

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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(Formerly known as ICSI Insolvency Professionals Agency)

## KNOWLEDGE REPONERE (8<sup>th</sup> April- 21<sup>st</sup> April, 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**").

### ADMITTED CASES

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

S. No.	Cause Title	Relevant Section	NCLT Bench	Amount default mentioned in application (in Rupees)	in as in
1.	In the matter of <i>Ranga Particle Board Industries Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by Operational Creditor.	Hyderabad	11.50 Lakh	
2.	In the matter of <i>Aastha Surgimed Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	New Delhi	1.95 Crores	

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Cause Title	Bench	Date of Order
1.	In the matter of <i>Enfield Apparels Limited</i>	Kolkata	04.04.2019

## LANDMARK SUPREME COURT & HIGH COURT JUDGEMENTS (1<sup>st</sup> January 2019-10<sup>th</sup> April 2019)

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Dharani Sugars and Chemicals Ltd. v. Union of India</i>	02.04.2019	Supreme Court	The Hon'ble Supreme Court of India declared the circular dated 12th February, 2018 issued by RBI as <i>ultra vires</i> section 35AA of the Banking Regulation Act, 1949. Consequently, all actions taken under the said circular, including actions by which the Code was triggered were declared to fall along with the said circular. As a result, all cases where debtors have been proceeded against by financial creditors under section 7 of the Code, only because	<a href="https://ibbi.gov.in//webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&amp;%20Orders%20Transferred%20Case%20(Civii)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018">https://ibbi.gov.in//webadmin/pdf/order/2019/Apr/2nd%20Apr%202019%20in%20the%20matter%20of%20Dharani%20Sugars%20and%20Chemicals%20Ltd.%20Vs.%20Union%20of%20India%20&amp;%20Orders%20Transferred%20Case%20(Civii)%20No.%2066%20of%202018%20In%20Transfer%20Petition%20(Civil)%20No.%201399%20of%202018</a> 2019-

				of the operation of the impugned circular, were declared to be non-est. The Apex Court also observed, "Stressed assets can be resolved either through the Code or otherwise. When resolution through the Code is to be effected, the specific power granted by section 35AA can alone be availed by the RBI. When resolution dehors the Code is to be effected, the general powers under sections 35A and 35AB are to be used. Any other interpretation would make section 35AA otiose."	<a href="#">04-02%2016:39:21.pdf</a>
2.	<i>The Deputy Director Directorate Of Enforcement Delhi v. Axis Bank &amp; Ors.</i>	02.04.2019	High Court	It was held by the High Court that banking legislation and the Insolvency and Bankruptcy Code, 2016 (IBC) do not prevail over the Prevention of Money Laundering Act, 2002 (PMLA) when it comes to attachment of properties obtained as "proceeds of	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/RKG02042019CRLA14320182019-04-03%2013:20:34.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/RKG02042019CRLA14320182019-04-03%2013:20:34.pdf</a>

*crime*".The Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (RDBA), The Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI Act) and the IBC should instead be enforced in harmony with the PMLA, the Court held.

High Court observed that *"..the said laws (or similar other laws, some referred to above) must co-exist, each to be construed and enforced in harmony, without one being in derogation of the other, with regard to assets respecting which there is material available to show the same to have been "derived or obtained" as a result of "criminal activity relating to a scheduled offence" rendering the same "proceeds of crime", within the mischief of PMLA."*

3.	<i>Liberty House Group PTE Ltd. v. State Bank Of India &amp; Ors.</i>	22.02.2019	High Court	<p>The questions raised in this application, have clearly arisen in relation to the insolvency resolution of Castex Ltd. and ARGL Ltd. being corporate debtors.</p> <p>It was held that the jurisdiction of this Hon'ble Court will also be barred by Section 231 of the Code which provides that "<i>No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered, by or under, this Code to pass any order.</i>" The jurisdiction of this Court is thus expressly barred over the subject matter of these suits, by aforesaid provisions of the Code.</p> <p>Hon'ble High Court upheld the supremacy of Insolvency and Bankruptcy Code (IBC) over other</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Liberty%20House%20Group%20PTE%20Ltd%20Vs%20State%20Bank%20of%20India%20CS%200(Comm)%201246-2018%20and%20IAs%20No.%2016056-2018%20and%2016060-2018%20AND%20CS%20(Comm)%201247-2018%20and%20IAs%20No.16061-2018%20and%2016065-2018%2019-02-22%2020:51:37.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Liberty%20House%20Group%20PTE%20Ltd%20Vs%20State%20Bank%20of%20India%20CS%200(Comm)%201246-2018%20and%20IAs%20No.%2016056-2018%20and%2016060-2018%20AND%20CS%20(Comm)%201247-2018%20and%20IAs%20No.16061-2018%20and%2016065-2018%2019-02-22%2020:51:37.pdf</a></p>
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				<p>civil laws such as those of contracts and guarantees and said that only the National Company Law Tribunal (NCLT) or similar adjudicating authorities should deal with the cases falling under the code.</p> <p>While rejecting Liberty House's plea, the court imposed a cost of Rs 50 lakh on the company.</p>	
4.	<i>Cushman And Wakefield India Private Limited v. Union Of India &amp; Anr.</i>	31.01.2019	High Court	<p>A writ petition was filed before the Hon'ble Delhi High Court to declare that Rule 3(2) of the Companies (Registered Valuers and Valuation) Rules, 2017 as unconstitutional for violating Article 14, Article 19(1)(g) and Article 301 of the Constitution of India.</p> <p>Rule 3(2) states that no partnership entity or a company can be a registered valuer if it is a subsidiary, joint</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Cushman%20and%20Wankefield%20India%20Private%20Limited%20Vs%20Union%20of%20India%20&amp;%20Anr%20WP%20(C)%20No.%2009883%20-2018%20CM%20No.%2038508-2018-2019-02-">https://ibbi.gov.in/webadmin/pdf/order/2019/Feb/In%20the%20matter%20of%20Cushman%20and%20Wankefield%20India%20Private%20Limited%20Vs%20Union%20of%20India%20&amp;%20Anr%20WP%20(C)%20No.%2009883%20-2018%20CM%20No.%2038508-2018-2019-02-</a></p>

