

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (22nd April- 29th 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 the various benches of National Company Law Tribunal ("**NCLT**"). The newly admitted cases with regard to CIRP under the Code are provided in the table below:

| S. No. | Cause Title | Relevant Section | NCLT Bench | Amount default mentioned in application (in Rupees) | in as in |
|--------|--|--|------------|---|----------|
| 1. | <i>In the matter of Octagon Builders & Promoters Pvt. Ltd.</i> | Section 9 of the Code dealing with the initiation of CIRP by operational creditor. | Allahabad | 1 Crore | |
| 2. | <i>In the matter of Taurus Agile Technology Pvt. Ltd.</i> | Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor. | New Delhi | 131.60 Crore | |
| 3. | <i>In the matter of MAS Project Engineers</i> | Section 9 of the Code dealing with the initiation of CIRP by | New Delhi | 10.50 Lakh | |

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| | <i>Private Limited</i> | operational creditor. | | |
| 4. | <i>In the matter of Rathi TMT Saria Pvt. Ltd.</i> | Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor. | New Delhi | 75.52 Crore |
| 5. | <i>In the matter of City Tiles Limited</i> | Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor. | Ahmedabad | 1.24 Crore |
| 6. | <i>In the matter of Parshuram Forge Pvt. Ltd.</i> | Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor. | Mumbai | 27.5 Crore |
| 7. | <i>In the matter of Senthil Papain & Food Products Private Limited</i> | Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor. | Chennai | 17.80 Crore |
| 8. | <i>In the matter of Fortune Fasteners Pvt. Ltd.</i> | Section 9 of the Code dealing with the initiation of CIRP by operational creditor. | New Delhi | 8.85 Lakh |

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

| S. No | Case Title | Bench | Date of Order |
|--------------|---|--------------|----------------------|
| 1. | <i>In the matter of Calyx Chemicals & Pharmaceuticals Limited</i> | Mumbai | 16.04.2019 |

NEWS UPDATE

1. Banks' recoveries from IBC cases falling

Banks' recoveries made through Bankruptcy proceedings initiated under the IBC, 2016 have seen a decline as demand for sick companies under the Insolvency and Bankruptcy Code has waned. However, fears of losing their companies have pushed more promoters to approach banks with onetime settlements under Section 12(A) of the Code.

(Source: [//economictimes.indiatimes.com/articleshow/68898677.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://economictimes.indiatimes.com/articleshow/68898677.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

2. IBBI, not NCLT, is the competent body to act against resolution professionals: NCLAT

The Insolvency and Bankruptcy Board of India (IBBI) will be the competent authority and not the National Company Law Tribunal (NCLT) to act against any resolution professional (RP) for dereliction of duty, the National Company Law Appellate Tribunal has stated in an order recently.

(Source: [//economictimes.indiatimes.com/articleshow/68983479.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://economictimes.indiatimes.com/articleshow/68983479.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

3. Banks may get just a quarter of claims from 12 debt cases

Banks would realise just about a quarter of their claims from 12 corporate debt resolution cases in January-March 2019, dashing hopes of higher bad loan recovery in the last quarter of the last fiscal.

In the March quarter, the realisation by banks was 24% of their claims, in comparison to 43% overall.

(Source: [//economictimes.indiatimes.com/articleshow/69106440.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](https://economictimes.indiatimes.com/articleshow/69106440.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst))

4. Jaypee Infratech insolvency: NBCC wants its bid to be considered on merit

In its meeting on April 26, a committee of creditors (CoC) decided not to consider NBCC's bid as it was subject to approval of various government

authorities. As its bid to acquire debt-ridden Jaypee Infratech got rejected by the lenders panel, state-owned NBCC has written to interim resolution professional (IRP) that the company is interested in taking over Jaypee group's realty firm and its offer should be considered on merit.

