

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE
(05th November-26th November, 2018)

Dear Professional Members,

Greetings!

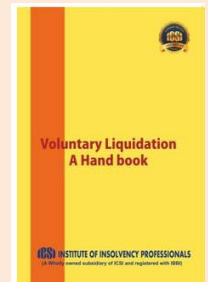
We are pleased to share with you our next issue of the knowledge bulletin on the Insolvency and Bankruptcy Code, 2016 ("**Code**").

!! ICSI IIP PUBLICATIONS NOW AVAILABLE ALSO ON FLIPKART !!

Voluntary Liquidation- A Handbook:

This Publication covers the procedural aspects of voluntary liquidation of corporate persons along with the specimen formats of Board resolution, shareholders' resolution, engagement letter, intimations to various authorities, preliminary report, final report, application to NCLT for dissolution, FEMA and taxation aspects of Voluntary liquidation etc.

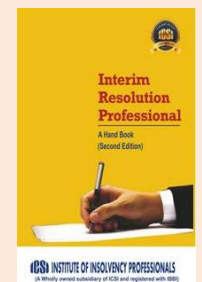
<http://dl.flipkart.com/dl/voluntary-liquidation-hand-book/p/itm9n26hqwy3sf?pid=9789386676047&cmpid=product.share.pp>



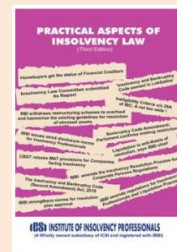
Interim Resolution Professional- A Handbook (Second Edition):

This Publication is an updated edition covering the role of Interim Resolution Professional, and the compliances and functions required to be performed. It also contains specimen formats of NCLT applications, Notices of COC, process of handing over from IRP to RP, important judgements supporting/directing IRP directly.

<http://dl.flipkart.com/dl/interim-resolution-professional-hand-book/p/itm9n25azggfy23?pid=9789386676030&cmpid=product.share.pp>



Practical Aspects of Insolvency Law (Third Edition):



This Publication is updated up to August, 2018 and covers the Insolvency and Bankruptcy (Amendment) Act, 2018 and related changes in the Regulations, Circulars etc., specimen formats of NCLT applications along with major landmark judgments that would help Insolvency Professionals get an insight into the interpretations of provisions of Code.

<http://dl.flipkart.com/dl/practical-aspects-insolvecy-law/p/itm9n263hqmcf?pid=9789386676023&cmpid=product.share.pp>

UPDATES

WORLD BANK 'EASE OF DOING BUSINESS' REPORT:

India jumped to the 77th position in the global 'Ease of doing business' report this year. The World Bank in its report stated that India improved in six out of the ten parameters that determine its position on the global arena. These parameters include the ease of starting a business, construction permits, getting electricity, getting credit, paying taxes, trade across borders, enforcing contracts and resolving insolvency. Even though India has been ranked 77th, the report states that it has been ranked 108 under the 'resolving insolvency' parameters opposed to 103 in the previous report. The factors that determine this rank include time, rate of recovery, legal framework and cost. As per the World Bank report '*India strengthened access to credit by amending the rules on priority of secured creditors outside reorganization proceedings and by adopting a new law on insolvency that provides a time limit and clear grounds for relief to the automatic stay for secured creditors during reorganization proceedings.*' However, in a recent report by Debtwire Asia it was discovered that on an average it took about 285 days to approve a resolution plan from the time the Corporate Debtor was admitted under Corporate Insolvency Resolution Process under the Code as opposed to 233 days as estimated by the Government. The Code is at its nascent stage and it will have to overcome many practical and logistical hurdles to become consistent and comprehensive. The introduction of Cross Border Insolvency under the Code will help put India on the global map and put foreign creditors at ease, however, simply adopting the UNCITRAL cross-border insolvency regime should not be mistaken to mean that the provision of the Code will be imported, or its intent applied in foreign jurisdictions. There will only be scope for improvement if major issues like timely resolution, cross-border insolvency and group of companies' insolvency are addressed and implemented. There are some teething problems as Insolvency and Bankruptcy Code is a relatively new law but with constant reforms and amendments as

well as smooth implementation of the same it will be able to yield good results and achieve a better ranking in the next report.

