

## KNOWLEDGE REPONERE

(1<sup>st</sup> May-30<sup>th</sup> May, 2020)

**Dear Professional Colleagues,**

Trust this mail finds you well. We are pleased to share with you our 78<sup>th</sup> issue of the knowledge bulletin on the Insolvency and Bankruptcy Code, 2016 ("**Code**") along with recent initiatives of ICSI IIP.

### **IBC UPDATE:**

- **No fresh insolvency to be initiated for 1 year under IBC: FM Sitharaman**

In a bid to give relief to companies defaulting on loans due to the Covid-19 stress, Finance Minister Nirmala Sitharaman on 17<sup>th</sup> May, 2020 said no fresh insolvency will be initiated for one year under the Insolvency and Bankruptcy Code.

Special insolvency resolution framework for MSMEs under Section 240A of the Code will be notified soon.

Also, Coronavirus-related debt will be excluded from definition of default, she said.

Minimum threshold to initiate insolvency proceeding has already been raised to Rs 1 crore from Rs 1 lakh to benefit MSMEs, she said adding that an Ordinance will be promulgated to bring this change in IBC.

**Link:** <https://pib.gov.in/PressReleasePage.aspx?PRID=1624661>

- **Insolvency and Bankruptcy Board of India (IBBI) invites comments from public on the Regulations notified under the Insolvency and Bankruptcy Code, 2016**

On 04<sup>th</sup> May, 2020, IBBI has invited comments from public on all Regulations already notified under the IBC. The comments received between April 13, 2020 and December 31, 2020 shall be processed together, and following due process, be modified to the extent considered necessary

Outlining the process for submission of comments by various stakeholders, IBBI assures that it shall endeavor to notify modified regulations by March 31, 2020 and bring them into force on April 1, 2021.

**Link:** <https://ibbi.gov.in/uploads/press/6408370b268c3a50c61bf75118493198.pdf>

- **IBBI's communication dated 8th May 2020 - Role of Resolution Professional / Liquidator in respect of Avoidance Transactions**

On 08<sup>th</sup> May, 2020, IBBI issued a communiqué clarifying the role of Resolution Professional/Liquidator in respect of Avoidance Transactions, for the sole purpose of educating the IPs and other stakeholders of corporate insolvency resolution and liquidation processes.

IBBI advised a stakeholder must refer to the Code and the Rules/Regulations and relevant case laws or seek professional advice if he intends to take any action or decision in any matter under the Code.

**Link:** <https://ibbi.gov.in/uploads/whatsnew/3d9849d4c72be198d901ba78006005cf.pdf>

- **NCLT has made 'Record of Default' mandatory for Insolvency Proceedings**

NCLT vide its order dated 12.05.2020 directed Financial Creditors to file default record from Information Utility(IU) before initiating insolvency process under Section 7 of IBC. Now, no new petition would be entertained without record of default under section 7. In case of pending cases also, NCLT directed to file record of defaults from IU before the next date of hearing.

Before this order of NCLT, till date the default record from IU was not mandatory and even other documents or evidence were sufficient to demonstrate a default.

**Link:** <https://ibbi.gov.in/uploads/legalframwork/e3daa98bab56a6098c4e9356b93095bb.pdf>

## **NEWS HEADLINES**

- **Jet Airways insolvency resolution professional seeks fresh EoI for defunct airline**

The interested parties can submit EoI by May 28, 2020 while the final list of eligible prospective resolution applicants (PRAs) will be given to the lenders' committee on June 10, as per the EoI document.

**Link:**[https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/jet-airways-insolvency-resolution-professional-seeks-fresh-eoi-for-defunct-airline/articleshow/75710814.cms?utm\\_source=contentofinterest&utm\\_medium=text&utm\\_campaign=cppst](https://economictimes.indiatimes.com/industry/transportation/airlines/-/aviation/jet-airways-insolvency-resolution-professional-seeks-fresh-eoi-for-defunct-airline/articleshow/75710814.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

- **IBC deferral plan and absence of loan rejig put banks in a fix**

Banks are in a quandary over the resolution of stress among corporate borrowers as they find themselves caught between the government's proposal to suspend the bankruptcy code for a year and the Reserve Bank of India's reluctance to allow a one-time loan restructuring in the absence of adequate information and data.

**Link:** <https://economictimes.indiatimes.com/industry/banking/finance/banking/ibc-deferral-plan-and-absence-of-loan-rejig-put-banks-in-a-fix/articleshow/76078629.cms>

- **Bankruptcy resolution: In IBC, liquidation an overwhelming outcome rather than revival**

A significantly greater number of cases of stressed assets that undergo resolution proceedings under Insolvency and Bankruptcy code end up in liquidation rather than being revived, the data show. Of the total 3,774 cases admitted into Corporate Insolvency Resolution Processes (CIRPs) till the end of March 2020, 914 ended into liquidation, which is 24 per cent of the total cases admitted, Care Ratings said in a report.

