

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

**KNOWLEDGE REPONERE**  
**(13<sup>th</sup> August-14<sup>th</sup> September, 2018)**

**Dear Professional Members,**

Greetings!

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

## **REGULATORY UPDATES**

### **IBBI Circulars**

#### **1. Compliance of regulation 13 (2) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016.**

IBBI issued a circular on 31<sup>st</sup> August, 2018 with regard to the intimation of change in the Constitution of IPEs to IBBI within seven days of such change, subject to conditions specified under sub-regulation (2) of regulation 13.

As per the Circular, an insolvency professional entity (IPE) which is recognised by the IBBI under Chapter V of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 is directed to provide the information within seven days from the date when an insolvency professional ceases to be its director or partner or joins as its partner or director. The information shall be provided by the authorised signatory of the IPE in the format provided in the Annexure by an email from the email address of the IPE registered with the Board to [ipe@ibbi.gov.in](mailto:ipe@ibbi.gov.in). Failure to comply with the said requirement shall invite appropriate action, including withdrawal of recognition granted to an IPE.

The link to the circular can be accessed at:

[http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Aug/Circular-IPEdated%2031st%20August%202018\\_2018-08-31%2018:09:26.pdf](http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Aug/Circular-IPEdated%2031st%20August%202018_2018-08-31%2018:09:26.pdf)

#### **2. Voting in the Committee of Creditors**

IBBI issued a circular on 14<sup>th</sup> September, 2018 with regard to Voting by Committee of Creditors, clarifying that a person, who is not a member of the Committee of Creditors, does not have voting right in the Committee of Creditors. A person, who is not a member of the Committee of Creditors, cannot be regarded as one who has voted against a resolution plan or abstained from voting..

The link to the circular can be accessed at:

[http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Sep/Circular-Voting%20in%20the%20Committee%20of%20Creditors\\_2018-09-14%2018:32:15.pdf](http://ibbi.gov.in/webadmin/pdf/legalframework/2018/Sep/Circular-Voting%20in%20the%20Committee%20of%20Creditors_2018-09-14%2018:32:15.pdf)

### **ADMITTED CASES**

Cases under the Code are being filed expeditiously across the various benches of National Company Law Tribunal ("NCLT"). The newly admitted cases with regard to CIRP under the Code are as below:

<b>S. No.</b>	<b>Case Title</b>	<b>Relevant Section</b>	<b>NCLT Bench</b>	<b>Amount in default as mentioned in application (in Rupees)</b>
1.	Mr. Bhanu Ram & ors v/s M/s HBN Dairies & Allied Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	90.71 Lakhs
2.	Suria Construction v/s Kohinoor pulp & paper pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Kolkata	15.57 Lakhs
3.	Mr. Tejwant Singh v/s M/s Associated Drilling & Services Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	13.57 Lakhs
4.	RG Steel v/s M/s Bee Kay Presicum (India Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Allahabad	21 Lakhs
5.	SEI Trading India pvt.ltd. v/s Aishwarya technologies and	Section 9 of the Code dealing with the initiation of	Hyderabad	1.72 Crore

	telecom limited.	CIRP by operational creditor.		
6.	State Bank Of India v/s SRS Ltd.	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chandigarh	585 Crore
7.	M/s Pohoja Print Solutions Pvt. Ltd. v/s M/s Nova Electro Magnetics Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chennai	3.60 Lakhs
8.	Weather Makers pvt. Ltd. v/s Parabolic Drugs Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Chandigarh	73.37 Lakhs
9.	Reliance Communications & Infrastructures Ltd. v/s TVC Skyshop Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	25.83 Lakhs
10.	Deepak Seth v/s Moods Hospitality Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Allahabad	4 Crores

### **LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION**

<b>S. No</b>	<b>Case Title</b>	<b>Bench</b>	<b>Date of Order</b>
<b>1.</b>	Conros Steels Private Limited	Mumbai	21.08.18
<b>2.</b>	Eastern Gases Limited	Kolkata	21.08.18
<b>3.</b>	Brown Kraft Industries	Mumbai	27.08.18

