

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

## **KNOWLEDGE REPONERE (2<sup>nd</sup> March-8<sup>th</sup> March, 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**").

### **NEWS UPDATE**

#### 1. NCLT rejects insolvency plea against Bhushan Steel

The National Company Law Tribunal (NCLT) has dismissed a petition seeking to once again drag Bhushan Steel, which Tata Steel took over last year, to the Insolvency Court to recover unpaid dues of about Rs. 18 crores. The NCLT, principal bench, held that the petition filed by Vistrat Real Estate, an entity operated by Neeraj Singal, was non-maintainable. Vistrat is a related party of Bhushan Steel and its former promoters Brijbhushan Singal and Neeraj Singal, who were also "time and again authorised to act on behalf of the company" even though they were not on the Board of Directors.

(Source:

[//economictimes.indiatimes.com/articleshow/68227583.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/68227583.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

#### 2. JM Financial files Insolvency case against Hotel Leelaventure

JM Financial Asset Reconstruction Company Ltd (JMFARC) has filed an Insolvency petition with the Mumbai bench of National Company Law Tribunal (NCLT) against the company. The application has been filed under Section 7 of the Insolvency and Bankruptcy Code, 2016, Hotel Leelaventure.

(Source:

[//economictimes.indiatimes.com/articleshow/68171005.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/68171005.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

### 3. NCLAT Directs NCLT To Decide On Arcelor Mittal's Essar Steel Bid By March 8

The National Company Law Appellate Tribunal on 28<sup>th</sup> February, 2019 asked the Ahmedabad bench of the National Company Law Tribunal to pass its final order in the Rs 42,000-crore resolution plan submitted by ArcelorMittal for the insolvent Essar Steel by March 8. Earlier, the NCLAT had given time till Feb. 28 for the NCLT to deliver its final order in the case, stating that the appellate tribunal would take over from March 1.

(Source: <https://www.bloomberquint.com/law-and-policy/nclat-directs-nclt-to-decide-on-arcelormittals-essar-steel-bid-by-march-8#gs.RuKttTHG>)

### 4. NCLAT suspends its hearing due to fire inside CGO complex

The National Company Law Appellate Tribunal (NCLAT) on 06.03.2019 suspended its hearing till further notice after a fire broke out at Pandit Deendayal Antyodaya Bhawan of the CGO complex, where it is situated.

NCLAT is on the third floor of the Deen Dayal Antyodaya Bhawan, earlier known as Paryavaran Bhawan.

(Source: [http://economictimes.indiatimes.com/articleshow/68282375.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/68282375.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

## UPCOMING EVENTS

### ❖ 15th Pre Registration Educational Course being conducted in Chennai

All the three IPAs, viz., ICSI IIP, IIPICAI and IPA ICAI (Cost), are jointly conducting the 15th Pre Registration Training Programme for Insolvency Professionals, as detailed below:

**Date:** 9th March, 2019 – 15th March, 2019.

**Venue:** Hotel Park Elanza, No.125, Valluvar Kottam High Rd, Ponnangipuram, Tirumurthy Nagar, Nungambakkam, Chennai, Tamil Nadu 600034

## PAST EVENTS

- ❖ 'IBC-AN INTERACTIVE MEET WITH BANKERS' Session held on March 05, 2019.



**ICSI Institute of Insolvency Professionals** jointly with **Insolvency and Bankruptcy Board of India** organised 'IBC-AN INTERACTIVE MEET WITH BANKERS' at New Delhi on 5<sup>th</sup> March 2019. The interactive meet was attended by several bankers of different banks, including GM of SBI and Senior Group President of Yes Bank, as well as Insolvency Professionals, Advocates, Company Secretaries *et al.*

During the Interactive Meet, a number of difficulties faced by Bankers were discussed, such as, backing of Resolution Plans by Banks of the Corporate Debtor, each bank having a different Credit Policy and difference of opinion amongst the CoC members on several pertinent issues as also the role of guarantor after triggering of CIRP.

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	In the matter of <i>Gemini Communication Limited.</i>	Chennai	26.02.2019

## REGULATORY UPDATES

By way of Notification dated 26<sup>th</sup> Feb, 2019 and in exercise of the powers conferred by sub-section (1) of section 7 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby notifies following persons who may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority, on behalf of the financial creditor: -

- (i) a guardian;
- (ii) an executor or administrator of an estate of a financial creditor;
- (iii) a trustee (including a debenture trustee); and
- (iv) a person duly authorised by the Board of Directors of a Company.