**Link:** <https://www.financialexpress.com/economy/bankruptcy-resolution-in-ibc-liquidation-an-overwhelming-outcome-rather-than-revival/1972086/>

- **NCLAT sets asides NCLT order to make MCA party in all insolvency, company matters**

The NCLAT has set aside an NCLT order to implead the Corporate Affairs Ministry as a party in all proceedings related to insolvency and company matters before it. Allowing the plea filed by the Ministry of Corporate Affairs (MCA), a two-member bench of the appellate tribunal said the NCLT's direction was "beyond the power" and amounted to "imposition of a new rule in a compelling fashion".

**Link:** <https://www.moneycontrol.com/news/india/nclat-sets-asides-nclt-order-to-make-mca-party-in-all-insolvency-company-matters-5316331.html>

- **NCLAT's resolution professional ruling: Several bankruptcy cases face delay**

National Company Law Appellate Tribunal (NCLAT) had ordered that a former bank official cannot be appointed as a resolution professional (RP) in a company facing bankruptcy

In an order dated May 22, the NCLAT said the apprehension of bias expressed by Metenere about the appointment of former banker Shailesh Verma as the proposed 'interim resolution professional' at the instance of the SBI cannot be dismissed offhand.

**Link:** [https://www.business-standard.com/article/companies/nclat-s-resolution-professional-ruling-several-bankruptcy-cases-face-delay-120052501295\\_1.html](https://www.business-standard.com/article/companies/nclat-s-resolution-professional-ruling-several-bankruptcy-cases-face-delay-120052501295_1.html)

- **U.K. Introduces Insolvency Bill to Help Covid-Hit Companies**

The U.K. government has introduced new insolvency legislation to help businesses that are struggling from the economic impacts of coronavirus.

Legislation was introduced in parliament on 20<sup>th</sup> May, 2020 to temporarily suspend wrongful trading provisions at least until June 30, allowing directors to continue trading without the threat of personal liability.

**Link:** <https://www.bloomberg.com/news/articles/2020-05-20/u-k-introduces-insolvency-bill-to-support-covid-hit-companies>

- **Insolvency suspension necessary during Covid-19 times: IBBI Chief M S Sahoo**

According to Mr. Sahoo, pushing firms to insolvency when there is nobody to rescue them will mean they will all die, which Government wants to avoid.

He also said that one of the main reasons why suspending the insolvency and bankruptcy code (IBC) is required, in the current Covid-19 times, is that there are not enough 'White Knights' to rescue the firms in distress.

**Link:** <https://www.thehindubusinessline.com/money-and-banking/insolvency-suspension-necessary-during-covid-19-times-ibbi-chief-m-s-sahoo/article31625853.ece?homepage=true>

- **Govt plans pre-packaged IBC deals to ease caseload**

The pause in bankruptcy resolutions because of the covid-19 pandemic has prompted the government to legislate changes to the insolvency code to fast-track processing of cases where a restructuring plan has been agreed in advance between the company and its creditors.

The so-called pre-packaged insolvency procedure, or pre-pack, will also help ease the burden on bankruptcy courts, once the changes to the Insolvency and Bankruptcy Code are approved by Parliament.

**Link:** <https://www.livemint.com/news/india/govt-plans-pre-packaged-ibc-deals-to-ease-caseload-11588789472048.html>

## **RECENT ORDERS/ JUDGEMENTS**

1. Supreme Court extended all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and u/s 138 of the Negotiable Instruments Act, 1881 w.e.f. March 15, 2020, till further orders, **in the**

