

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE
(14th September-21st October, 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 amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fourth Amendment) Regulations, 2018 on 05.10.2018. The highlight of the Regulations is as follows:
 - The Resolution Professional shall circulate the minutes of Committee of Creditors to all the members of CoC and to Authorized Representatives within 48 hours of the conclusion of the meeting. Further, the Authorized Representatives shall circulate the minutes received to all the creditors in a class.

The amount due to operational creditors under the resolution plan shall be paid in priority over financial creditors and *removing the clause relating to provision of at least liquidation value to dissenting financial creditors, so that all the financial creditors are treated equally.*
 - The regulations mandate the resolution professional to preserve the physical and electronic copy of the records relating to insolvency resolution process of the corporate debtor as per the record retention schedule.
- ❖ IBBI amends the Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2018 on 11.10.2018. The highlight of the Regulations is as follows:
 - An insolvency professional shall now also pay to IBBI, a fee @ 0.25% of the professional fee earned for the services rendered by him as an IP in the preceding financial year, on or before the 30th of April every year in addition to a fee of ten thousand rupees, every five years after the year in which the certificate is granted;

- Application fees of fifty thousand for seeking recognition as Insolvency Professional Entity
- An IPE shall pay to IBBI, a fee @ 0.25% of the turnover from the services rendered by it in the preceding financial year, on or before the 30th of April every year;
- An IPE shall pay fees of two thousand while intimating the change in directors/partners.
- A delay in payment of fees will attract interest @ 12% on the amount of fee unpaid, without prejudice to any other action

The link to the Amendment can be accessed at:

[https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/IP%20Reg%20Amendment%2011-10-18%20at%2011.00AM 2018-10-11%2020:43:13.pdf](https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/IP%20Reg%20Amendment%2011-10-18%20at%2011.00AM%202018-10-11%2020:43:13.pdf)

- ❖ IBBI amends the Insolvency and Bankruptcy Board of India (Insolvency Professional Agencies) (Amendment) Regulations, 2018 on 11.10.2018. The highlight of the Regulation is as follows:

- Eligibility for registration of IPA have been amended with the following in Regulation 3:
 - No person shall at any time, directly or indirectly, either individually or together with persons acting in concert, acquire or hold more than five per cent of the paid-up equity share capital in an insolvency professional agency: However, (i) a stock exchange; (ii) a depository; a banking company; (iv) an insurance company; a public financial institution; and a multilateral financial institution, may, acquire or hold, directly or indirectly, either individually or together with persons acting in concert, up to fifteen per cent. of the paid-up equity share capital of an insolvency professional agency:
 - the Central Government; a State Government; and a statutory regulator, may, acquire or hold, directly or indirectly, up to hundred per cent. of the paid-up equity share capital of an insolvency professional agency."

The link to the Amendment can be accessed at:

[https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/IPA%20Regulations%2011.10.2018%20AT%2011.00AM 2018-10-11%2020:44:03.pdf](https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/IPA%20Regulations%2011.10.2018%20AT%2011.00AM%202018-10-11%2020:44:03.pdf)

- ❖ IBBI amends the Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment), Regulations 2018 on 11.10.2018. Every Insolvency Professional Agency registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Model

Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2018, shall comply with regulations 5 and 5A within one year from the date of such commencement. The highlight of the Regulation is as follows:

- The Governing Board of an IPA shall consist of managing director, independent directors and shareholder directors. The managing director shall not be considered either as an independent director or shareholder director. An individual may serve as an independent director for a maximum of two terms of three years each or part thereof, or up to the age of seventy years, whichever is earlier.
- An IPA shall, subject to the guidelines issued by the IBBI from time to time, determine the qualification and experience, manner of appointment, terms and conditions of appointment and other procedural formalities associated with the selection and appointment of the managing director. The appointment, renewal of appointment and termination of service of the managing director shall be subject to prior approval of the IBBI. The managing director shall be an ex officio member of Membership Committee, Monitoring Committee, Grievance Redressal Committee and Disciplinary Committee.

The link to the Amendment can be accessed at:

https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/Model%20Bye%20Laws%20Regulations%2011.10.2018%20AT%2011.00AM10102018_2018-10-11%2020:45:35.pdf

- ❖ IBBI amends the Insolvency and Bankruptcy Board of India (Information Utilities) (Amendment) Regulations, 2018 on 11.10.2018. Every information utility registered as on the date of commencement of the Insolvency and Bankruptcy Board of India (Information Utilities) (Second Amendment) Regulations, 2018, shall comply with regulations 9 and 9A, within one year from the date of such commencement. It has similar provisions as mentioned in Insolvency and Bankruptcy Board of India (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) (Amendment), Regulations 2018.

The link to the Amendment can be accessed at:

https://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Oct/IU%20Amendment%20Regulations%2011.10.2018%20at%202.30pm%20corrected_2018-10-11%2020:44:37.pdf

- ❖ IBBI issued a circular on 17th October, 2018 with regard to Valuation under the Insolvency and Bankruptcy Code, 2016

As per the circular, every valuation required under the Code or any of the regulations made thereunder is required to be conducted by a 'Registered Valuer', that is, a valuer registered with the IBBI under the Companies (Registered Valuers and Valuation) Rules, 2017. The circular directed that with effect from 1st February, 2019, no

Insolvency Professional shall appoint a person other than a registered valuer to conduct any valuation under the Code or any of the regulations made thereunder.

