

# INSTITUTE OF INSOLVENCY PROFESSIONALS

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

*“The harder you work for something, the greater you'll feel when you achieve it-Anonymous”*

## KNOWLEDGE REPONERE- 80

(21<sup>st</sup> June-15<sup>th</sup> July, 2020)

Dear Professional Colleagues,

Trust this mail finds you well and safe.

The ICSI IIP has taken an initiative to keep its professional members abreast with the latest amendments, notification and case laws filed under the Code as well as other issues encompassing the law of insolvency in India and Abroad. We are pleased to share with you our 80<sup>th</sup> issue of the Knowledge Bulletin on the recent updates under Insolvency and Bankruptcy Code, 2016 (“Code”) along with recent initiatives of ICSI IIP.

### **IBC UPDATES**

#### **1. Insolvency and Bankruptcy Board of India(Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020**

On 10<sup>th</sup> July, 2020, the Insolvency and Bankruptcy Board of India (IBBI) has come up with guidelines that govern the online delivery of education by IPAs and RVOs. In the wake of COVID-19, the IBBI, vide its advisories No. IBBI/IPA/031/2020 dated 20th March, 2020 and No. IBBI/RVO/032/2020 dated 20th March, 2020, allowed online delivery of courses by RVOs and IPAs and continuing education by RVOs till 30th September, 2020. Since, the menace of COVID-19 continues with no resolution in sight. It is considered necessary to continue online delivery of education beyond 30th September, 2020, in addition to classroom mode, wherever possible.

Link: <https://ibbi.gov.in/uploads/legalframework/27b396627077e4426e0b8fbfd5a69727.pdf>

#### **2. Insolvency and Bankruptcy Board of India (Insolvency Professionals) (Second Amendment) Regulations, 2020**

IBBI has vide its amendment notification dated 30<sup>th</sup> June, 2020, made amendment in the IBBI(Insolvency Professionals) Regulations, 2016. It stated that in the Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, in regulation 12(1), for clause (a), the following clause shall be substituted, namely: — “(a) *its sole objective is to provide support services to insolvency professionals;*” The wordings which limited its scope of services to only those insolvency professionals who are its partners or directors have been

dispensed with. The amendment indicates towards allowing a slight expansion in scope of services for such entities.

Link: <https://ibbi.gov.in/uploads/legalframework/298ceb6f7b14fc9d8647342a093925ee.pdf>

### **3. Report of the Committee of Experts on Institutional Framework for Regulation and Development of Valuation Professionals**

The Report of Committee of Experts to examine the need for an institutional framework for regulation and development of valuation professionals, constituted vide order No.12/9/2019-PI dated 30th August, 2019, presented to the Government of India. The report was accompanied by a draft of 'Valuers Bill, 2020'.

Link: <https://ibbi.gov.in/uploads/whatsnew/ed6bf110d4c26d3dc9a2e40053cf53c6.pdf>

## **RECENT ORDERS/ JUDGEMENTS**

1. In the matter of *Mr. Abhijit Guhathakurta, Monitoring Agency of the Corporate Debtor v. Royale Partners Investment Fund Ltd.*, NCLAT dismissed the appeal and held that the Appellant / Respondent cannot avoid/evade/ or circumvent its 'solemn responsibility' to implement the 'Resolution Plan' unconditionally in strict sense of the term, without any further procrastination.

Link: <https://nclat.nic.in/Useradmin/upload/19848071895ef4848631749.pdf>

2. In the matter of *M/s. Kotak Resources v. Dharmendra Dhelaria & Ors*, the issue raised in the appeal was in regard to reimbursement of the 'corporate insolvency resolution process cost', liability in respect whereof had been laid by the Adjudicating Authority upon Committee of Creditors consisting of the Appellant and another financial creditor in equal proportion. NCLAT held that CIRP cost will be borne by the members of CoC, 'Corporate Debtor' cannot be saddled with the liability of the CIRP costs.

Link: <https://ibbi.gov.in/uploads/order/bf66186d953a557e93330003925c5c72.pdf>

3. In the matter of *M/s Mansi Oils and Grains Pvt Ltd before the West Bengal Authority for Advance Ruling, Goods and Services Tax*, West Bengal Authority of Advance Ruling mandated that a resolution professional since he is selling goods, has to be registered under the GST regime and pay tax thereon. The sale of the assets of the Corporate Debtor by Resolution Professional is a *supply of goods* and hence, Resolution Professional has to be registered under section 24 of the GST Act.

