

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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**KNOWLEDGE REPONERE**  
**(1<sup>st</sup> - 15<sup>th</sup> October, 2019)**

**Dear Professional Members,**

Greetings!

We are glad to introduce you to our Managing Director, CA. Dr. Binoy J. Kattadiyil who has joined ICSI IIP on 7<sup>th</sup> October, 2019.



**Dr. Binoy** is a fellow member of the Institute of Chartered Accountants of India (ICAI) and has over two decades of rich experience in fields as diverse as, Private Equity, Project Development and Corporate Governance. Dr. Binoy was earlier the Managing Director for a SEBI licensed Portfolio Management and Alternative Investment Fund Company in India. Prior to that, he was the Finance Director for the iconic development of Atlantis, The Palm Jumeirah project in Middle East.

His education includes a Doctorate (PhD) in Finance, Fellow Chartered Accountant (FCA), research Masters in Economics (MS), Masters in Business Administration (MBA) and Masters in Law (LLM).

Dr. Binoy strongly believes in the success of present Insolvency and Bankruptcy law regime in India established under the Insolvency and Bankruptcy Code, 2016. He considers prescription of strict timelines under the Code (IBC) as one of the biggest contributor to the success of the legislation.

We look forward to your continuous support!

We are pleased to share with you our next issue of the knowledge bulletin on the Insolvency and Bankruptcy Code, 2016 ("**Code**").

### **NEWS UPDATE(S)**

- **Haldiram emerges as sole bidder to buy insolvency-bound Kwality for Rs. 130 crore.**

In the insolvency proceedings initiated by the global private equity player, KKR India Financial Services, against *M/s Kwality Ltd.* wherein RP Shailendra Ajmera, who is a part of the multinational consultancy firm EY, is appointed as the Resolution Professional, Delhi-based Haldiram group has emerged as the sole bidder for acquiring debt-ridden dairy firm *Kwality* with an offer of around Rs. 130 crores in the ongoing insolvency process. *Kwality* has a total debt of Rs. 19,00 Crores.

Read more at:

[//economictimes.indiatimes.com/articleshow/71519712.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71519712.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **NCLAT asked Enforcement Directorate to release Bhushan Power's attached property**

The National Company Law Appellate Tribunal (NCLAT) on 14<sup>th</sup> October, 2019 has put JSW Steels' payment of Rs 19,700 crores to acquire Bhushan Power and Steel (BPSL) on hold and has asked the Enforcement Directorate (ED) to release the BPSL's attached properties. The attachment (of immovable properties) was caused (by the ED) pursuant to a money laundering case against the CD for allegations of siphoning-off of funds obtained as loans from various Banks and Financial Institutions.

The appellate tribunal has further directed the ED not to attach any more property of BPSL without its permission.

Read more at:

[//economictimes.indiatimes.com/articleshow/71582768.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71582768.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **Government mulls raising Rs 1 lakh default threshold for invoking IBC.**

The Government is examining the suggestion made to it to raise the threshold limit (of Rs. 1 lakh default) to invoke the provisions of Insolvency and Bankruptcy Code (IBC) to reduce number of cases in the NCLT, Corporate Affairs

Secretary, Injeti Srinivas said. He also mentioned that the banks should be looking at other options for recovering loans before invoking the IBC, especially in those cases where amount of bad loans is not significant.

Read more at:

[//economictimes.indiatimes.com/articleshow/71583287.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71583287.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

### LIST OF COMPANIES THAT HAVE RECENTLY UNDERGONE LIQUIDATION

S. No	Case Title	Bench	Date of Order
1.	<i>In the matter of Guman Furniture and Services Pvt. Ltd.</i>	Jaipur	01.10.2019
2.	<i>In the matter of Sharif Knife Company Pvt. Ltd.</i>	Mumbai	01.10.2019

### BRIEF OF JUDGEMENTS

S. No.	Cause Title	Date of Order	Court	Order Brief	Case link
1.	<i>Duncans Industries Ltd. v. A.J. Agrochem</i>	04.10.2019	Supreme Court	In an appeal filed by the CD against NCLAT's order wherein the NCLAT had reversed AA's order of declining to entertain OC's application (filed u/s 9, IBC) on the ground that the application is not maintainable in view of provisions of Tea Act, 1953, the SC, while upholding NCLAT's order, has clarified on the over-riding effect of IBC over the Tea Act, 1953. The SC held that the provisions of IBC have an overriding effect	<a href="https://ibbi.gov.in/uploads/order/e28afc56033ed5b324a7f49ad62e3049.pdf">https://ibbi.gov.in/uploads/order/e28afc56033ed5b324a7f49ad62e3049.pdf</a>