(Source:

[https://ibbi.gov.in/webadmin/pdf/legalframework/2019/Mar/199039\\_2019-03-04%2022:04:52.pdf](https://ibbi.gov.in/webadmin/pdf/legalframework/2019/Mar/199039_2019-03-04%2022:04:52.pdf) )

## BRIEF OF JUDGMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Ingen Capital Group LLC. v. Mr. Ramkumar S.V. &amp; Anr</i>	01.03.2019	NCLAT	Ingen Capital Group was the successful Resolution Applicant for the Corporate Debtor, Orchid Pharmaceuticals Limited. As per the approved resolution plan, Ingen was directed to deposit a sum of Rs. 1,000 crores within five days of approval of the Resolution Plan by NCLT; Rs. 1,000 crores being the approved sum due to secured Financial Creditors. NCLT approved the plan on September 17,	<a href="https://barandbench.com/wp-content/uploads/2019/03/MA-575-576-146_1.pdf">https://barandbench.com/wp-content/uploads/2019/03/MA-575-576-146_1.pdf</a>

				<p>2018, however, Ingen did not deposit the promised sum. The Creditors' Committee had also granted a waiver from depositing the earnest money of Rs. 5 crores, and the Performance Guarantee of Rs. 50 crores to Ingen. NCLAT directed NCLT to pass appropriate orders with respect to the Insolvency Resolution Process, <i>i.e.</i>, if further plans need to be considered. Based on the said directions, NCLT has allowed a 90-day extension period to the RP and Creditors' Committee to call for fresh resolution plans. Furthermore, NCLT directed for exclusion of time between invitation of 'expression of interest' till the time the resolution plan was submitted with the NCLT. The NCLAT, in the meanwhile, is conducting proceedings to take action against the defaulting Resolution Applicant, Ingen.</p>	
2.	<i>Krishna Kumar</i>	27.02.2019	NCLAT	Financial Creditor had	<a href="https://nclat.nic.in/Useradmin/u">https://nclat.nic.in/Useradmin/u</a>

*Mintri v. Kamlesh Kumar Sighania & Anr.*

filed an application before NCLT under Section 12A of the Insolvency & Bankruptcy Code seeking withdrawal of its original application, stating that the total amount has been paid in full, and voted by Committee of Creditors with 100% voting share. NCLT, Kolkata Bench *vide* its impugned orders dated 3rd August, 2018 had however rejected the withdrawal application. It held that Section 12A will not be applicable having application under Section 7 filed earlier. NCLAT, however, held that Regulation 30A cannot override substantive provisions of Section 12A. Further, no discrimination can be made for withdrawal of an application under section 7 or section 9 on the ground that the

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				<p>application was filed before a cutoff date or filed after a cutoff date. Such cutoff date has no nexus with the objective to be achieved.</p>	
3.	<p><i>Sarla Tania v. Ramaanil Hotels &amp; Resorts Pvt. Ltd</i></p>	25.02.2019	NCLAT	<p>NCLAT while discussing the issue as to whether there was a pre-existing dispute, observed that the contractual relations <i>inter-se</i> the parties which are governed by the Leave and License Agreement do not admit of any oral agreement contrary to stipulations therein. The defense raised by the Corporate Debtor that the <i>ad hoc</i> amount was paid on the basis of reduced 'carpet area' of the licensed premises or that the oral agreement running parallel to the Leave and License Agreement enjoined upon the Corporate Debtor to pay rent on the basis of 'carpet area', which was less as compared to the 'super built up area', was a mere moonshine and could not be entertained as a</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/25th%20Feb%202019%20in%20the%20matter%20of%20Sarla%20Tania%20vs%20Ramaanil%20Hotels%20&amp;%20Resorts%20Pvt.%20Ltd.%20[CA(AT)(In%20sovcnry)%20513-2018]_2019-02-28%2013:41:04.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/25th%20Feb%202019%20in%20the%20matter%20of%20Sarla%20Tania%20vs%20Ramaanil%20Hotels%20&amp;%20Resorts%20Pvt.%20Ltd.%20[CA(AT)(In%20sovcnry)%20513-2018]_2019-02-28%2013:41:04.pdf</a></p>