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.	AVK Automall Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	1.19 Lacs
2.	Oneworld Industries Pvt. Ltd	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	7.78 Crores
3.	Astonfield Solar (Gujarat) Private Limited	Section 10 of the Code dealing with the initiation of CIRP by corporate debtor.	New Delhi	10 Crore
4.	In the matter of Aristo Developers Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	12.10 Crore
5.	In the matter of Birla Cotsyn (India) Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	29.85 Crore

6.	In the matter of AVK Automart Pvt. Ltd.	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	1.31 Lakh
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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 Bhootnath Consultancy Pvt. Ltd.	Kolkata	09.11.18
2.	In the matter of Satyalaxmi Tradelink Pvt. Ltd.	Kolkata	09.11.18
3.	In the matter of Flower Dealcom Pvt. Ltd.	Kolkata	14.11.18
4.	In the matter of Ashoka Multiyarn Mills Ltd.	Jaipur	16.11.18

IBBI ORDERS

❖ IBBI in its order dated 12th November, 2018, cancelled the registration and debarred an Insolvency Professional from applying for a fresh registration for the next ten years for conniving with the parties to allow a One Time Settlement (OTS) in the garb of resolution plan and to allow an ineligible Resolution Applicant to submit the OTS and did absolutely nothing either to run the business of the Corporate Debtor or to run the Corporate Insolvency Resolution Process (CIRP). This was in contravention of (a) sections 17, 23, 25(2)(h), 29A, 30(2)(e), 30(4) and 208(2)(a) and (d) of the Insolvency and Bankruptcy Code, 2016; (b) Regulations 18 to 26, 36A, 37, and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016; and (c) Regulations 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations 2016 read with clauses 1, 2, 3, 5, 10, 12, 13, 14, 15, and 16 of the Code of Conduct for insolvency professionals specified in the First Schedule to the said Regulations. The order laid down guidelines for how Insolvency Professionals should conduct themselves after the commencement of the CIRP.

The link to read the full order is as follow:

[https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/Order%20in%20the%20Matter%20of%20Martin%20S.%20K.%20Golla 2018-11-13%2014:30:13.pdf](https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/Order%20in%20the%20Matter%20of%20Martin%20S.%20K.%20Golla%202018-11-13%2014:30:13.pdf)

BRIEF OF LANDMARK SUPREME COURT JUDGEMENTS (1st August-31st October, 2018)

S. No.	Case Details	Date of Order	Brief	Case link
1.	In the matter of Transmission Corporation of Andhra Pradesh Limited Vs Equipment Conductors and Cables Limited	23.10.18	<p>An application was moved to NCLT u/s 9 of IBC. NCLT dismissed the petition observing that the very claims were subject matter of arbitration and the award was passed rejecting these claims as time-barred.</p> <p>In the appeal filed before NCLAT, it observed that a prima facie case has been made out by the petitioner and said that if appeal is allowed and corporate insolvency resolution process is initiated against Transmission Corporate of Andhra Pradesh Ltd., the government undertaking may face trouble.</p> <p>Hon'ble Supreme Court observed that Insolvency and Bankruptcy Code is not intended to be substitute to a recovery forum. It is also laid down that whenever there is</p>	https://ibbi.gov.in/webadmin/pdf/order/2018/Oct/33945_2018_Judgement_04-Oct-2018_2018-10-04%2015:36:20.pdf

			existence of real dispute, the IBC provisions cannot be invoked. It has also set aside order dated September 04, 2018 passed by the NCLAT. However, It was further observed that as the Court has gone into merits and found that order of the NCLT is justified, no purpose would be served if the matter is remanded back to the NCLAT for deciding the appeal filed. Accordingly the Appeal was dismissed.	
2.	B.K. Educational Services Private Limited Vs Parag Gupta and Associates	11.10.18	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.	https://ibbi.gov.in/w_eadmin/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%2017:02:00.pdf
3.	Arcelormittal India Private Limited Vs Satish Kumar Gupta & Ors.	04.10.18	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	https://ibbi.gov.in/w_eadmin/pdf/order/2018/Oct/33945_2018_Judgement_04-Oct-2018_2018-10-04%2015:36:20.pdf

			<p>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 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>	
4.	State Bank of India Vs Ramakrishna & Anr	14.08.2018	By an order dated 18 September 2017, NCLT, Chennai Bench allowed the application filed by Mr. Ramakrishnan and restrained SBI from moving against him until the period of moratorium was over. An appeal was preferred by SBI before NCLAT, against the order of the NCLT. The NCLAT in	https://ibbi.gov.in/w/ebadmin/pdf/order/2018/Aug/11958_2018_8_Judgement_14-Aug-2018_2018-08-14%2022:04:34.pdf