**matter of Cognizance for extension of limitation, Suo Moto Writ No.3 of 2020 dated 06.05.2020.**

2. High Court of Jharkhand held that approved resolution plan cannot stop garnishee proceedings when VAT authorities unaware of CIRP. HC dismisses writ petitions filed by Electrosteel Steels ('Corporate Debtor') challenging the garnishee order passed by Deputy Commissioner of Commercial Taxes ('Respondent') against SBI w.r.t. tax due from the Corporate Debtor under the Jharkhand VAT Act, holds that "...the State Government (Respondent) was never involved in the corporate insolvency resolution process, and as such, the resolution plan cannot be said to be binding on it; **in the matter of Electrosteel Steels Limited v. The State of Jharkhand and Ors, W.P. No.6324-6327 of 2019 dated 01.05.2020.**
3. NCLT Kolkata Branch admitted Operational Creditors Section 9 application for initiation of CIRP against Corporate Debtor for default in payment in debt to the tune of Rs.90 lacs, rejecting the Corporate Debtor's contention that the increased IBC threshold of Rs.1 Cr. Will have retrospective effect. NCLT held that the amendment to Section 4 of IBC increasing threshold of default to Rs.1 crore vide notification dated 24.03.2020 shall have prospective effective not retrospective; **in the matter of Fosesco India Limited Vs. Om Bosco Rail Products Limited, CP(IB) No. 1735/KB/2019 dated 20.05.2020.**
4. NCLAT set aside the order of NCLT, New Delhi Bench which directed that MCA be impleaded as respondent in all IBC cases and company petitions so that authentic record is made available by the MCA officers for appreciation of matters. NCLT also directed that the aforesaid order shall be applicable throughout the country to all benches of NCLT. NCLAT held that whether MCA has to be impleaded as a necessary party/even as proforma Respondent before the tribunal has to be determined only on a case to case basis when the need arise for rumination of issues and to implead MCA in all IBC cases is beyond the power of NCLT and it tantamounts to imposition of new rule in compelling fashion; **in the matter of Union Bank of India Vs. Oriental Bank of Commerce, CA(AT)(Insolvency) No.1417 of 2019 dated 22.05.2020.**
5. NCLAT held that an ex-employee of the Financial Creditor cannot be permitted to act as a Resolution Professional in a CIRP initiated by the Financial Creditor to ensure that the corporate insolvency resolution process is conducted in a fair and unbiased manner; **in the matter of SBI vs. M/s. Metenere Limited, CA(AT)(Insolvency)No.76 of 2020 dated 22.05.2020.**
6. NCLAT held that Forensic Audit under sec. 75 of the IBC cannot primarily be directed at the time of admission of application under section 7 for initiating a

CIRP process in terms of finding proof of default, unless forgery or falsification of documents is patent and prima facie established; **in the matter of Allahabad Bank vs. Poonam Resorts Ltd., CA(AT)(Insolvency) No.1303 of 2019 dated 22.05.2020.**

7. NCLT, Chennai Branch held that National Company Law Tribunal is not a forum to claim damages for non-delivery of goods to a party, **in the matter of Cellpap BV vs. Oren Hydrocarbons Pvt. Ltd., IBA/937/2019 dated 05.05.2020.**
8. Where corporate debtor has raised the issue of limitation against the application filed by financial creditor under section 7, as the debt was classified as NPA and the date of default would have been prior to the effective date of NPA classification, NCLT, Mumbai Branch held that Financial creditor has to prove beyond doubt that the petition is within the period of limitation prescribed for proceedings under the IBC; **in the matter of India Resurgence ARC Private Limited vs. Indian Steel Corporation Limited, CP(IB)No.3846/MB-II/2019 dated 06.05.2020.**

#### **NEWS FROM INSTITUTE**

- **ICSI IIP organized a Workshop on the topic "*Forensic Audit under IBC*"**

On 2<sup>nd</sup> May, 2020, ICSI IIP organized an online Workshop on the topic "*Forensic Audit under IBC*" from 10:00 am to 5:00 pm. The speakers for the Workshop were CS (Ms.) Aneetha (IP), Adv. Avinash Krishnan Ravi and CA Dr Gopal Krishna Raju.

It was the first Workshop conducted by ICSI IIP online for the professional development of the IP's. It was a full day detailed workshop on Forensic Audit under IBC.

- **ICSI IIP organized a Workshop on the topic "*Evolving Framework for Resolution Plan under IBC, 2016*"**

On 3<sup>rd</sup> May, 2020, ICSI IIP organized an online workshop on the topic Evolving Framework of Resolution Plan under IBC, 2016. It was a full day workshop wherein Dr. Binoy J. Kattadiyil, MD, ICSI IIP gave the Welcome address, CS Ashish Garg, President, ICSI welcomed Hon'ble Shri. Justice Krishnan Ramasamy, Judge Madras High Court for the Inaugural Address.

The expert speakers/panelists for the workshop were Mr. K. R. Saji Kumar, ED, IBBI; Adv. Ashish Makhija, Insolvency Professional; CA Anil Goel, Insolvency Professional and Dr. Savan Godiawala, Insolvency Professional (RP and Liquidator in Lanco).

