reconsider a Resolution Plan and hence resolution applicant approached NCLT was proper.

VII. NEWS AROUND THE CORNER

1) UltraTech ready to pay Rs 79.60 billion to take over Binani Cement

- Initially in February 2018, when bidding process for Binani Cement commenced UltraTech Cement (“UltraTech”) was willing to pay approximately Rs. 60 billion to acquire Binani Cement.
- In March, 2018 UltraTech increased its bid to Rs 72.66 billion but lost it to Dalmia Bharat.
- But as per the latest reports, UltraTech is now willing to pay Rs 79.60 billion to acquire Binani Cement.
- Ultratech has increased its bid by Rs 7 billion more than its earlier offer which was Rs 72.66 billion. Although the revised offer of UltraTech was rejected in the voting process. But after the conclusion of CoC Meeting, UltraTech offered an out-of-court settlement to Binani Cement.

Source: Business Standard/Dated: 16th April, 2018

http://www.business-standard.com/article/companies/insolvency-ultratech-willing-to-pay-rs-79-60-bn-to-take-over-binani-cement-118041601218_1.html

2) Amtek Auto submits resolution plan to NCLT

- Corporation Bank filed the insolvency petition against Amtek Auto under Section 7 of the Code in July 2017 for default in the repayment of approximately Rs. 825 Crores.
- Amtek Auto is one of the top 12 loan defaulters identified by RBI.
- Committee of Creditors of Amtek Auto approved the resolution plan submitted by the Liberty House Group being the highest bidder during bidding process.

Source: Financial Express /Dated: 17th April, 2018

<https://www.financialexpress.com/industry/amtek-auto-submits-resolution-plan-to-nclt/1135424/>

3) Relief for Home Buyers: NCLAT assures financial returns

- In the appeal preferred in the matter Nikhil Mehta v/s. AMR Infrastructure Limited, NCLAT stated that *arrears of assured returns and money owed by a builder to a buyer with whom an agreement is in place to make regular payments will be considered as 'Financial Debt' and person getting assured returns will be considered as 'Financial Creditor'*.

Source: Time of India /Dated: 17th April, 2018

<https://timesofindia.indiatimes.com/business/india-business/assured-returns-to-home-buyers-is-financial-debt-rules-nclat/articleshow/63792452.cms>

4) Fugitive Economic Offenders Ordinance Approved by the Cabinet

- The Fugitive Economic Offenders Ordinance 2018 has been approved by the Cabinet which would empower the government to seize the domestic assets of those deemed by a relevant court to be fugitive economic offenders.

Source: The Hindu / Dated: 21st April, 2018

<http://www.thehindu.com/business/Economy/cabinet-approves-promulgation-of-fugitive-economic-offenders-ordinance/article23627311.ece>

5) NCLT asks Binani Cement RP to stay on as 270-day moratorium draws to a close

- In the case of Binani Cement, the 270-day moratorium period has come to an end.
- As per the Code, a Resolution Plan has to be approved by the NCLT maximum within the period of 270 days; else the company could go in for liquidation.
- However, NCLT has discretionary powers to extend the timeframe or not consider time taken for litigation within the stipulated period.
- Since in case of Binani Cement, hearing could not be completed, therefore as per NCLT, Kolkata Bench Order the RP will continue management of the corporate debtor until further order is issued by NCLT.

Source: Economic Times / Dated: 21st April, 2018

https://economictimes.indiatimes.com/articleshow/63853254.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

6) Foreign Assets under IBC

- The ongoing insolvency proceedings against Binani Cement will not only determine the sanctity of out-of-court settlements but also test how the Insolvency and Bankruptcy Code (IBC) deals with the foreign assets of companies going through the National Company Law Tribunal (NCLT)-driven process.
- It is the need of an hour that IBC provisions should be amended to take control of the foreign assets of sick companies.

Source: Business Line / Dated: 22nd April, 2018

<https://www.thehindubusinessline.com/news/ibc-process-what-happens-to-foreign-assets/article23638478.ece>

We trust you will find this issue of our bulletin useful and informative.

Wish you good luck in all your endeavors!!

Team ICSI IIP