				<p>venture or associate or another company or body corporate.</p> <p>The Court laid down that the objective and intention behind laying down the Rule is clearly to introduce higher standards of professionalism in valuation industry, specifically in relation to valuations undertaken for the purpose of Companies Act and IBC, 2016. The impugned Rule obviates the possibility of conflict of interest on account of diverging interests of constituent / associate entities which resultantly shall undermine the very process of valuation, being one of the most essential elements of the proceedings before NCLT.</p> <p>The issue raised was whether exclusion of a subsidiary company, joint</p>	<p><a href="#">06%2011:30:20.pdf</a></p>
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				<p>venture or associate of other company, for purpose of eligibility for registration as valuer is reasonable.</p> <p>The court held that making eligible only companies other than subsidiary companies, associate companies and joint ventures for the purpose of registration as valuer, a separate class has been carved out based on classification which is founded on intelligible differentia and as such the Rule cannot be faulted.</p>	
5.	<i>Swiss Ribbons Pvt. Ltd. &amp; Anr. v. Union of India &amp; Ors.</i>	25.01.2019	Supreme Court	<p>The experiment contained in the Code, judged by the generality of its provisions and not by so-called crudities and inequities that have been pointed out by the petitioners, passes constitutional muster. SC observed that Classification</p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/25th%20Jan%202019%20in%20the%20matter%20of%20Swiss%20Ribbons%20Pvt.%20Ltd.%20&amp;%20Anr.%20Writ%20Petition%20(Civil)%20No.%2037,99,1">https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/25th%20Jan%202019%20in%20the%20matter%20of%20Swiss%20Ribbons%20Pvt.%20Ltd.%20&amp;%20Anr.%20Writ%20Petition%20(Civil)%20No.%2037,99,1</a></p>



				<p>between FCs and OCs is neither discriminatory, nor arbitrary, nor violative of Article 14.</p> <p>Discussing the powers of the RP, SC observed that the RP is really a facilitator of the resolution process, whose administrative functions are overseen by the CoC and by the AA.</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Vijay%20Kumar%20Jain%20Vs%20Standard%20Chartered%20Bank%20&amp;%20Ors%20Civil%20Appeal%20No.%208430-2018%2019-01-31%2023:14:57.pdf">00,115,459,598,775,822,849%20&amp;%20201221-2018%20In%20Special%20Leave%20Petition%20(Civil)%20No.%208623%20of%202018%2019-01-25%2013:07:58.pdf</a>
6.	<i>Vijay Kumar Jain v. Standard Chartered Bank &amp; others (Ruchi Soya Industries Ltd)</i>	31.01.2019	Supreme Court	<p>Resolution Plans should be given to former directors of Corporate Debtor to attend CoC Meetings</p> <p>The present appeal arises out of an NCLAT judgment rejecting the appellant's prayer for directions to the RP to provide all relevant documents including the resolution plans in question to members of the suspended Board of Directors of the corporate debtor in each case so that they may meaningfully</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Vijay%20Kumar%20Jain%20Vs%20Standard%20Chartered%20Bank%20&amp;%20Ors%20Civil%20Appeal%20No.%208430-2018%2019-01-31%2023:14:57.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jan/In%20the%20matter%20of%20Vijay%20Kumar%20Jain%20Vs%20Standard%20Chartered%20Bank%20&amp;%20Ors%20Civil%20Appeal%20No.%208430-2018%2019-01-31%2023:14:57.pdf</a>

			<p>participate in meetings held by the CoC.</p> <p>SC observed that the statutory scheme of IBC and CIRP Regulations made it clear that though the erstwhile Board of Directors are not members of the CoC, yet, they have a right to participate in each and every meeting held by the CoC and also have a right to discuss along with members of the CoC all resolution plans that are presented at such meetings under Section 25(2)(i)</p> <p>SC decided that members of the erstwhile Board of Directors, being vitally interested in resolution plans that may be discussed at meetings of the CoC, must be given a copy of such plans as part of "documents" that have to be furnished along with</p>	
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				the notice of such meetings.	
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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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