

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (30thApril- 10th May, 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 Siddharth Milk Foods (India) Pvt. Ltd.</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Mumbai	130.36 Crore	
2.	<i>In the matter of Century Agro Chemicals Private Limited</i>	Section 9 of the Code dealing with the initiation of CIRP by operational creditor.	Mumbai	36.26 Lakh	

PAST EVENTS

- Webinar on "**Graduate Insolvency Programme: Introducing Insolvency to the World of Education**".

Institute of Company Secretaries of India (ICSI), Institute of Insolvency Professionals ("ICSI IIP") and Indian Institute of Corporate Affairs ("IICA") organised a webinar on "**Graduate Insolvency Programme: Introducing Insolvency to the World of Education**" on 30th April, 2019 from 3:30 PM to 4:30 PM.



L-R: Dr. Neeti Shikha (*Head, Centre for Insolvency and Bankruptcy, IICA*), Dr. Scott Pryor (*US Bankruptcy expert*), CS Ranjeet Pandey (*President, ICSI*), CS Alka Kapoor (*CEO, ICSI Institute of Insolvency Professionals*), CS Lakshmi Arun (*Head, Education & Training, ICSI Institute of Insolvency Professionals*)

LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Sri Krishnakanth Textiles Private Limited</i>	Chennai	25.04.2019
2.	<i>In the matter of AS Sales & Exports Private limited</i>	Kolkata	26.04.2019

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Brief	Case link
1.	<i>Jk Jute Mill Mazdoor Morcha v. Juggilal Kamlapat Jute Mills Company Ltd. Through Its Director & Ors</i>	30.04.2019	Supreme Court	<p>It was held that a trade union, for the purpose of filing insolvency petition can be an operational creditor.</p> <p>The NCLT and NCLAT both rejected the petition of trade union <i>vide</i> their orders dt. 28.04.2017 and 12.09.2017 respectively, by stating that a since a trade union doesnot provide any service to the Corporate Debtor, they cannot be termed as an Operational Creditor, and that each claim of each workman is a separate cause of action in law, and accordingly held that each worker may file an individual application before the NCLT respectively..</p> <p>The Supreme Court referred to provisions of the Trade Unions Act, 1926 and the IBC, 2016 read</p>	https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/In%20the%20matter%20of%20JK%20Jute%20Mill%20Mazdoor%20Morcha%20Vs%20Juggilal%20Kamlapat%20Jute%20Mills%20Company%20Ltd%20through%20it%20Directors%20Civil%20Appeal%20No.%2020978-2017-2019-04-30%2022:35:45.pdf

with IBC (Application to Adjudicating Authority) Rules and held that,

*"...a trade union is certainly an entity established under a statute – namely, the Trade Unions Act, and would therefore fall within the definition of "person" under Sections 3(23) of the Code. This being so, it is clear that an "operational debt", meaning a claim in respect of employment, **could certainly be made by a person duly authorised to make such claim on behalf of a workman.**"*

The Bombay High Court had earlier in the case of *Sanjay Sadanand Varrier v. Power Horse India (P) Ltd.*, after setting out various provisions of the Trade Unions Act, 1926 including Section 15, had held:

"...registered trade unions can prosecute or defend any legal proceeding to which

				<p>the trade union or member thereof is a party, when such prosecution or defence is undertaken for the purpose of securing or protecting any right of the trade union as such, or any rights arising out of the relations of any member with his employer or with a person whom the member employs."</p> <p>Considering all contentions raised and the judgements produced, the Supreme Court allowed the appeal and set aside the judgment of the NCLAT.</p>	
2.	<i>North East Centre for Technology Application and Reach v. Sri Vari Metal Works Pvt. Ltd. & Anr</i>	16.04.2019	NCLAT	<p>NCLAT dismissed the appeal and up-held the order of NCLT wherein resolution Professional filed application for winding up against the Corporate Debtor without considering the resolution plan submitted by the Appellant. NCLAT rejected the contention of the Appellant that the</p>	<p>https://nclat.nic.in/Useradmin/upload/12601330975cb5d283ebf27.pdf</p>

				<p>resolution plan is required to be put before the Committee of Creditors for approval/voting. It held that where time has been lapsed, no late submission can be condoned by NCLAT. The Resolution Plan submitted by M/s. Grandvalult Enterprises, Bengaluru was not submitted within time and therefore, the Resolution Plan of the said M/s. Grandvalult Enterprises, Bengaluru was not considered.</p>	
3.	<i>Ravi Mahajan v. Jalesh Kumar Grover and Ors.</i>	15.04.2019	NCLAT	<p>NCLAT admitted the appeal filed by the promoter of Corporate Debtor against the order of NCLT whereby NCLT passed an order of liquidation of Corporate Debtor. It has been held that since the corporate debtor is a small scale industry, the promoter will be eligible to file resolution plan. Hence, at the stage of liquidation under section 230 of the</p>	<p>https://ibbi.gov.in/webadmin/pdf/order/2019/Apr/15th%20April%20In%20the%20matter%20of%20Ravi%20Mahajan%20Vs%20Jalesh%20Kumar%20Grover%20and%20Ors%20[CA(AT)(Insolvency)%2066%20of%202019]2019-04-26%2012:55:32.pdf</p>

				Companies Act, 2013, it is open to the promoter to propose scheme and such scheme is liable to be considered by the Resolution Professional.	
4.	<i>C. Satyanarayana v. Sri Vasudevan, R.P. & Anr.</i>	01.05.2019	NCLAT	<p>The prayer of the Appellant to allow Arbitral Proceeding to be resumed for completion on its own and enabling the Arbitrator to make an award, has been rejected.</p> <p>The Arbitral Proceeding is pending since 2012 and on the verge of completion. The Appellant has already filed claim and the Corporate Debtor has also filed counter claim.</p> <p>The Resolution plan has already been approved by the Committee of Creditors and Resolution Professional has placed the same before the Adjudicating Authority for approval under Section 31. NCLAT</p>	https://ibbi.gov.in/webadmin/pdf/order/2019/May/1st%20May%202019%20In%20the%20matter%20of%20C.%20Satyanarayana%20VS%20Sri%20Vasudevan%20[CA(AT)(Insolvency)%2087-2019] 2019-05-02%2018:03:12.pdf

				directed the Adjudicating Authority to pass appropriate order under Section 31. NCLAT held that if the plan is approved, thereafter the Arbitral Proceeding may continue.	
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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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