				<p>over the Tea Act, 1953. The context of the order is that in cases wherein management of a tea unit has been taken over by the Central Government, section 16G(1)(c) of the Tea Act, 1953 requires consent of the Central Government to be mandatorily taken before initiation of proceedings for winding up or for appointment of a receiver in respect of such company. Thus, <i>vide</i> its order dt. 4<sup>th</sup> October, 2019 passed in the matter, the Apex Court has clarified that the insolvency proceedings initiated under Section 7 or Section 9 by the FC or the OC respectively shall be maintainable even without obtaining Central Government's consent.</p>	
2.	<i>Sagar Sharma &amp; Anr v. Phoenix Arc Pvt. Ltd.</i>	30.09.2019	Supreme Court	<p>In the present appeal matter, Hon'ble Apex Court, while clarifying that Article 141 of the Constitution of India requires that its judgments are to be followed both in letter and in spirit, has ruled that the date of coming into force of IBC the cannot form the trigger</p>	<p><a href="https://ibbi.gov.in/uploads/order/f20674d09e65a0cbd694fbb4d13cb754.pdf">https://ibbi.gov.in/uploads/order/f20674d09e65a0cbd694fbb4d13cb754.pdf</a></p>

point of limitation for applications filed under the Code.

While reiterating its ruling passed in the matter of *B.K. Educational Services (P) Ltd. v. Parag Gupta & Associates*, the Apex Court further clarified that for the applications filed u/s 7, IBC the article of Limitation Act, 1963 which shall be applicable is Article 137, which is in the nature of a residuary clause and provides for a limitation period of 3 years in cases of applications for which no period of limitation is provided for.

Vide the impugned order Article 62 (erroneously stated to be Article 61) was stated to be attracted to the facts of the case in view of the fact that there was a deed of mortgage executed between the parties. The SC, however, made it clear that an application u/s 7, IBC does not purport to be an application to enforce any mortgage liability, and is an application made by a Financial Creditor stating that a default, as

				defined under the IBC, has been made, which amounts to Rs. 1 lac or above.	
3.	<i>Action Ispat &amp; Power Pvt. Ltd v. Shyam Metalics &amp; Energy Limited &amp; Ors.</i>	10.10.2019	High Court	<p>In an appeal preferred against a single judge bench order, wherein, on an application moved by the SBI (FC), the winding-up proceedings initiated by one of the Creditors (M/s Shyam Metalics &amp; Energy Ltd.) of the CD were revoked and the Company Petition was directed to be transferred to the NCLT, the Division Bench (DB) of the Delhi High Court while upholding the impugned order has held that an application for transfer of a case to the National Company Law Tribunal under Insolvency and Bankruptcy Code is maintainable even after service of notice on company in respect of whom the winding up proceedings are filed.</p> <p>The DB also held that merely because the Ld. Company Judge had ordered the winding-up of the appellant, it does not follow that it should be necessarily liquidated and dissolved. It further held that other options available, namely to</p>	<a href="https://ibbi.gov.in/uploads/order/fe0847ae462b5419ffdb414d58e583c4.pdf">https://ibbi.gov.in/uploads/order/fe0847ae462b5419ffdb414d58e583c4.pdf</a>

				<p>resolve/revive a company, can and should always be explored unless irrevocable steps towards liquidation have already been undertaken.</p> <p>The DB placed reliance on Section 434 of <i>the Companies Act, 1956</i> and Rules 5 and 6 of <i>the Companies (Transfer of Pending Proceedings) Rules, 2016</i> to hold that unless an order for dissolution of the company was passed, there was no bar against the proceedings under section 7 of the IBC.</p>	
4.	<i>JSW Steel Limited v. Mahender Kumar Khandelwal &amp; Anr.</i>	14.10.2019	NCLAT	<p>The issues raised in this Appeal was whether the <i>Directorate of Enforcement</i> has jurisdiction to attach the property of the CD or part thereof which is undergoing CIRP; and whether the 'Directorate of Enforcement' comes within the meaning of OC in terms of Section 5 (20) and (21) of the IBC, for the purpose of money claim (civil matter), which may be generated out of the attached property/ part thereof of the CD.</p>	<a href="https://ibbi.gov.in/uploads/orders/eb655b79aa6e04ecf4af2d6c353cfb7e.pdf">https://ibbi.gov.in/uploads/orders/eb655b79aa6e04ecf4af2d6c353cfb7e.pdf</a>

