

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

KNOWLEDGE REPONERE (16th– 31stOctober, 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**").

EVENTS

- **Diwali Celebration at ICSI Institute of Insolvency Professionals**



NEWS UPDATE(S)

- **Cauvery Power to face insolvency proceedings.**

National Company Law Tribunal (NCLT), Chennai Bench ordered corporate insolvency proceedings against *Cauvery Power Generation*, which has defaulted on payments of Rs 13.71 crores to Punjab National Bank. The account was classified as a non-performing asset by PNB in January, 2019.

Read more at:

[//economictimes.indiatimes.com/articleshow/71816009.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71816009.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

➤ **NCLAT sets aside plea to initiate insolvency proceedings against Intex Technologies**

The NCLAT dismissed a plea to initiate insolvency proceedings against smartphone and mobile accessories maker *Intex Technologies India Ltd.* by one of its creditors.

A three-member NCLAT bench headed by Chairperson Justice S J Mukhopadhaya upheld an order of NCLT Delhi, which had dismissed the plea of an Operational Creditor (Avalon Sports and Media) after finding a pre-existing dispute over the claims made.

Read more at:

[//economictimes.indiatimes.com/articleshow/71792374.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst](http://economictimes.indiatimes.com/articleshow/71792374.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. | In the matter of M/s R L Logistics (P) Ltd. | Chennai | 16.10.2019 |
| 2. | In the matter of <i>OSIL Exports Ltd.</i> | Chandigarh | 17.10.2019 |
| 3. | In the matter of <i>Vedika Steels Private Ltd.</i> | Hyderabad | 17.10.2019 |
| 4. | In the matter of M/s Jambu Knits (P) Ltd. | Principal Bench, New Delhi | 30.10.2019 |

BRIEF OF JUDGEMENTS

| S. No. | Case Details | Date of Order | Courts | Brief | Case link |
|--------|--|---------------|--------|---|---|
| 1 | <i>JSW Steel Ltd. and Ors. v. Mahender Kumar Khandelwal & Ors.</i> | 25.10.2019 | NCLAT | <p>This appeal was earlier heard on 14th October 2019 wherein the questions raised for consideration of the Appellate Tribunal were: (a) <i>Whether the 'Directorate of Enforcement' has jurisdiction to attach property of the 'Corporate Debtor' or part thereof which is undergoing 'corporate insolvency resolution process';</i> and (b) <i>Whether the 'Directorate of Enforcement' comes within the meaning of 'Operational Creditor' in terms of Section 5(20) and 5(21) of IBC for the purpose of money claim (civil matter), which may be generated out of the attached property/ part thereof of the 'Corporate Debtor'.</i></p> <p>On, 14th October, 2019, considering the respective stand taken by Enforcement</p> | https://ibbi.gov.in/uploads/order/17bc67ab12a87d6decea6e464ba85d7f.pdf |

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| | | | <p>Directorate and Government of India, order of attachment passed by Deputy Director, 'Directorate of Enforcement' with regard to part property of the 'Corporate Debtor' (Bhushan Power & Steel Limited) was stayed, and further orders for release of property already attached were passed. Further, to ensure that the 'resolution plan' is not given effect to before a decision on the issue, the impugned order dated 5th September, 2019, insofar as it related to payment to the creditors was stayed. On 25th October, 2019, the NCLAT while holding a <i>prima facie</i> view that if the assets seized by the Enforcement Directorate are held to be purchased out of the '<i>proceeds of crime</i>', then the amount which is generated from such assets would come within the meaning of 'Operational Debt'</p> | |
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| | | | | <p>under the Code.</p> <p>However, before deciding the appeal on its merit, NCLAT gave an opportunity to different wings/ Departments of the Central Government to sit together and settle the issue. The appeal was accordingly adjourned for 18th November, 2019.</p> | |
| 2 | <i>Jindal Steel and Power Limited v. Arun Kumar Jagatramka and Ors.</i> | 24.10.2019 | NCLAT | <p>The issues raised in this appeal were (a) whether in a liquidation proceeding under IBC, the Scheme for Compromise and Arrangement can be made in terms of Sections 230 to 232 of the Companies Act, 2013 and (b) if so permissible, whether the Promoter is eligible to file an application for Compromise and Arrangement, while he is ineligible under Section 29A of IBC to submit a Resolution Plan.</p> <p>After taking into account the ratio of</p> | https://ibbi.gov.in/uploads/order/7e01c1b8d22611331b432accc96b16be.pdf |

