

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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(Formerly known as ICSI Insolvency Professionals Agency)

## KNOWLEDGE REPONERE (17<sup>th</sup> June - 12<sup>th</sup> July, 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)
1.	<i>In the matter of Jet Airways (India) Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Mumbai	462.39 Crores
2.	<i>In the matter of Digital Travels Private Limited</i>	Section 7 of the Code dealing with the initiation of CIRP by Financial Creditor.	Mumbai	39.03 Lakhs

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE RESOLUTION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Tiffins Barytes Asbestors &amp; Paints Limited</i>	Chennai	12.06.2019
2.	<i>In the matter of KND Engineering Technologies Pvt. Ltd.</i>	Kolkata	12.06.2019

## LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of RLS Alloys Private Limited</i>	Chennai	14.06.2019

## NEWS UPDATE

- **Jaypee home buyers protest at Jantar Mantar, seek government intervention**

Home buyers held protest at Jantar Mantar here and are planning to submit a petition to Finance Minister Nirmala Sitharaman in this regard. In their petition, the home buyers have appealed to the government to direct IDBI Bank and NBCC to resolve their differences on the resolution plan and IDBI Bank to vote for NBCC's resolution plan.

They also demand that the majority vote of home buyers in the CoC be treated as the vote of the whole voting sub-class of home buyers.

Read more at:

[//economictimes.indiatimes.com/articleshow/69922344.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/69922344.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **Jet's resolution process on the fast track; shares jump 9%**

Shares of Jet Airways jumped nearly 9 per cent in morning trade on Monday even as media reports suggested that the insolvency resolution professional has put the grounded airline's resolution process on the fast track.

NCLT on 20th June, 2019 admitted an insolvency plea by Jet's top lender State Bank of India. In their order, the judges halved the deadline for the resolution process to 90 days from the usual 180 days, saying this was a matter of "national importance".

Read more at:

[//economictimes.indiatimes.com/articleshow/69922128.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/69922128.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>Asset Reconstruction Company India Ltd. v. Gopal Krishna Raju</i>	18.06.2019	NCLT, Chennai	While disposing-off an application seeking directions for inclusion of applicant's claim by RP, after recording RP's submissions that applicant's claim has been decided by DRT and that the same has been subjected to a review by DRT itself, the NCLT directed RP to collate applicant's claim (as per the recovery certificate) making such claim subject to outcome of the review petition pending disposal before Hon'ble DRT.	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/18th%20Jun%202019%20in%20the%20matter%20of%20Gopal%20Krishna%20Raju%20(A%20nandram%20Developers%20Pvt.%20Ltd.%20MA-144-2019%20in%20OCP-603-2018%2019-06-21%2017:29:28.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/18th%20Jun%202019%20in%20the%20matter%20of%20Gopal%20Krishna%20Raju%20(A%20nandram%20Developers%20Pvt.%20Ltd.%20MA-144-2019%20in%20OCP-603-2018%2019-06-21%2017:29:28.pdf</a>

2.	<i>S.Rajgopal (RP for Frontier Lifeline Ltd.) v. Deputy General Manager</i>	18.06.2019	NCLT, Chennai	<p>In respect of an insolvency resolution process, the RP had filed an application seeking exclusion of 43 days and a further extension of CIRP period by another 43 days. The CoC had earlier received a resolution plan which was not acceptable and had accordingly directed the RA to revise its offer. Subsequently, another Resolution Plan was submitted but the same was also rejected on the ground that it is far below the liquidation value. In such circumstances, CoC had sought time to take a call on the Resolution Plan.</p> <p>The NCLT, however, took a view that since CoC has neither been restrained by the AA or any external agency from taking a decision, there is no ground to grant either extension or exclusion of period as sought for. More so, when there is no resolution passed by the CoC seeking such</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/18th%20Jun%202019%20in%20the%20matter%20of%20Frontier%20Lifeline%20Pvt.%20Ltd.%20MA-430-2019%20in%2020CP-698-IB-2017%2019-06-21%2017:47:37.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/18th%20Jun%202019%20in%20the%20matter%20of%20Frontier%20Lifeline%20Pvt.%20Ltd.%20MA-430-2019%20in%2020CP-698-IB-2017%2019-06-21%2017:47:37.pdf</a>
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				<p>exclusion or extension.</p> <p>NCLT also recorded that, even in the event of liquidation, it shall be open to the Liquidator to sell the CD as a going concern.</p>	
3.	<i>State Bank of India v. Bhushan Energy Limited</i>	30.05.2019	NCLT, Principal Bench, New Delhi	<p>The NCLT, while approving the resolution plan submitted by Tata Steel for Bhushan Energy Limited, made following observations in connection with the term "<b>undischarged insolvent</b>" under Section 29A of the Insolvency and Bankruptcy Code:</p> <p>1. Not only individuals, but a Body Corporate can also be an "undischarged insolvent" in terms of Section 29 A(a) of the Code. <i>(The expression 'person' used in Section 29A of the Code has been defined to include a body corporate (company) by virtue</i></p>	<p><a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/30th%20May%202019%20in%20the%20matter%20of%20Bhushan%20Energy%20Limited%20C.A.%20No.929(PB)-2018%20in%20OC.P.%20(IB)-530(PB)-2017%2019-06-06%2016:15:54.pdf">https://ibbi.gov.in/webadmin/pdf/order/2019/Jun/30th%20May%202019%20in%20the%20matter%20of%20Bhushan%20Energy%20Limited%20C.A.%20No.929(PB)-2018%20in%20OC.P.%20(IB)-530(PB)-2017%2019-06-06%2016:15:54.pdf</a></p>