4.	Gupta Global Resources pvt Ltd	Mumbai	28.08.18
5.	Bajrangibali Alloys pvt Ltd.	Kolkata	28.08.18
6.	Techno Fab Manufacturing Limited	Kolkata	05.09.18

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	Jalan Intercontinental Hotels	Kolkata	24.08.18

### IBBI ORDERS

- IBBI in its order dated 23<sup>rd</sup> August, 2018, cancelled the registration of an Insolvency Professional and debarred him from seeking further registration as an Insolvency Professional or providing any services under Insolvency & Bankruptcy Code, 2016 for ten years. It was observed that no single creditor, whether secured or unsecured, irrespective of its voting power or share, can substitute the CoC. A RP must not engage in private communication with a creditor irrespective of his voting power. It was further held that the conduct of IP in all four CIRP's was in contravention of several provisions including the above as mentioned in the Code and Regulations.

The link to read the full order is as follow:

[http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/Order-%20Mukesh%20Mohan\\_2018-08-23%2018:18:58.pdf](http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/Order-%20Mukesh%20Mohan_2018-08-23%2018:18:58.pdf)

- IBBI in its order dated 24<sup>th</sup> August, 2018 imposed a monetary penalty of Rs. 1,00,000/- on the Insolvency Professional, to be paid to IBBI within 30 days. It was observed in the order that an insolvency professional shall not influence the decision or the work of the committee of creditors or debtor, or other stakeholders under the Code, so as to make any undue or unlawful gains for himself or his related parties, or cause any undue preference for any other persons for undue or unlawful gains and shall not adopt any illegal or improper means.

The link to read the full order is as follow:

[http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/Order-%20Mr.Dinkar\\_2018-08-24%2015:51:11.pdf](http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/Order-%20Mr.Dinkar_2018-08-24%2015:51:11.pdf)

- IBBI in its order dated 6<sup>th</sup> September, 2018 suspended an Insolvency Professional for three months on the ground that he used the term 'IBBI' in his LLP's name.

The link to read the full order is as follow:

[http://ibbi.gov.in/webadmin/pdf/order/2018/Sep/Kapil%20Goel%20order%20-6.9.18 2018-09-07%2013:06:08.pdf](http://ibbi.gov.in/webadmin/pdf/order/2018/Sep/Kapil%20Goel%20order%20-6.9.18%2018-09-07%2013:06:08.pdf)

### BRIEF OF NCLT JUDGEMENTS

S. No.	Case Details	Date of Order	Brief	Case link
1.	Invest Assets Securitisation pvt. Ltd v/s Mohan Gems & Jewels pvt. Ltd	01.08.2018	It was held that member of suspended Board of Directors may appear before NCLT whether by himself or through a representative.	<a href="https://nclt.gov.in/sites/default/files/Interim-order-pdf/Invest%20Assets%20Securitisation%20%26%20Reconstruction%20Pvt%20Ltd%20Vs.%20Mohan%20Germs%20%26%20Jewels%20Pvt%20Ltd._1.pdf">https://nclt.gov.in/sites/default/files/Interim-order-pdf/Invest%20Assets%20Securitisation%20%26%20Reconstruction%20Pvt%20Ltd%20Vs.%20Mohan%20Germs%20%26%20Jewels%20Pvt%20Ltd._1.pdf</a>
2.	R.Venkatakrishnan v/s Paragon Steels pvt. Ltd.	14.08.2018	The Adjudicating Authority directed the CoC to support RP and Resolution applicant.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Paragon%20Steels%20Pvt.%20Ltd.%20(R.%20Venkatakrishnan%20Vs.%20Paragon%20Steels%20Pvt.%20Ltd.%20&amp;%20Ors.)_2018-08-20%2016:52:39.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Paragon%20Steels%20Pvt.%20Ltd.%20(R.%20Venkatakrishnan%20Vs.%20Paragon%20Steels%20Pvt.%20Ltd.%20&amp;%20Ors.)_2018-08-20%2016:52:39.pdf</a>
3.	Shantanu T Ray v/s AML Steel & power Ltd. & Ors	17.08.2018	The tribunal passed an order directing the authorities (District Collector/ District Magistrate and the District Police Authorities) to secure and handover the property of the Corporate	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/17th%20Aug%202018%20in%20the%20matter%20of%20AML%20Power%20&amp;%20Steel%20Ltd.%20(Santanu%20T%20">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/17th%20Aug%202018%20in%20the%20matter%20of%20AML%20Power%20&amp;%20Steel%20Ltd.%20(Santanu%20T%20</a>