Link: [http://wbcomtax.nic.in/GST/GST\\_Advance\\_Ruling/02WBAAR2020-21\\_20200629.pdf](http://wbcomtax.nic.in/GST/GST_Advance_Ruling/02WBAAR2020-21_20200629.pdf)

4. In the matter of *M/s Siemens Gamesa Renewable Power Pvt. Ltd. v. Ramesh Kymal*, insolvency proceedings under Section 9 were pending before NCLT when IBC (Amendment) Ordinance, 2020 was promulgated by the Government on June 5, 2020, suspending Section 7, 9 and 10 of IBC. The date of alleged default in the present application was April 30, 2020. The

question before NCLT, Chennai Bench was whether Section 10A would be applicable to pending proceedings too. NCLT held that Section 10A which bars the initiation of insolvency proceedings, will be applicable retrospectively to pending applications with respect to defaults arising on or before March 25, 2020.

**Link:** [https://nclt.gov.in/sites/default/files/July-final-orders-pdf/IA%20395\\_0.pdf](https://nclt.gov.in/sites/default/files/July-final-orders-pdf/IA%20395_0.pdf)

5. In the matter of *GE Power India Limited v. NHPC Limited*, dispute in the present case was between the copyright holder (plaintiff) and the company (defendant) which had acquired the corporate debtor to whom the engineering drawings covered by the copyrights were supplied under a conditional and limited license for use. High Court of Delhi held that the suit for infringement of copyrights, arising out of and/or in relation to the insolvency resolution process of a corporate debtor must be adjudicated by the NCLT and that the proceedings in the Civil Court are barred.

**Link:** [CS\(Comm\)140/2020 & I.A. 4016/2020\(under Order XXXIX Rule 1 and 2 CPC\)](https://nclt.gov.in/sites/default/files/July-final-orders-pdf/CS%20Comm%20140%202020%20&%20IA%204016%202020%20(under%20Order%20XXXIX%20Rule%201%20and%202%20CPC).pdf)

6. In the matter of *Office of the Specified Officer, Special Economic Zone, Warora, District v. Mr. V. Venkatachalam, RP of Sai Wardha Power Generation Limited*, the challenge to the approved Resolution Plan in the appeal filed by Special Economic Zone (Appellant) is limited to concession which deals with 'Relief and Concession in the Resolution Plan sought by the Resolution Applicant'. Unless the plan approved by the CoC is in conflict with any provision of law and the distribution mechanism balances the interests of all stakeholders, judicial intervention would not be warranted.

**Link:** <https://nclat.nic.in/Useradmin/upload/3371325655f0c341358097.pdf>

7. In the matter of *Vijay Kumar V Iyer (Resolution Professional for Aircel Ltd. And Dishnet Wireless Ltd) v. Bharti Airtel Ltd*, appeal was filed by RP of the Aircel Ltd. (Corporate Debtor/CD) against the impugned order passed by NCLT, Mumbai Bench which permitted to set off certain amount to be paid by the Aircel Companies to the Airtel Companies to the tune of approx. Rs.112 Crores. (Set off amount). NCLAT set aside the ruling of NCLT which allowed to set off a certain amount while making payment.

**Link:** <https://ibbi.gov.in/uploads/order/d5c1b0bd5698a6bf181bc0c2843f8e5d.pdf>

## **NEWS HEADLINES**

### **1. Cheaper, faster and easier insolvency resolution process on cards for MSMEs: IBBI**

The board envisaged a shorter time limit than the current 180 days for an MSME insolvency resolution process, along with cost-effective and easier procedures where the debtor continues to manage the business while negotiating with creditors, Kumar said during an online conference.

**Link:** <https://economictimes.indiatimes.com/small-biz/startups/newsbuzz/cheaper-faster-and-easier-insolvency-resolution-process-on-cards-for-msme-says-ibbi/articleshow/76248328.cms>

[easier-insolvency-resolution-process-on-cards-for-msmes-ibbi/articleshow/77068772.cms](https://economictimes.indiatimes.com/news/international/business/scandal-hit-wirecard-files-for-insolvency/articleshow/77068772.cms)

2. **Wirecard AG filed for insolvency, the culmination of a stunning accounting scandal that led to the arrest of its CEO**

Wirecard AG filed for insolvency, the culmination of a stunning accounting scandal that led to the arrest of its CEO and left the German payment-processing firm scrambling to find over \$2 billion missing from its balance sheet.

Link: <https://economictimes.indiatimes.com/news/international/business/scandal-hit-wirecard-files-for-insolvency/articleshow/76631840.cms>

3. **PNB terms DHFL exposure of ₹3,688.6 crore as fraud**

India's second-largest public sector lender Punjab National Bank (PNB) on Thursday declared its ₹3,688.58 crore exposure to mortgage financier Dewan Housing Finance Ltd (DHFL) as fraud.