				<p>of Section 3(23) of the Code.)</p> <p>2. Section 7, Section 9 and Section 10 proceedings are summary proceedings for the determination of default which are not conclusive in nature. The Adjudicating Authority further noted that CIRP is a rescue process and while a company is under CIRP, it cannot be said to be 'undischarged insolvent'.</p> <p>3. The Tribunal observed that it is extremely doubtful whether the Adjudicating Authority- NCLT has jurisdiction to issue such a declaration by adopting a summary procedure.</p>	
4.	Mr. Ashok Velamur Seshadari v. Arumugam samy	26.06.2019	NCLT, Chennai	An application was filed by the RP against the promoters/directors of the Corporate Debtor for non-cooperation from them during the CIRP. The promoters had refused to hand over some documents	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/26th%20Jun%202019%20in%20the%20matter%20of%20R.%20A.%20Samy%20Trading%20Private%20Li">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/26th%20Jun%202019%20in%20the%20matter%20of%20R.%20A.%20Samy%20Trading%20Private%20Li</a>

				<p>asked for by the RP to enable him to prepare the Expression of Interest (EOI). After multiple attempts by the RP and outright refusal by the promoters, the instant application was filed by the RP.</p> <p>After considering the facts, NCLT directed said promoters/directors to hand over documents sought for by the RP within a week so that the RP could discharge his duties. It was further directed that any failure to do so would result in taking assistance of police authorities for the purposes of hand over of custody and control of the assets to the applicant/RP.</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/27th%20Jun%202019%20in%20the%20matter%20of%20Orchid%20Pharma%20Limited%20MA-578-2019%20in%20mited%20MA-588-2019%20in%20OIBA-332-2019%2019-07-03%2010:44:15.pdf">mited%20MA-588-2019%20in%20OIBA-332-2019 2019-07-03%2010:44:15.pdf</a>
5.	<i>Accord Life Spec Private Limited v. Sripatham Venkatsubramanian Ramkumar</i>	27.06.2019	NCLT, Chennai	<p>An application was preferred by an unsuccessful Resolution Applicant (RA) seeking directions to the RP to place their plan before the CoC for their consideration. After taking account of the facts, the Tribunal observed that the</p>	<a href="https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/27th%20Jun%202019%20in%20the%20matter%20of%20Orchid%20Pharma%20Limited%20MA-578-2019%20in%20https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/27th%20Jun%202019%20in%20the%20matter%20of%20Orchid%20Pharma%20Limited%20MA-578-2019%20in%20">https://ibbi.gov.in/webadmin/pdf/order/2019/Jul/27th%20Jun%202019%20in%20the%20matter%20of%20Orchid%20Pharma%20Limited%20MA-578-2019%20in%20</a>

				<p>Applicant’s plan had been placed before the CoC but the plan of Dhanuka Laboratories Ltd. (successful Resolution Applicant) was approved looking at the <i>feasibility</i> and <i>viability</i> of the two Plans. The Tribunal concluded that the exercise could not be repeated and the decision of the CoC is based on merits, hence final. The application was thus dismissed.</p>	<p><a href="#">OCP-540-IB-2017 2019-07-02%2015:01:53.pdf</a></p>
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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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