			Debtor to the Resolution Professional.	<a href="#">Ray%20Vs.%20AML%20Power%20&amp;%20Steel%20Ltd.%20&amp;%200rs.) 2018-08-24%2014:33:01.pdf</a>
4.	M/s Butterfly Appliance v/s SRK Kitchen Appliances pvt. Ltd.	21.08.2018	IRP was changed and replaced by another IRP due to certain compelling family circumstances. It was further directed by AA that the reply of the IRP to be forwarded to IBBI for taking action against the IRP who expressed his inability to accept the assignment.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/21st%20August%202018%20In%20the%20matter%20of%20SRK%20Kitchen%20Appliances%20Private%20Limited%20[Company%20Petition%20(IB)%20No.%20191-ALD-2018 2018-08-31%2019:06:36.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/21st%20August%202018%20In%20the%20matter%20of%20SRK%20Kitchen%20Appliances%20Private%20Limited%20[Company%20Petition%20(IB)%20No.%20191-ALD-2018 2018-08-31%2019:06:36.pdf</a>
5.	M/s Levcon Valves v/s pvt Ltd v/s Energo Engineering	24.08.2018	A short question was raised whether the moratorium could be extended to the bank guarantees furnished by non applicants by restraining them to encash those bank guarantees. It was held that the provision in Sec 14 (3) of the Code, 2016 would make it patent that moratorium would not apply to a surety in a contract of guarantee to a Corporate Debtor. Moreover, it is an independent agreement. Hence the application was dismissed.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/24th%20Aug%202018%20in%20the%20matter%20of%20Energo%20Engineering%20Projects%20Ltd.%20CA%20No.%20453-(PB)-2017%20in%20CP%20No.%20(IB)-160-(ND)-2017 2018-08-28%2015:45:06.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/24th%20Aug%202018%20in%20the%20matter%20of%20Energo%20Engineering%20Projects%20Ltd.%20CA%20No.%20453-(PB)-2017%20in%20CP%20No.%20(IB)-160-(ND)-2017 2018-08-28%2015:45:06.pdf</a>