judgments delivered in the matters of *Y. Shivram Prasad* and *S.C. Sekaran* (by NCLAT) and Hon'ble Apex Court's decision in *Swiss Ribbons*, Hon'ble NCLAT held that even during the liquidation stage, for the purpose of Section 230 to 232 of the Companies Act, 2013, the CD is to be saved from its own management. Thus, the Promoters, who are ineligible under Section 29A, are not entitled to file an application for Compromise and Arrangement in their favour under Section 230 to 232 of the Companies Act, 2013.

NCLAT, further held that, the proviso to Section 35(f), IBC prohibits the Liquidator to sell the immovable and movable property or actionable claims of the 'Corporate Debtor' in Liquidation to any person who is not eligible to be a Resolution Applicant.

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| | | | | NCLAT thus set aside the order passed by the NCLT and remitted the case to Liquidator and Adjudicating Authority for re-consideration in accordance with the judgment. | |
| 3 | <i>IL & FS Financial Services Ltd. V. Emerald Lands (India) Pvt. Ltd</i> | 22.10.2019 | NCLAT | An appeal was preferred by IL&FS Financial Services Limited (<i>Financial Creditor</i>) against impugned order dated 27th August, 2019 passed by Adjudicating Authority, wherein the AA dismissed an application filed by IL&FS Financial Services Limited (<i>petitioner</i>) under Section 7 of the Code. The grounds for such dismissal were that as regards <i>service of notice</i> of the petition to CD, the person who received the same hasnot identified himself, and thus, it is questionable as to the capacity in which such person signed the said notice. The AA, in the impugned order had further observed as, "we are constrained hence to dismiss this petition | https://nclat.nic.in/Useradmin/upload/13513141365db00d74c85a5.pdf |

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| | | | | <p><i>in view of the non-compliance of the order in view of the limited time window available for this Tribunal to dispose of Section 7 applications and this petition is hence dismissed for non-compliance."</i></p> <p>The NCLAT, after perusing contents of the impugned order, and upon hearing submissions made by the parties, held that the Adjudicating Authority has given a wrong ground to dismiss the application under Section 7 of the Code and that only because the person receiving notice at the address of the Corporate Debtor does not put his designation, this by itself is no reason to straight away dismiss the application of the Financial Creditor.</p> | |
| 4 | <i>Saregama India Limited v. M/s Home Movie Makers Private Limited</i> | 23.10.2019 | NCLAT | Being aggrieved by an order passed by the AA (NCLT, Chennai Bench), wherein the application filed by the appellant u/s 7, | https://ibbi.gov.in/uploads/order/8e301d1e18342a8a3ed80ab3b6a2742f.pdf |

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| | | | | <p>IBC was dismissed on the grounds that that the claim made by the Appellant (Financial Creditor) is not a 'financial debt'. In the impugned order, the AA had further held that, <i>"it is not a financial debt and the petitioner tried to masquerade it as financial debt when reply came to section 8 Notice from the corporate debtor. Therefore, this Bench having felt that this petitioner should not have concealed the facts and tried to metamorphose this petition as petition u/s 7 of the Code, this Company Petition is hereby dismissed by imposing costs of ₹ 1,00,000 payable to the Corporate Debtor within 15 days hereof."</i> NCLAT held that nowhere it is mentioned that the amount paid by the Appellant to be repayable along with interest over a period of time in a single or series of payments in future, and hence, it is not money against</p> | |
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| | | | | the consideration for the time value. Thus concluding, NCLAT held that the claim of the Appellant is not a Financial Debt within the meaning of Section 5(8) of IBC, and the Appeal was accordingly dismissed. | |
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We trust you will find this issue of our Bulletin useful and informative.

Wish you good luck in all your future endeavors!!

Team ICSI IIP

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