

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## KNOWLEDGE REPONERE (16<sup>th</sup> February- 22<sup>nd</sup> February, 2019)

**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**").

### PAST EVENTS

- ❖ Interactive Session and Networking for Insolvency Professionals & Other Professionals was organized on 20<sup>th</sup> Feb, 2019 by ICSI IIP.



*An Interactive Session and Networking for Insolvency Professionals & Other Professionals* was organized by ICSI IIP on February 20, 2019 to deliberate on various issues faced by IPs. The Interactive Session covered issues such as age limit for Graduate Insolvency Program, treatment of contingent liabilities during CIRP, fixing of IP fees, due diligence

to be performed by an IP, support extended to an IP from other Revenue/Government Authorities etc. The Session, besides offering solutions to the challenges faced by Insolvency Professionals, also provided clarity on the role of Resolution Professionals in the whole process.

## UPCOMING EVENTS

### ❖ **IBC- A game changer for the Bankers: An Interactive Session on March 05, 2019**

**Insolvency and Bankruptcy Board of India and ICSI Institute of Insolvency Professionals (ICSI IIP)** jointly proposes to organise a half-day session for the Bankers on the subject '**IBC- A game changer for the Bankers**', at the Conference Hall, 5th Floor, Andhra Association, 24-25, Lodhi Institutional Area, New Delhi on March 5, 2019 from 3.00pm to 6.00pm.

## IBBI ORDER

IBBI in its order dated 21st February, 2019 cancelled the registration and debarred an Insolvency Professional from applying for a fresh registration for the next ten years as the professional has repeated the same contravention in CIRPs of 15 CDs covered in the SCN issued by IBBI and in conspiracy with her husband. Further the Insolvency Professional has seriously compromised her independence, impartiality and integrity. Insolvency Professional consented to take up 15 assignments simultaneously, much beyond her capacity, putting the life of 15 CDs at risk. Therefore has contravened provisions of sections 17, 20, 23 and 208(2)(a) and (e) of the Code, regulations 7(2)(a), (b) and (h) of the IBBI (Insolvency Professionals) Regulations, 2016 and clauses 1, 2, 3, 5, 9, 10, 11, 12, 14, 22, 25, and 27 of the Code of Conduct specified thereunder.

The link to read the full order is as follow:

[https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Feb/Order%20dated%2021-02-2019%20in%20the%20matter%20of%20Bhavna%20Sanjay%20Ruia.-1\\_2019-02-21%2017:43:03.pdf](https://ibbi.gov.in/webadmin/pdf/whatsnew/2019/Feb/Order%20dated%2021-02-2019%20in%20the%20matter%20of%20Bhavna%20Sanjay%20Ruia.-1_2019-02-21%2017:43:03.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 mentioned in application
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				(in Rupees)
1.	In the matter of Maharashtra Vidhyut Nigam Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Mumbai	94.95 Crore
2.	In the matter of IDV Technology Solutions Private Limited	Section 7 of the Code dealing with the initiation of CIRP by financial creditor.	Principal Bench	67 Lakh
3.	In the matter of Delhi Control Deveices Private Limited	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Principal Bench	12.19 Lakh

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

S. No	Case Title	Bench	Date of Order
1.	In the matter of Sadhbhawana Impex Pvt. Ltd.	Chandigarh	13.02.2019
2.	In the matter of Global Coke Limited	Kolkata	19.02.2019

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

S. No	Case Title	Bench	Date of Order
1.	In the matter of Swadisht Oils Pvt. Ltd.	Allahabad	13.02.2019

## BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	Shailesh Sangani v. Joel Cardoso	30.01.2019	NCLAT	<p>NCLAT held that the money advanced by a Promoter, Director or a Shareholder of the Corporate Debtor as a stakeholder to improve financial health of the Company would have the commercial effect of borrowing on the Corporate Debtor notwithstanding the fact that no provision is made for interest. Thus, funds raised in such situation may be treated as Long Term Borrowings and therefore considered as financial debt under the Code.</p> <p>Appellate Tribunal in consent with the order passed by NCLT Mumbai Bench dismissed the appeal filed by the Corporate Debtor on the ground that amount claimed by 'Mr. Joel Cardoso' is a financial debt and</p>	<a href="https://nclat.nic.in/Useradmin/upload/20294392455c5198a2332cd.pdf">https://nclat.nic.in/Useradmin/upload/20294392455c5198a2332cd.pdf</a>