				<p>pre-existing dispute to defeat initiation of Corporate Insolvency Resolution Process. NCLAT further observed that the Adjudicating Authority failed to notice that the Corporate Debtor never sought settlement of any dispute in regard to calculation of rent on 'carpet area' basis through arbitration which was the agreed mode of resolution of dispute between the parties in terms of the Leave and License Agreement. Since the debt and default is established, the Adjudicating Authority will admit the application under Section 9 of I&amp;B Code after providing an opportunity to the Corporate Debtor to settle the claim of Operational Creditor, if it so chooses.</p>	
4.	<i>Bhandari Hosiery Exports Ltd. &amp; Ors v. In-Time Garments Pvt. Ltd. &amp; Ors.</i>	01.03.2019	NCLAT	<p>NCLAT observed that there is a pre-existing dispute due to which the application under Section 9 of the I&amp;B Code was not accepted by NCLT. However, NCLAT made it clear that the Adjudicating Authority has not decided nor NCLAT</p>	<p><a href="https://nclat.nic.in/Useradmin/upload/9719608525c7916b847ff8.pdf">https://nclat.nic.in/Useradmin/upload/9719608525c7916b847ff8.pdf</a></p>



				<p>have gone into the question as to whether any fraud is committed by the CD or not, which will be decided by the Court of competent jurisdiction, because such an issue cannot be decided by the Adjudicating Authority as the question of return of fabrics is subsequent to that of the pre-existing dispute communicated by WhatsApp message.</p>	
5.	<p><i>Paramjit Gandhi v. Amit Kumar Malik &amp; Anr. (M/s. Kindle Developers Pvt. Ltd.)</i></p>	28.02.2019	NCLAT	<p>The Corporate Debtor sought for some time to settle the matter. However, even after four months, the matter was not settled. Financial Creditors brought to the notice of NCLAT that the post-dated cheques which were provided to the allottees, out of 10 cheques, three were encashed and fourth got bounced on presentation. The amount of the bounced cheque is Rs. 2 lacs, <i>i.e.</i>, more than Rs. 1 lac, and so an application could be made under IBC. The group of allottees, together, submitted that in their cases also the Real Estate Owner (Corporate Debtor) has</p>	<p><a href="https://nclat.nic.in/Useradmin/upload/9777382115c78d215cdaba.pdf">https://nclat.nic.in/Useradmin/upload/9777382115c78d215cdaba.pdf</a></p>

				failed to provide the flats and/or refund the amount. They have jointly applied as 'Resolution Applicants' and their 'Resolution Plan' is pending consideration.	
6.	<i>Viceroy Hotels v. Asset Reconstruction Co (India) Ltd.</i>	26.02.2019	NCLT, Hyderabad Bench	<p>Section 21(8) of the IBC provides that "<i>Save as otherwise provide in the Code, all decisions of the CoC shall be taken by a vote of not less than 51%</i>" and Section 28(3) provides that for all acts enumerated in Section 28(1), the voting share requirement shall be 66%.</p> <p>In this case, during one of the CoC meeting, an item for consideration was on the question of forensic audit. <b>59.21%</b> of the CoC members voted in favour of conducting the forensic audit, however, the Resolution Professional declined to go ahead with it. He claimed that the requisite voting share of 66% is not fulfilled and thus the forensic audit could not be conducted. He relied on the language of Section 28(1)(m) which</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/In%20the%20matter%20of%20Asset%20Reconstruction%20Company%20(India)%20Limited%20(ARCI)%20Vs%20Mr%20Viceroy%20Hotels%20Limited%20IA%20No.344%20of%202018%20In%20CP%20(IB)%20No.219-7-HDB-2018-2019-03-07%2020:38:46.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Mar/In%20the%20matter%20of%20Asset%20Reconstruction%20Company%20(India)%20Limited%20(ARCI)%20Vs%20Mr%20Viceroy%20Hotels%20Limited%20IA%20No.344%20of%202018%20In%20CP%20(IB)%20No.219-7-HDB-2018-2019-03-07%2020:38:46.pdf</a>

requires 66% voting share for making "changes in the appointment or terms of contract of statutory auditors or internal auditors of the corporate debtor."

The NCLT had to determine whether conducting a forensic audit would, in fact, be considered as one of the items which requires the enhanced voting threshold of 66%. The Bench concluded that conducting a forensic audit of the corporate debtor does not amount to 'changing terms of statutory auditors' and thus requires only 51% vote in the CoC.

(In an appeal matter against the NCLT orders, NCLAT vide its orders dt. 26.02.2019 held that the act of "appointment of a forensic auditor" does not fall within the language of section 28(1)(m), and thus, the requirement of 66% of voting share as laid down under section 28(3) which pertains to the actions taken under section 28(1), is not

				applicable in the present case.)	
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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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