

KNOWLEDGE REPOINERE (21stMarch-10thApril, 2020)

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**").

PAST EVENTS

- ❖ **ICSI IIP in association with IBBI organized a Webinar on 2nd April, 2020.**

On 2nd April, 2020, ICSI IIP organized a Webinar in association with IBBI on the topic *Impact of "IBC on Ease of doing business" and "Relaxation of IBC threshold"*. The Webinar was addressed by Ms. Medha (Assistant Director, IBBI), Mr. Ashish Makhija (Insolvency Professional) and hosted by Dr. Binoy J. Kattadiyil.

- ❖ **ICSI IIP in association with IBBI and Knowledge Partner, IP Foundation organized a Webinar on 7th April, 2020.**

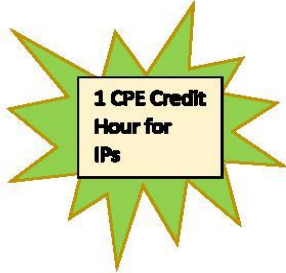
On 7th April, 2020, ICSI IIP in association with IBBI and Knowledge Partner, IP Foundation organized a Webinar on the topic "Impact and practical Issues during and post lockout on IBC process and impact of IBC on ease of doing business". The topics were addressed by Shri. D R Chaudhuri (CGM, IBBI), CA Snehal Kamdar (Insolvency Professional), Mr. Aashit Shah (Advocate) and hosted by Dr. Binoy J. Kattadiyil.

UPCOMING EVENT



भारतीय दिवाला और शोधन अधिनियम बोर्ड
Insolvency and Bankruptcy Board of India

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
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1 CPE Credit
Hour for
IPs

ICSI Institute of Insolvency Professionals
in association with
Insolvency and Bankruptcy Board of India
Organizes a
Webinar
on the topic

**“Code of Conduct for IPs and Disciplinary Proceedings” and
“Impact of IBC on Ease of Doing Business”**

Date	11 th April 2020
Time	6:30 pm – 8:30 pm
Speakers in discussion	1. Dr. Navrang Saini, Whole Time Member, IBBI 2. Ms. Medha Shekhar, Assistant Manager, IBBI 3. CS Shravan Vishnoi, Insolvency Professional
Host	Dr. Binoy J. Kattadiyil, Managing Director, ICSI IIP
Registration Opens	9 th April 2020, 10 AM
Registration Closes	10 th April 2020, 8 PM
Payment Link	https://www.payumoney.com/events/#/buyTickets/www.icsiip.com-events



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The link to register for the Webinar on 11th is –

<https://www.payumoney.com/events/#/buyTickets/www.icsiip.com-events>

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	of Courts	Case link
1	<i>In Re : Cognizance For Extension Of Limitation, SuoMotu Writ Petition(Civil)No(s).3/2020</i>	23.03.2020	Supreme Court	https://ibbi.gov.in/uploads/order/ba13679c3c9779782c75ad2dbd7c65ca.pdf
<p>The Supreme Court exercised its power under Article 142 read with Article 141 of the Constitution of India to declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.</p> <p>SC took <i>suomoto</i> cognizance of the situation arising out of challenge faced by the country on account of COVID-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State), the Apex Court too the decision that,</p> <p><i>"To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings."</i></p>				
2	<i>Ultra Tech Nathdwara Cement Ltd., (formerly known as Binani Cements Ltd.) v. Commissioner, Central Goods And Service Tax and Central Excise Commissionerate, Jodhpur and Ors</i>	07.04.2020	High Court, Rajasthan	https://ibbi.gov.in/uploads/order/eee9e6247d407246d19b1b55c5cd38c8.pdf

The facts at hand are that the resolution plan of Ultra Tech Cement was accepted by the COC in the ongoing CIRP of Binani Cements. After the approval of the resolution plan by the NCLT, the operational creditors i.e. the Commercial Taxes Department of Govt. of Rajasthan as well as the respondent (Commissioner of Goods and Service Tax) assailed the resolution plan by filing appeals before Hon'ble the Supreme Court with a specific plea that their dues have not been accounted for by the COC in the resolution plan. The present writ petition has been filed seeking relief from the same.

Hon' ble High Court relied on the legislative intent of amended Section 31(1) of IBC and Supreme Court judgment in the matter of **Committee of Creditors of Essar Steel India Ltd. Through Authorised Signatory Vs. Satish Kumar Gupta &Ors**, to hold that,

"The purpose of the statute is very clear that it intends to revive the dying industry by providing an opportunity to a resolution applicant to take over the same and begin the operation on a clean slate. For that purpose, the evaluation of all dues and liabilities as they exist on the date of finalization of the resolution plan have been left in the exclusive domain of the resolution professional with the approval of the COC.

...In addition thereto, it may be mentioned here that from the two possible situations; one being liquidation and the other being revival, the respondents will gain significantly in the later because as per the assessed liquidity value, their dues have been assessed as nil, whereas as per the resolution plan with revival of the industry at the instance of the resolution applicant (the petitioner company herein), their rights have been secured to the extent of Rs.72 crores odd. It may be emphasized here that the amount of Rs.72 crores assessed by the resolution professional in favour of the respondent GST Department has already been deposited by the successful resolution applicant i.e. the petitioner company."

The High Court of Rajasthan therefore held that the respondents would be acting in a totally illegal and arbitrary manner while pressing for these demands and thus allowed the writ petition.

3	<i>RajiveKaul and Ors. v. Vinod Kumar Kothari and Ors</i>	20.03.2020	NCLAT	https://ibbi.gov.in/uploads/order/1679091c5a880faf6fb5e6087eb1b2dc.pdf
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The present appeal was filed against the decision of the AA wherein it was held that the Liquidator has the power to remove the 'Nominee Directors' and can nominate 'Directors' and that NICCO Parks and Resorts Limited is bound to act upon the proposals of replacement of existing 'Nominee Directors' of Corporate

Debtor.

The contention of the Appellants is such that they can only be removed by adhering to the procedure specified in terms of Sec 169 of the Companies Act, 2013 and not by the Liquidator in terms of their power under IBC.

Hon' ble NCLAT pulled focus on Section 238 of the Code which has an 'overriding effect of other Laws'. The maximisation of value of Liquidation estate can only be certain if the said shares of NPRL as held by the Corporate Debtor (Nicco) together with the class rights or termed as part of the Liquidation estate attached to it, are held to be forming part liquidation estate and assignable, as enshrined in IBC.

As per Section 33(7), of the Code, the Directors concerned would stand discharged automatically and in practice the procedure mentioned in Section 169 of the Companies Act, 2013 need not be. Rule 39 of IBBI (Liquidation Process) Regulation 2016, clearly spells out that a Liquidator shall make an attempt to recover and realise all the assets and outstanding of a CD in a time bound manner for the purpose of 'Maximation of Value' of the stakeholders.

The appeals were thus dismissed.

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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