The link to the circular can be accessed at:

https://ibbi.gov.in/webadmin/pdf/legalframework/2018/Oct/17th%20October,%202018%20Circular%20-%20Valuation%20under%20the%20Insolvency%20and%20Bankruptcy%20Code,%202016_2018-10-17%2012:38:49.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:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	State Bank of India v/s Techno Kart India Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	456.90 Crores
2.	Amira Pure Foods Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	5.07 Lakhs
3.	Gitanjali Gems Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	608 Crores
4.	NUI Pulp & Paper Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational	Chennai	23.91 Lakhs

		creditor.		
5.	Pixion Media Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	177 Crore
6.	Turbo Machinery Engineering Industries Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Hyderabad	10.46 Crore
7.	Osaka Pharmaceuticals Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Ahmedabad	64 Lakhs
8.	In the matter of Bengal India Global Infrastructure Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Kolkata	88 Crores
9.	Rayala Corporation Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Chennai	4.46 Crores
10.	Basic India Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	New Delhi	104 Crores
11.	Puma Realtors Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial	New Delhi	58.75 Lakh

		creditor.		
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LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Bookawheel Technologies Pvt. Ltd	Chandigarh	18.09.18
2.	In the matter of Moser Baer India Ltd.	New Delhi	20.09.18
3.	In the matter of Meka Dredging Company Private Limited	Mumbai	20.09.18
4.	In the matter of KKK Cotspin Pvt. Ltd.	Chandigarh	25.09.18
5.	In the matter of Annamalai Foods Pvt. Ltd	Chennai	26.09.18
6.	In the matter of Snowblue Trexim Pvt. Ltd.	Kolkata	26.09.18
7.	In the matter of Nandkishore Steel Industries Private Limited	Mumbai	26.09.18
8.	In the matter of J R Diamonds Pvt. Ltd.	Ahmedabad	01.10.18
9.	In the matter of Geo Express Pvt. Ltd.	New Delhi	05.10.18
10.	In the matter of Gee Ispat Pvt. Limited	New Delhi	05.10.18
11.	In the matter of Nife Fire Systems Pvt. Ltd	Chennai	05.10.18
12.	In the matter of Jinprabha Infrastructure Developments Ltd.	Kolkata	08.10.18
13.	In the matter of Luxury Train	New Delhi	08.10.18

	Private Ltd.		
14.	In the matter of VISA Power Limited	Kolkata	11.10.18
15.	In the matter of Business Jets India Private Limited	Chennai	12.10.18

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	In the matter of Malabar Hotels Pvt. Ltd.	Chennai	17.09.18
2.	In the matter of Assam Company India Ltd.	Guwahati	20.09.18
3.	In the matter of Dooteriah & Kalej Valley Tea Estates Pvt. Ltd.	Kolkata	26.09.18
4.	In the matter of Rajpur Hydro Power Pvt. Ltd.	Chandigarh	27.09.18
5.	In the matter of Universal Power Transformers Private Limited	Bengaluru	11.10.2018

IBBI ORDERS

- ❖ IBBI in its order dated 23rd August, 2018, imposed monetary penalty on a Resolution Professional equal to one hundred percent of the total fee payable to him as IRP and as RP in the CIRP of Stewarts & Lloyds of India Ltd. Further the Board directed the Resolution Professional to undergo the pre-registration educational course specified under regulation 5(b) of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 from his Insolvency Professional Agency to improve his understanding of the Code and the regulations made thereunder, before accepting any assignment under the Insolvency and Bankruptcy Code, 2016. It was observed that the RP did not conduct even one meeting of the CoC during the entire CIRP (only one meeting of CoC was conducted when he was appointed as IRP). It was further observed that the Resolution Professional has contravened provisions of sections 31(2) and 208(2)(a) of the Code read with regulation 7(2)(a) and 7(2)(g) of the IP regulations and clauses 9, 10, 12, 14, 15 of the Code of Conduct.

The link to read the full order is as follow:

https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/Order%20Sandeep%20Kumar%20Gupta%2015102018_2018-10-15%2018:22:37.pdf

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	Arcelormittal India Private Limited Vs Satish Kumar Gupta & Ors.	04.10.18	Supreme Court	<p>It was observed that Resolution Professional is not required to take any decision, but merely to ensure that the resolution plans submitted are complete in all respects before they are placed before the Committee of Creditors. Section 30(2)(e) does not empower the Resolution Professional to 'decide' whether the resolution plan does or does not contravene the provisions of law.</p> <p>It was further observed that if a resolution plan has been approved by the Committee of Creditors, and has passed muster before the Adjudicating Authority, this determination can be challenged</p>	https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/33945_2018_Judgement_04-Oct-2018_2018-10-04%2015:36:20.pdf