- **ICSI IIP organized a Workshop on the topic "Cross Border Insolvency and Group Insolvency"**

On 10<sup>th</sup> May, 2020, ICSI IIP organized an online workshop on the topic "Cross Border Insolvency and Group Insolvency". It was a full day workshop wherein Dr. Binoy J. Kattadiyil, MD, ICSI IIP gave the Welcome address, CS Devendra Deshpande, Director ICSI IIP gave the inauguration address, CS Ashish Garg, President, ICSI welcomed Hon'ble Shri. Justice (Retd,) M.M Kumar, Past President, National Company Law Tribunal who gave a keynote address to all the professionals who attended the Workshop.

The eminent speakers/panelists for the workshop were Shri. Methil Unnikrishnan, General Manager, IBBI; Adv. Sumant Batra, President, Society of Insolvency Practitioners of India, Chairman - ASSOCHAM; CA Anil Goel, Insolvency Professional; CA Avil Menezes, Insolvency Professional; Mr. Anuj Jain, Insolvency Professional; Mr. Mahender Khandelwal, Insolvency Professional. More than 600 professionals attended the Workshop.

- **ICSI IIP organized a Webinar on the topic "Secured Creditors under IBC" on 13<sup>th</sup> May, 2020.**

On 13<sup>th</sup> May, 2020, ICSI IIP organized a Webinar on the topic "Secured creditors in IBC". The topic was addressed by Adv. Shubharanjani Ananthand hosted by Dr. Binoy J. Kattadiyil.

- **ICSI IIP in association with IBBI and IPA of ICAI (Cost) organized a Webinar on 15<sup>th</sup> May, 2020.**

On 15<sup>th</sup> May, 2020 ICSI IIP in association with IBBI and IPA of ICAI (Cost) organized a Webinar on the topic "Valuations under IBC- – Impact on account of COVID-19 pandemic". The speakers for the Webinar were Dr. Navrang Saini, Whole Time Member, IBBI; Dr. Binoy J. Kattadiyil, MD, ICSI IIP; Dr. S. K. Gupta, MD & CEO, IPA of ICAI (Cost) and Mr. Praveen Subramanya, Registered Valuer (Governing Council Member, RICS).

- **ICSI IIP organized a Webinar on 22<sup>nd</sup> May, 2020.**

On 22<sup>nd</sup> May, 2020, ICSI IIP in association with IBBI organized a Webinar on the topic "Management of Corporate Debtor as Going Concern; Operations Management". The speakers for the Webinar were Mr. Sudhaker Shukla, Whole Time Member, IBBI; Dr. Binoy J. Kattadiyil, MD, ICSI IIP; Mr. Sanjeev Ahuja, Insolvency Professional and Mr. Nitin Satija, AD, ICSI IIP.

- **ICSI IIP in association with IBBI and in collaboration with the British High Commission, organized a webinar on 28<sup>th</sup> May, 2020**

On 28<sup>th</sup> May, 2020, ICSI IIP in association with IBBI and in collaboration with British High Commission, organised a Webinar on 'Reviewing and Challenging Avoidable Transactions under IBC-How to maximise the assets'. Dr. Binoy J Kattadiyil, MD, ICSI IIP gave welcome address and CS Nagendra D. Rao gave introductory Remark in the webinar. Key note address was given by Mr. K.R. Saji Kumar, Executive Director, IBBI and Mr. Rahul Ahluwalia, First Secretary(Financial Services, British Deputy High Commission). Eminent speakers in the webinar were Mr. Dhananjay Kumar, Cyril Amarchand Mangaldas, Mr. Dhruv Phophalia, Managing Director, Alvarez & Marsal, Ms. Madlyn Gleich Primoff, Partner, Freshfields Bruckhaus Deringer, New York Office and Mr. Craig Montgomery, Partner, Freshfields Bruckhaus Deringer, London Office.

- **ICSI IIP organized Two Days Interactive Workshop titled "Evolution of judicial precedents on IBC vs PMLA and IBC and RERA" on 29<sup>th</sup> and 30<sup>th</sup> May, 2020**

On 29<sup>th</sup> and 30<sup>th</sup> May, 2020, ICSI IIP organized a Two days interactive workshop titled "Evolution of judicial precedents on IBC vs PMLA and IBC and RERA". The guest of Honour in the Workshop was Hon'ble Shri Balvinder Singh, Member(Technical), National Company Law Tribunal, and eminent expert Adv. Anant Merathia, Managing Partner, Anant Merathia & Associates addressed the participants in the two days workshop.

We hope you will find this issue of our Bulletin useful and informative.

Please Stay Safe, be Healthy and follow the advice and precautions issued by the Government from time to time for fighting against COVID-19.

Wish you good luck in all your endeavors!!

**Team ICSI IIP**

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