				can be treated as 'Financial Creditor.'	
2.	Sanjay Kumar Ruia v. Catholic Syrian Bank Ltd. & Anr	03.01.2019	NCLAT	<p>In the present case, the application was filed under Section 9 of the 'I &amp; B Code' and not under Section 55. Therefore it was held that the 'Fast Track Corporate Insolvency Resolution Process' is different from 'Corporate Insolvency Resolution Process' against such 'Corporate Debtors(s)' as may be notified by the Central Government in terms of clauses (a), (b) &amp; (c) of Section 55(2).</p> <p>It was held that the Adjudicating Authority had no jurisdiction to proceed with the 'Corporate Insolvency Resolution Process' beyond the period of 270 days and it cannot wrongly exercise its power under sub-section</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/3rd%20Jan%202019%20In%20the%20matter%20of%20Sanjay%20Kumar%20Ruia%20vs%20Catholic%20Syrian%20Bank%20Ltd%20%5bCA(AT)(Insolvency)560-2018%5d%2019-02-13%2010:43:26.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/3rd%20Jan%202019%20In%20the%20matter%20of%20Sanjay%20Kumar%20Ruia%20vs%20Catholic%20Syrian%20Bank%20Ltd%20%5bCA(AT)(Insolvency)560-2018%5d%2019-02-13%2010:43:26.pdf</a>

				<p>(2) of Section 55 of the 'I &amp; B Code.</p> <p>Regulation 34 makes it clear that the 'Committee of Creditors' shall design the 'Insolvency Resolution Process Costs' which includes the expenses incurred on or by the 'Resolution Professional'. After Adjudicating Authority approves the 'Resolution Plan' under Section 31, the 'Resolution Professional' is entitled to know the actual expenses allowed as approved by the 'Committee of Creditors' and the Adjudicating Authority.</p> <p>In the present case ,Appellate Tribunal held that the Adjudicating Authority has passed no order under Section 31 or Section 33 of the 'I &amp; B Code' therefore, the Adjudicating</p>	
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				Authority has no jurisdiction to decide the resolution cost including the fee of the 'Resolution Professional'.	
3.	Sham Lal v. Ramboll India Pvt. Ltd.	14.02.2019	NCLAT	<p>NCLAT in the matter wherein the Appellant is prepared to settle the matter with the Operational Creditor. Since Interim Resolution Professional is stated to have been issued public announcement, in the meanwhile the IP will keep it as a going concern. NCLAT held that the bank account(s) of the 'Corporate Debtor' be allowed to be operated for day-to-day functioning of the company such as for payment of current bills of the suppliers, salaries and wages of the employees'/workmen, electricity bills etc.</p> <p>'Interim Resolution Professional' will ensure that the company remains going concern and will take assistance of the (suspended)</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/NCLAT%20Interim%20Order%20Sham%20lal%20vs%20Ramboll%20India%20Pvt.%20Ltd.%20%5bCA(AT)(Insolvency)%20148-2019%5d_2019-02-15%2013:57:39.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/NCLAT%20Interim%20Order%20Sham%20lal%20vs%20Ramboll%20India%20Pvt.%20Ltd.%20%5bCA(AT)(Insolvency)%20148-2019%5d_2019-02-15%2013:57:39.pdf</a>

				Board of Directors. The persons who are working will perform their duties including the paid Directors. The person who is authorised to sign the bank cheques may issue cheques only after authorisation of the 'Interim Resolution Professional'.	
4.	Shalini Publicity Creative Pvt. Ltd. v. Dena Bank	18.02.2019	NCLAT	<p>The Adjudicating Authority took note of the fact that the One Time Settlement (OTS) proposal made by the Corporate Debtor had been rejected by the Financial Creditor and that the 'debt' and 'default' was established. AA proceeded to admit the application thereby initiating Corporate Insolvency Resolution Process against the Corporate Debtor.</p> <p>The AA held that on one hand the Appellant was seeking restructuring of loan in terms of RBI Guidelines seeking more time for One</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20In%20the%20matter%20of%20Shalini%20Publicity%20Creative%20Pvt.%20Ltd.%20vs%20Dena%20Bank%20[C A(AT)(Insolvency)%20153-2019] 2019-02-20%2011:23:42.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20In%20the%20matter%20of%20Shalini%20Publicity%20Creative%20Pvt.%20Ltd.%20vs%20Dena%20Bank%20[C A(AT)(Insolvency)%20153-2019] 2019-02-20%2011:23:42.pdf</a>

