

KNOWLEDGE REPONERE (9th- 30thApril, 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 11thApril, 2020.**

On 11thApril, 2020, ICSI IIP organized a Webinar in association with IBBI on the topic "*Code of Conduct for IPs and Disciplinary Proceedings*" and "*Impact of IBC on Ease of Doing Business*". The Webinar was addressed by Dr. Navrang Saini, Whole Time Member, IBBI, Ms. Medha Shekhar, Assistant Manager, IBBI, CS Shravan Vishnoi, Insolvency Professional and hosted by Dr. Binoy J. Kattadiyil.

- ❖ **ICSI IIP in association with IBBI organized a Webinar on 14th April, 2020.**

On 14th April, 2020, ICSI IIP in association with IBBI organized a Webinar on the topic "*Insolvency Resolution and Bankruptcy of Personal Guarantors to Corporate Debtor*" and "*Impact of IBC on Ease of Doing Business*". The topics were addressed by Mr. Sudhaker Shukla, Whole Time Member, IBBI, Dr. Anuradha Guru, Executive Director, IBBI, Adv. Ashish Makhija, Insolvency Professional and hosted by Dr. Binoy J.Kattadiyil.

- ❖ **ICSI IIP in association with IBBI organized a Webinar on 17th April, 2020.**

On 17th April, 2020, ICSI IIP in association with IBBI organized a Webinar on the topic "Scope of Mediation in Insolvency Proceedings and Scope of IBC under Ease of Doing Business". The topics were addressed by Dr. (Ms.) Mukulita Vijayawargiya, WTM, IBBI, Ms. Medha Shekhar, Assistant Manager, IBBI, CA Sanjeev Ahuja, Insolvency Professional and hosted by Dr. Binoy J.Kattadiyil.

❖ **ICSI IIP organized a Webinar on 20th April, 2020.**

On 20th April, 2020, ICSI IIP organized a Webinar on the topic "IP: crisis manager and manager in crisis". The topic was addressed by Mr. K. R. Saji Kumar, Executive Director, IBBI and hosted by Dr. Binoy J.Kattadiyil.

❖ **ICSI IIP organized a Webinar on 26th April, 2020.**

On 26th April, 2020, ICSI IIP organized a Webinar on the topic "Revival under IBC: Resolution Plans and Schemes under Section 230, Companies Act". The topic was addressed by Mr. P.H. Arvinth Pandian, Senior Advocate & Additional Advocate General Of Tamil Nadu and hosted by Dr. Binoy J.Kattadiyil.

❖ **ICSI IIP organized a Webinar on 29th April, 2020.**

On 29th April, 2020, ICSI IIP organized a Webinar on the topic "Section 53 of IBC: The Heart of Insolvency law". The topic was addressed by CS Vinod Kothari, Insolvency Professional and hosted by Dr. Binoy J.Kattadiyil.

NEWS UPDATE

▪ **IBBI steps in to improve governance structure of Registered Valuers' Organisations**

The Insolvency and Bankruptcy Board of India (IBBI) is making efforts to improve the governance structure of Registered Valuers' Organisations (RVO), the frontline organisations for the development and regulation of valuation professions.

It has now clarified that the promoter organisation of an RVO cannot appoint its own members — shareholder member in the case of a company, a trustee in case the promoter is a trust, and a professional member in case the promoter is a professional body — as independent directors in the RVO. The government had tasked the IBBI with the regulatory oversight of valuation professions.

To read more:

<https://www.thehindubusinessline.com/companies/ibbi-steps-in-to-improve-governance-structure-of-registered-valuers-organisations/article31425663.ece>

- **Covid-19: Lockdown period not to be counted for liquidation process related tasks timelines**

The insolvency regulator IBBI ruled that the 40-day nationwide lockdown imposed by the Centre in the wake of COVID-19 outbreak will not be counted for the purpose of computation of timeline for any tasks under liquidation process.

To read more:

<https://www.thehindubusinessline.com/companies/covid-19-lockdown-period-not-to-be-counted-for-liquidation-process-related-tasks-timelines/article31380735.ece>

- **Timeline for DHFL insolvency process may be extended to June 30**

The date of closure of the corporate insolvency resolution process (CIRP) of the financially distressed Dewan Housing Finance Corporation Ltd (DHFL) is expected to be extended to June 30 from May 31. This will give more time to the investors (resolution applicants) who participated in the Expression of Interest (EOI) to submit their resolution plans.

To read more:

<https://www.thehindubusinessline.com/premium/timeline-for-dhfl-insolvency-process-may-be-extended-to-june-30/article31438608.ece#>

IBBI ORDERS

1. ***In the matter of Mr. Koteswara Rao Karuchola, Insolvency Professional (IP)*** under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016 read with Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code).

Link for full Order:
<https://ibbi.gov.in/uploads/order/3ded9a678bdc25e89ea42cc286750736.pdf>

Brief: On various contentions against the IP, A Show Cause Notice was issued and an opportunity of personal hearing was provided to the IP. The contentions were that the IP had engaged an IPE for the task of verification of claims, IP failed to include the details of security interest of the admitted claims even though these details were provided to him by the secured financial creditors and a transaction made by the CD was not included in the Section 43 application before the AA as preferential transactions by the IP on the ground that such amount was adjusted against the amounts payable.