In the matter, a reply affidavit was filed by the Union of India stating that *“under the process envisaged under the Insolvency & Bankruptcy Code, 2016, once a Resolution Plan is approved by the Ld. Adjudicating Authority, it is binding on all stakeholders. Before approving the Resolution Plan, objections are heard by the Ld. Adjudicating Authority and once hearing on the Resolution Plan and objections is completed before the Ld. Adjudicating Authority and the Resolution Plan is approved, such approved Resolution Plan is binding on all stakeholders, including all government agencies. The provision of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 by which Section 31(1) was amended, makes it amply clear that a resolution plan is binding on Central Government and all statutory authorities.”*

Taking into consideration the stand taken by the parties, the Appellate Tribunal, while

				<p>answering the issues raised, held that the Director, Deputy Director and other officers of 'Directorate of Enforcement' are prohibited from attachment of any property of the Corporate Debtor (Bhushan Power and Steel Limited) without prior approval of the Appellate Tribunal.</p>	
5.	<p><i>Karan Goel v. M/s Pashupati Jewellers &amp; Anr</i></p>	01.10.2019	NCLAT	<p>An appeal was preferred by Mr. Karan Goyal, Promoter of M/s Marigold Overseas Limited (Corporate Debtor) challenging impugned order dated 20th September, 2019 passed by the AA wherein the AA admitted an application filed under Section 7, IBC preferred by M/s Pashupati Jewellers (Financial Creditor).</p> <p>The CIRP proceedings initiated against the CD were challenged on the ground that the loan facility of Rs. 2.6 Crores was availed by one Mr. Bal Karan Singh Bhullar from Sumedha Kanodia and an agreement thereof was executed on 7th April, 2017. The Appellant contended that the said agreement</p>	<p><a href="https://ibbi.gov.in/uploads/order/1c818fd036a03eaa5eb874f2f41c631.pdf">https://ibbi.gov.in/uploads/order/1c818fd036a03eaa5eb874f2f41c631.pdf</a></p>

was executed in violation of Section 185 of the Companies Act, 2013 and that the 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017 as purported, has been given by the CD. It was alleged that there is a fraud played by one of the erstwhile Director, namely - Mr. Navlesh and the so-called 'Corporate Guarantee and Undertaking' Agreement dated 7th April, 2017 is not reflected in the records of the 'Corporate Debtor' available with the Registrar of Companies. Relying on these contentions, it was contended that in the eyes of law, no 'Corporate Guarantee' has been given by the CD, and therefore, application u/s 7, IBC is not maintainable.

In order to decide the merit of the contentions raised and to dispose-off the appeal, NCLAT relied upon the judgement of Hon'ble Supreme Court passed in the matter of *Innoventive Industries Ltd. v. ICICI Bank and Anr.* and held that once

				<p>the AA is satisfied on the basis of records that the debt is payable and there is default, the AA is required to admit the application. It further held that merely because a suit has been filed by the Appellant which is pending, cannot be a ground to reject the application u/s 7, IBC. Pre-existing dispute cannot be a subject matter of Section 7, though it may be relevant under Section 9, IBC.</p>	
6.	<i>R.G.Steels v. Berry Auto Ancillaries Pvt. Ltd.</i>	23.09.2019	NCLT, New Delhi	<p>A petition was preferred by M/s RG Steels as an Operational Creditor under Section 9, IBC seeking orders for initiation of CIRP against <i>M/s. Berry Auto Ancillaries Private Limited</i> (Corporate Debtor) before the Adjudicating Authority.</p> <p>While dismissing the petition preferred, the AA held that the petition has been preferred by M/s RG Steels, which is a Sole Proprietary Concern. It was further held that by virtue of definition as contained in Section 3(23) of IBC, 2016 a person even though includes an "individual" it does not</p>	<p><a href="https://ibbi.gov.in/uploads/order/3b4ed0e251cf3d3791b458c5c50bb0c1.pdf">https://ibbi.gov.in/uploads/order/3b4ed0e251cf3d3791b458c5c50bb0c1.pdf</a></p>

				<p>include within its ambit a "Sole Proprietary" concern.</p> <p>Accordingly, Hon'ble NCLT held that in aforementioned circumstances, a Sole Proprietary Concern cannot initiate Corporate Insolvency Resolution Process.</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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