(Source: http://economictimes.indiatimes.com/articleshow/69087259.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

5. Jet Airways now faces risk of landing at NCLT

Jet Airways is now slapped with a threat of the bankruptcy law. Last week, one of the service providers to the recently-grounded airline shot a notice under the Insolvency and Bankruptcy Code of 2016 – warning Jet that ‘corporate insolvency resolution process’ would be initiated if the airline fails to pay up dues within 10 days.

(Source: http://economictimes.indiatimes.com/articleshow/68983407.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

BRIEF OF JUDGEMENTS

| S. No. | Case Details | Date of Order | Courts | Brief | Case link |
|--------|---|---------------|--------|---|---|
| 1. | <i>Prakash Chand v. Punjab National Bank & Ors.</i> | 24.04.2019 | NCLAT | The Appellant Mr. Prakash Chand is acting in concert with erstwhile Management and, therefore, he was ineligible in terms of Section 29A of the IBC. However, the ‘Resolution Plan’ approved by the ‘Committee of Creditors’ is far superior in terms of maximization of value of assets of the ‘Corporate Debtor’. | https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/24th%20April%202019%20In%20the%20matter%20of%20Prakash%20Chand%20Jain%20VS%20Punjab%20National%20Bank%20&%20Ors.%20[CA(AT)(insolvency)%20156-2018]_2019- |

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| | | | | <p>the Information Memorandum was not obtained by Appellant- 'Mr. Prakash Chand' from the 'Resolution Professional', inspite of it, he applied knowing details of the Information Memorandum, including the liabilities and assets of the 'Corporate Debtor', which makes it clear that he acted in concert with the other Applicant, who is related party of the erstwhile management of the 'Corporate Debtor'. The Application of the Appellant who is also a Promoter would not stand.</p> | <p>04-26%2015:53:17.pdf</p> |
| 2. | <i>Damont Developers Pvt. Ltd. v. Bank of Baroda and Anr.</i> | 24.04.2019 | NCLAT | <p>The Appeal was filed challenging the initiation of CIRP against the Corporate Debtor. The grievance of the Appellant is that the Adjudicating Authority by impugned order dated 4th February, 2019 rejected the Impleadment Application filed by</p> | <p>https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/24th%20April%202019%20In%20the%20matter%20of%20Damont%20Developers%20Pvt.%20Ltd.%20VS%20Bank%20of%20Baroda%20&%20Anr.%2</p> |

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| | | | | <p>the Appellant and by subsequent order dated 18th March, 2019 admitted the application under Section 7.</p> <p>The Adjudicating Authority is required to go through the record to find if there is a debt and default and while doing so it was open for the Corporate Debtor to show that there is no debt payable and no default, at the stage of admission of the petition. Except the Corporate Debtor, no other party has right to intervene at the stage of admission of a petition under Section 7 or 9. However, an aggrieved party may prefer an appeal if the order of admission affects the person. Hence this appeal was held to be not maintainable.</p> | 0[CA(AT)(Insolvency)%20436-437-2019] 2019-04-26%2015:49:55.pdf |
| 3. | <i>Cortica Manufacturing India Pvt. Ltd. v. Victory Electricals Limited</i> | 10.04.2019 | NCLT, Chennai | <p>The Operational Creditor had filed an application under section 9 of IBC on the basis of the default committed by the Corporate Debtor in making payment</p> | https://nclt.gov.in/sites/default/files/final-orders-pdf/VICTORY%20ELECTRICALS%20LTD.pdf |

of the decretal amount which is in the nature of operational debt.

CD had argued that as against a Decree passed, an Execution Petition could be filed, but an Insolvency Proceedings cannot be used for execution. The Tribunal was, however, convinced that the application (under consideration) is neither for execution of the decree nor for recovery of the decretal amount, but for initiating the CIR process which is on the basis of default by the CD in making payment of decretal amount which is in the nature of an operational debt.

Thus, concluding, NCLT rejected the objections raised by CD holding that it can take cognizance of the Decree passed by the Civil Court under which claim has been crystalized, and further directed for commencement

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| | | | | of CIRP declaration moratorium. | and of | |
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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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