			<p>its judgement dated 28 February 2018 refused to interfere with the order passed by the NCLT. In doing so, the NCLAT held that the moratorium imposed under Section 14 would also apply to the personal guarantor.</p> <p>Hon'ble Supreme Court held that the period of moratorium under Section 14 of the Insolvency and Bankruptcy Code, 2016 (Code) would not apply to the personal guarantors of a corporate debtor.</p>	
5.	In the matter of Pr. Commissioner of Income Tax Vs Monnet Ispat and Energy	10.08.18	<p>Section 238 of the Insolvency and Bankruptcy Code, 2016, states that the Code will override anything inconsistent contained in any other enactment, including the Income Tax Act and its progeny, making it clear that income-tax dues, being in the nature of Crown debts, do not take precedence even over secured creditors, who are private persons.</p>	https://ibbi.gov.in/w/ebadmin/pdf/order/2018/Aug/4309_2018_Order_10-Aug-2018_2018-08-16%2009:32:21.pdf
6.	In the matter of Chitra Sharma & Ors Vs Union of India	09.08.18	<p>The Supreme Court noted that the IBC at its time of enactment did not capture and recognise the interests of the homebuyers, which have now been safeguarded by the way of Amendment.</p> <p>The Supreme Court has</p>	https://ibbi.gov.in/w/ebadmin/pdf/order/2018/Aug/25878_2017_Judgement_09-Aug-2018_2018-08-09%2013:01:40.pdf

			<p>given primacy to the IBC, and the processes and institutions under it. The Supreme Court categorically observed that the provisions of Section 29A are intended to ensure that persons responsible for insolvency of the corporate debtor do not participate in the resolution process as their participation would undermine the salutary object and purpose of the IBC.</p>	
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BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	Pravin Patel Vs. Corporate Finance & Investment Services India Pvt. Ltd.	01.11.18	NCLAT	<p>IRP was directed to ensure the following:</p> <ul style="list-style-type: none"> that the company remains on going and the manufacturing and production of the company do not suffer. payment of wages to the employees/workmen are made on time. 	https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/1st%20Nov%202018%20in%20the%20matter%20of%20Pravin%20Patel%20Vs.%20Corporate%20Finance%20&%20Investment%20Services%20India%20Pvt.%20Ltd._2018-11-09%2015:03:1

				<ul style="list-style-type: none"> • if any material is supplied during corporate resolution process, the payment must be paid to the supplier/creditor. • If necessary, will take aid of (suspended) Board of Directors. <p>Further, it also directed the Bank having account of the corporate debtor to cooperate with the Insolvency Resolution Professional to ensure the compliance of the above directions.</p>	4.pdf
2.	Thrive Solar Energy Pvt. Ltd	02.11.18	NCLT	Proposed IRP at the time petition was filed expressed his difficulty therefore another IRP was appointed in September, 2018. Now, the Operational Creditor moved an application to replace the present IRP with the IRP proposed initially at	https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/2nd%20Nov%202018%20in%20the%20matter%20of%20Thrive%20Solar%20Energy%20Pvt.%20Ltd.%20C%20P%20(IB)%20No.%20355-9-HDB-

				<p>the time petition was filed. IRP appointed presently had no objection. Therefore, the IRP was replaced by another IRP has requested by Operational Creditor.</p>	<p>2018 2018-11-08%2017:16:45.pdf</p>
3.	Binani Industries Limited v. Bank of Baroda and Another	14.11.18	NCLAT	<p>In exercise of powers conferred by Section 31 of the 'I&B Code' read with order by the Hon'ble Supreme Court, Ultratech Cement Limited submitted revised Resolution Plan which was approved by the Committee of Creditors. NCLAT emphasized on:</p> <ul style="list-style-type: none"> • The objectives of the Code and the need to abide by them. • The resolution plan should not be treated as 'sale' or 'liquidation' or 'recovery'. • While finalizing the resolution plan, the aim 	<p>https://ibbi.gov.in/webadmin/pdf/order/2018/Nov/14th%20Nov%202018%20in%20the%20matter%20of%20Binani%20Ltd.%20Vs.%20Bank%20of%20Baroda%20&%20Anr.%20CA%20(AT)%20No.%2082-2018 2018-11-14%2017:12:47.pdf</p>

				<p>should be balance of interests of all types of creditors. The dues of all operational creditors should be treated like claims of financial creditors.</p>	
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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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