				Time Settlement (OTS) but on the other hand alleges fabrication and manipulation. What prompted the Corporate Debtor to seek restructuring of loan through One Time Settlement is explainable on no hypothesis other than the one that the Corporate Debtor had committed default qua the outstanding amount which was payable. For the aforesaid reason, AA dismissed the application.	
5.	Nagarjuna Oil Corporation( MAN Diesel and Turbo v. Rajendran Shanmagun)	21.01.2019	NCLT, Chennai	In the order for liquidation for Nagarjuna Oil Corporation (respondent) has been passed. However, AA observed that respondent's equipment is lying and is in the custody of the Applicant (German Company). AA held that disposal of equipment is essential and allowed the applicant to sell the equipment as per laws in	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/21st%20Jan%202019%20in%20the%20matter%20of%20Nagarjuna%20Oil%20Corporation%20Ltd.%20MA-17-2018%20In%20TCP-10-2017%2019-01-25%2011:26:39.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/21st%20Jan%202019%20in%20the%20matter%20of%20Nagarjuna%20Oil%20Corporation%20Ltd.%20MA-17-2018%20In%20TCP-10-2017%2019-01-25%2011:26:39.pdf</a>

				<p>Germany. The amount received in the sale is to be adjusted with the claim amount of the Applicant after deducting cost incurred to hold the sale. AA ordered that the proof of sale and supporting documents are to be submitted to the Liquidator. If the sale amount exceeds the sale amount then the excess amount is to be submitted to the Liquidator who will allot it as per waterfall mechanism under the Code.</p> <p>AA held that permission given to applicant to conduct the sale is given because of peculiar facts of the case and the same practice will not be allowed in future matters.</p>	
6.	Vinergy International Pvt. Ltd	08.02.19	NCLT, Mumbai	Initially the Petitioner filed petition u/s 7, IBC claiming himself to be a Financial Creditor, but on perusal of the records it appeared that the Petitioner had given notice u/s	<a href="https://nclt.gov.in/sites/default/files/final-orders-pdf/CP%203006%20-%202018%20Sanaya%20Tea%20Private%20Limite">https://nclt.gov.in/sites/default/files/final-orders-pdf/CP%203006%20-%202018%20Sanaya%20Tea%20Private%20Limite</a>

				<p>9, IBC pretending himself to be an Operational Creditor. The Petitioner has transferred an amount of Rs.1,00,00,000 to CD's account. Transferring amount to the account of Corporate Debtor, a person cannot claim to be a Financial Creditor. The Petitioner has not filed any document to substantiate its claim of being a Financial Creditor and debt as Financial Debt. There are contradictions in the petition as the petitioner has sent a demand notice treating the debt in question as operational debt as well as a letter treating it as financial debt. Petition being collusive stands dismissed.</p>	<p><a href="#">d%20v%20V inergy%20In ternational% 20Pvt.%20Lt d..pdf</a></p>
7.	<p>Asset Reconstructi on Company (India) Pvt. Ltd. V/S Shivam Water</p>	<p>18.02.2019</p>	<p>NCLT, Mumbai</p>	<p>The Resolution professional reported that the ex-director abused the RP while she was discharging her</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20in%20the%20">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20in%20the%</a></p>

	<p>Treaters Pvt. Ltd.</p>		<p>duties as Court officer.</p> <p>NCLT, Mumbai observed that RP is an officer of the court and non-cooperation with him would amount to contempt of the court.</p> <p>The Municipal Corporation of Ahmedabad was also directed to immediately open the seal and hand over the possession of the entire property of the Corporate Debtor to the Resolution Professional.</p> <p>Directions were also given to RP that the company should remain as a going concern so that the manufacturing and production of the company do not suffer, payment of wages to the employees/ workmen are made on time and if any material is supplied during the corporate resolution process. It was further stated in the order that IRP</p>	<p><a href="#">20matter%20of%20Shivam%20Water%20Treaters%20Pvt.%20Ltd.%20C.P.%20No.(IB)1882(MB)-2018-2019-02-21%2015:47:08.pdf</a></p>
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				will take the aid of suspended Board of Directors. The bank has an account of the Corporate Debtor will also co-operate with the IRP to ensure compliance.	
8.	Associated Cylinders and Accessories Private Limited	18.02.2019	NCLT, Chennai	Liquidator had filed this application for seeking direction for the Electricity Department for providing temporary connection to supply electricity to the factory of Corporate Debtor for securing property of the CD and to perform his duties. The Electricity Department was directed to supply temporary connection for two weeks for which liquidator would make monthly payments along with Rs. 5000 in advance.	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20in%20the%20matter%20of%20Associated%20Cylinders%20&amp;%20Accessories%20Pvt.%20Ltd.%20M-A-657-2018%20In%20CP-607-IB-2018%2019-02-20%2011:54:55.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/18th%20Feb%202019%20in%20the%20matter%20of%20Associated%20Cylinders%20&amp;%20Accessories%20Pvt.%20Ltd.%20M-A-657-2018%20In%20CP-607-IB-2018%2019-02-20%2011:54:55.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**

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