				<p>before the Appellate Authority under section 61 and may further be challenged before the Supreme Court under section 62, if there is a question of law arising out of such order.</p> <p>Further, it was held that the timelines that are to be adhered by the NCLT and NCLAT are of great importance, and if the matter is not disposed of within the time limit specified, the reasons must be recorded by either the NCLT or NCLAT.</p>	
2.	B.K. Educational Services Private Limited Vs Parag Gupta and Associates	11.10.18	Supreme Court	<p>The Limitation Act, 1963 will be applicable on the applications that are made under section 7 and Section 9 of the Insolvency and Bankruptcy Code, 2016 on and from the commencement of IBC on 01.12.2016.</p>	<p>https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/In%20the%20matter%20of%20B.K.%20Educational%20Services%20Private%20Limited%20Civil%20Appeal%20No.439,436,3137,4979,5819,7286%20-2018%2018-10-11%2017:02:0</p>

					0.pdf
3.	In the matter of AMR Infrastructure Ltd.	28.09.18	NCLT	<p>Deadlock was created by the low percentage of votes cast by a new category of financial creditors- <i>Real Estate</i></p> <p>The applicant IRP expressed his inability to proceed further as neither the Code nor the Regulations framed there under provide any specific guidance for Resolution of the deadlock</p> <p>It was observed that for appointment of IRP as Resolution Professional (RP) by the CoC 61.69% of the votes were casted in the favor of the resolution and 38.31 of the votes were casted against the resolution. For fixing the expenses to be incurred on or by the PR 59.25% of the votes casted in favor of the resolution and 40.75% of the votes casted against the</p>	<p>https://ibbi.gov.in/webadmin/pdf/order/2018/Sep/28th%20Sept%202018%20in%20the%20matter%20of%20AMR%20Infrastructure%20Ltd.%20CA%20No.%20811-(PB)-2018%20in%20IB-02-(PB)-2017%2018-09-28%2018:35:02.pdf</p>

				<p>resolution. For raising of Interim Finance to fund CIRP Cost, 62.56% of the votes casted in favor of the resolution plan and 37.44% of the votes casted have been casted against the resolution. For change of Management by removal of present directors and appointment of new directors, 98.79% of the votes casted in favor of the resolution and 2.61% of the votes casted have been casted against the resolution. For Banking Arrangements for AMR Infrastructures Ltd, 97.39% of the votes casted in favor of the resolution and 2.61% of the votes casted against the resolution.</p> <p>Therefore, IRP was appointed as RP as he had secured largest percentage of voting share threshold. Further it was held that Agenda item no4, 6 to 9 are also</p>	
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				deemed to be approved as majority in CoC has ratified those resolutions.	
4.	A. Manickam Vs. G. V. Ravikumar, R.P & Anr.	05.10.18	NCLAT	<p>It was held that if the shareholders are aggrieved with the resolution plan, they shall approach (suspended) Board of Directors to raise such question in the meeting of the Committee of Creditors.</p> <p>NCLAT cannot entertain the resolution plan which is already been approved by NCLT.</p>	https://nclat.nic.in/Useradmin/upload/13043757695bbc296f1370b.pdf
5.	Asset Reconstruction Company (India) Ltd. Vs The Dhar Textile Mills Ltd.	03.10.18	NCLAT	<p>The grievance of the appeal is that the AA reserved the order but no order has been passed after 11 months of filing.</p> <p>NCLAT did not express any opinion. However, directed NCLT to pass appropriate order within 2 weeks.</p>	https://nclat.nic.in/Useradmin/upload/3210516105bbc25e63ba06.pdf
6.	Ashutosh Singhania v/s Liquidator, Vindhiya Vasini Industries Ltd. &	25.09.18	NCLAT	NCLAT directed that no action can be taken against the moveable and	https://nclat.nic.in/Useradmin/upload/8276104695bb857c5

	Anr.			immoveable assets of the personal guarantor for liquidation. It is termed as illegal.	9b969.pdf
7.	Mrs. Madhurima Mridul & Anr v/s Raj Infrastructures Development (India) Pvt. Ltd. & Ors.	24.09.18	NCLAT	<p>Appellant (Financial Creditor, Home buyer) appealed before NCLAT that NCLT suo moto appointed IRP without consultation with IBBI.</p> <p>NCLAT dismissed the application and did not interfere in the appointment as they were of the view that only few days has been left for the appointment of RP and after that RP can properly function.</p>	https://nclat.nic.in/Useradmin/upload/14133323105ba9e5dfc8a0d.pdf
8.	Mr. G. Rama Manohar Reddy VS SEI Trading India Pvt. Ltd. & Ors.	19.09.18	NCLAT	<p>Appellant Authority held that NCLT failed to notice the pre existence of civil suit before admission of CIRP. However, the matter was settled also between the parties.</p> <p>NCLAT set aside the admission of order and released Board of Directors to function</p>	https://nclat.nic.in/Useradmin/upload/9503238625ba389bd4c1db.pdf

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

Wish you good luck in all your endeavors!!

Team ICSI IIP

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