## BRIEF OF NCLAT JUDGEMENTS

S. No.	Case Details	Date of Order	Brief	Case link
1	Export Import Bank of India (EXIM) v/s Resolution Professional JEKPL pvt Ltd.	14.08.2018	EXIM Bank was not treated to be the 'Financial Creditor'. It was held that EXIM Bank comes within the meaning of 'Financial Creditor' as defined under Section 5(7) r/w Section 5(8) of the I&B Code. In view of finding aforesaid, the claim of EXIM Bank having been wrongly rejected by the order of Adjudicating Authority has been set aside.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Export%20Import%20Bank%20of%20India%20Vs.%20Resolution%20Professional%20JEKPL%20Pvt.%20Ltd.%2018-08-20%2012:41:23.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Export%20Import%20Bank%20of%20India%20Vs.%20Resolution%20Professional%20JEKPL%20Pvt.%20Ltd.%2018-08-20%2012:41:23.pdf</a>
2	Jagmohan Bajaj v/s Shivam fragrances private limited	14.08.2018	The application was dismissed by the Appellate Tribunal imposing a <i>cost of Rs. 1 Lakh</i> on the Appellant with an opinion that the appeal is frivolous and the Appellant has encroached upon the precious time of this Appellate Tribunal on flimsy grounds. The grounds of appeal was admission of application for initiation of CIRP.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Jagmohan%20Bajaj%20Vs.%20Shivam%20Fragrances%20Pvt.%20Ltd.%20&amp;%20Anr.%20CA%20(AT)%20No.%20428-2018%2018-08-20%2012:11:59.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/14th%20Aug%202018%20in%20the%20matter%20of%20Jagmohan%20Bajaj%20Vs.%20Shivam%20Fragrances%20Pvt.%20Ltd.%20&amp;%20Anr.%20CA%20(AT)%20No.%20428-2018%2018-08-20%2012:11:59.pdf</a>
3	Dharmendra Kumar v/s IBBI	24.08.2018	It was held that the consent is required to be taken from the Interim Resolution Professional as to whether he intends to continue as Resolution Professional or to wants to be discharged having completed 30 days,	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/24th%20Aug%202018%20in%20the%20matter%20of%20Dharmender%20Kumar%20Vs.%20IBBI%20&amp;%20Ors.%20CA%20(AT)%20No.%20313-2018%2018-08-">http://ibbi.gov.in/webadmin/pdf/order/2018/Aug/24th%20Aug%202018%20in%20the%20matter%20of%20Dharmender%20Kumar%20Vs.%20IBBI%20&amp;%20Ors.%20CA%20(AT)%20No.%20313-2018%2018-08-</a>

			Without his consent the Interim Resolution Professional cannot be forced to continue beyond 30 days.	<a href="#">31%2018:27:24.pdf</a>
4	LML Limited	07.09.2018	<p><b>Adverse remarks against RP</b></p> <p>The order was in relation to the appeal filed by the Insolvency Professional against the adverse remarks by NCLT regarding:</p> <ol style="list-style-type: none"> <li>1. Not completing the resolution process within 180 days</li> <li>2. Not filing the progress reports to Adjudicating Authority within time</li> <li>3. Being not careful in following the timelines of the Code.</li> </ol> <p>NCLAT stands by the decision of NCLT regarding first 2 points and regarding the 3<sup>rd</sup> point NCLAT did not interfere and made no observation.</p> <p>However, NCLAT stated that the observation of Adjudicating Authority should not be taken as a complaint against the Appellant for initiation of disciplinary proceeding.</p>	<a href="https://nclat.nic.in/Useradmin/upload/17357372565b963ab2d1314.pdf">https://nclat.nic.in/Useradmin/upload/17357372565b963ab2d1314.pdf</a>
5	Amandeepsingh	30.08.2018	Adjudicating Authority has	<a href="https://nclat.nic.in/Usera">https://nclat.nic.in/Usera</a>



	Bhatia		powers to direct ex directors/Managing Director of the Corporate Debtor not to leave the Country without the leave of the tribunal.	<a href="dmin/upload/16377303485b8fa089beaf1.pdf">dmin/upload/16377303485b8fa089beaf1.pdf</a>
6	Industrial Services (Gases)	05.09.2018	Appellate Authority does not have powers to condone the delay in making appeal beyond 15 days.	<a href="http://ibbi.gov.in/webadmin/pdf/order/2018/Sep/5th%20Sept%202018%20in%20the%20matter%20of%20Industrial%20Services%20(Gases)%20Vs.%20Electrosteel%20Steels%20Ltd.%20&amp;%200rs.%20CA%20(AT)%20No.%20516-2018%2018-09-11%2016:55:23.pdf">http://ibbi.gov.in/webadmin/pdf/order/2018/Sep/5th%20Sept%202018%20in%20the%20matter%20of%20Industrial%20Services%20(Gases)%20Vs.%20Electrosteel%20Steels%20Ltd.%20&amp;%200rs.%20CA%20(AT)%20No.%20516-2018 2018-09-11%2016:55:23.pdf</a>

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

Wish you good luck in all your endeavors!!

**Team ICSI IIP**