The Disciplinary Committee of IBBI held that "The Code also requires an IP to play a catalytic role in CIRP which requires a right combination of experts acting under the overall supervision of the IP. He is the backbone 10 of the resolution

process under the Code and success thereof hinges on the conduct and competence demonstrated by him. Also, a Corporate Debtor undergoing CIRP is a representation of interests of several stakeholders who pin their hopes on the outcome of CIRP. During CIRP, it is the utmost responsibility of an IP to run the company of Corporate Debtor as a going concern and conduct the entire CIRP in a transparent manner without creating additional insolvency resolution process costs."

They, therefore, ordered a monetary penalty of Rs. 1,00,000/- (Rs. One Lakh only) to be submitted by the IP to IBBI for contravention of Sections 208(2)(a) of the Code, Regulation 13(1) of the CIRP Regulations and Regulation 7(2)(a), 7(2)(h) and 7(2)(i) of the IP Regulations read with clauses 2, 3, 10 and 14 of the Code of Conduct given in the First Schedule under the said Regulations.

2. In the matter of Mr. Bhupesh Gupta, Insolvency Professional (IP) under Regulation 11 of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016 read with Section 220 of the Insolvency and Bankruptcy Code, 2016 (Code).

Link for full order:
<https://ibbi.gov.in/uploads/order/bcad1e538d937001fd3b5cbfceb900f7.pdf>

Brief: On various contentions by the IP such as a difference of Rs. 2,73,000/- in the amount recorded in IM and amount reflected in the said progress report submitted to NCLT. This shows negligence in the conduct of the IP as the IM and the progress report shows varying amount for the same claim and vital information relating to CD was either missing or incorrectly recorded in IM. IP is expected to exercise professional due care and diligence in preparation and presentation of IM. IP also appointed a third valuer in a case and this is in contravention to Regulation 35(1)(b) of the CIRP Regulations which states that a third valuer may be appointed only if in the opinion of RP, the estimates submitted by the two valuers are significantly different. Lastly, in cases where the fee of liquidator has not been decided by the CoC, the liquidator should draw the fee in accordance with the table provided in Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016. However, by continuing to draw the same fee in the capacity of a liquidator as the IP was taking in the capacity of RP, he has acted in contravention of Regulation 4(3) of IBBI (Liquidation Process) Regulations, 2016.

IBBI through its findings concluded that IP has contravened provisions of:

- i. Sections 208(2)(a) and (e) of the Code,
- ii. Regulation 35(1)(b) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016,
- iii. Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016

- iv. Regulations 7(2)(a) and 7(2)(h) of the IBBI (Insolvency Professionals) Regulations, 2016 read with clauses 2, 3, 5, 14 and 25 of the Code of Conduct under the said Regulations.

The Disciplinary Committee of IBBI, directed the IP to deposit an amount of Rs. 31,09,000/- (Rs. Thirty-One Lakh Nine Thousand only) in the Liquidation Estate of CD which he has drawn without any authorization during the period 8th August 2018 to 31st October 2019 while acting as liquidator. However, IP is at liberty to claim liquidator fee in accordance with the provisions of Regulation 4(3) of the IBBI (Liquidation Process) Regulations, 2016. DC hereby warns the RP to be extremely careful, diligent, strictly act as per law and similar action should not be repeated.

BRIEF OF JUDGEMENTS

S. No.	Case Details	Date of Order	Courts	Case link
1	<i>Shakuntla Educational & Welfare Society Vs. Punjab & Sind Bank</i>	13.04.2020	High Court	https://ibbi.gov.in/uploads/order/9d8994718d822c587162604366694180.pdf

The petitioner (a charitable society engaged in the business of technical and higher education) sought a direction to the respondent to not declare its pending loan accounts as Non-Performing Assets (NPA) when the countrywide lockdown is still continuing. The petitioner also sought a direction to the respondent for grant of moratorium of three months to it as per the circular issued by the Reserve Bank of India (RBI) on 27th March, 2020.

Petitioner claimed that in view of circular issued by the RBI, whereunder a 90 days moratorium qua the instalments, which became payable after 01.03.2020 has been granted, the respondent cannot declare the petitioner's accounts as NPA only on account of its failure to pay the instalments, which were payable on or before 31.03.2020.

The Hon'ble High Court observed that the intention of the RBI while issuing the regulatory package was to maintain status quo with regard to the classification of accounts of the borrowers as they existed on 01.03.2020.

In view of the above, the Hon'ble High Court of Delhi held that,

"13. Any classification of the petitioner's accounts as NPA would certainly amount to altering the position as existing on 01.03.2020 and, therefore, grave and irreparable loss will be caused to the petitioner, in case, its accounts are declared as NPA, only on account of its failure to pay the instalments, which were admittedly

payable on or before 31.03.2020.”

Accordingly, the Hon’ble High Court of Delhi while admitting the petition directed that till 04th May, 2020, the respondent will stand restrained from declaring the petitioner’s accounts as NPA.

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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