Link: <https://www.livemint.com/industry/banking/pnb-terms-dhfl-exposure-of-3-688-6-crore-as-fraud-11594344619781.html>

4. **Rule change to help over 270 stressed cos raise funds, restructure finances**

On June 22, SEBI eased its preferential allotment rules to help stressed companies raise capital, changed the pricing formula to reflect recent prices and exempted such companies from the open offer requirement. More than 270 stressed companies, having default ratings on their debt instruments, are expected to benefit from recent relaxations in regulatory norms, enabling them to raise funds through preferential allotment.

Link: <https://indianexpress.com/article/business/banking-and-finance/rule-change-to-help-over-270-stressed-cos-raise-funds-restructure-finances-6493484/>

5. **Deutsche-led group exits race for GVK's Punjab power plant**

In this case, banks still have the option of recovery through the insolvency process as Axis Bank had already filed a petition in the National Company Law Tribunal (NCLT) to start bankruptcy proceedings against the company before the government's March 25 cut-off for bringing any fresh cases under the IBC.

Link: <https://economictimes.indiatimes.com/industry/banking/finance/banking/deutsche-led-group-exits-race-for-gvks-punjab-power-plant/primeshow/76844714.cms>

6. **JP Associates Lenders Attempt Resolution Plan Outside IBC**

Lenders to debt-laden Jaiprakash Associates Ltd. are working on a resolution plan for the company, which would save them a trip to the insolvency courts.

Link: <https://www.bloomberquint.com/bq-blue-exclusive/jp-associates-lenders-attempt-resolution-plan-outside-ibc-bq-exclusive>

7. **HC moved against amendment to insolvency code**

A PIL has been filed in the Madras High Court challenging a Central ordinance amending the Insolvency and Bankruptcy Code (IBC) wherein fresh insolvency proceedings will not be

initiated for defaults on account of the coronavirus pandemic. When it came up for hearing, first bench of Chief Justice A P Sahi and Justice Senthilkumar Ramamoorthy directed Additional Solicitor General R Sankaranarayanan to get instructions from the authorities concerned in six weeks after he opposed the petition, saying the amendment was only a temporary measure in view of COVID-19 lockdown.

**Link:**<https://www.outlookindia.com/newscroll/hc-moved-against-amendment-to-insolvency-code/1889840>

**8. Indian banks pursue Mallya bankruptcy order in UK court**

A consortium of Indian banks led by the State Bank of India (SBI) are pursuing their bankruptcy order against liquor tycoon Vijay Mallya in the High Court in England, as they seek to establish that any settlement offer made by him is now “dead in the water”. It follows Justice Briggs' ruling back in April in the case when he had concluded that Mallya should be given time until petitions pending in India can be determined before a decision is made on a bankruptcy order in London.

**Link:**<https://www.newindianexpress.com/business/2020/jul/08/sebi-signs-pact-with-cbdt-for-data-info-exchange-sets-up-data-exchange-steering-group-2167146.html>

**9. Borrowers Eligible For Moratorium On Grounds Of Business Continuity, Says Karnataka High Court**

The Karnataka High Court has directed HDFC Bank Ltd., Federal Bank Ltd. and Aditya Birla Housing Finance to grant a moratorium on loan repayments to a borrower from March 1 till Aug. 31. The court has also restrained the lenders from recovering loan instalments from the company as long as the moratorium is alive. HDFC Bank argued that it rejected the company's moratorium plea in line with its Board's policy, approved by the RBI, on structured loans. It said that as long as the repayment is in the form of cash flows which haven't been interrupted, moratorium cannot be granted. And since the company was receiving lease rentals, the relief won't apply.

**Link:**<https://www.bloomberquint.com/law-and-policy/borrowers-eligible-for-moratorium-on-grounds-of-business-continuity-says-karnataka-high-court>

**10. NCLT approves Amtek Auto resolution plan**

The National Company Law Tribunal (NCLT) approved the resolution plan for bankrupt firm Amtek Auto, submitted by US-based hedge fund Deccan Value Investors LP (DVIL) on Thursday. This brought to a close the three-year old case after the Supreme Court (SC) in June, refused to give more time for DVIL to assess the impact of the economic contraction caused by the pandemic.

**Link:**<https://economictimes.indiatimes.com/news/politics-and-nation/nclt-approves-amtek-auto-resolution-plan/articleshow/76882571.cms>

## **INTERNATIONAL INSOLVENCY NEWS**

### **1. UK's insolvency reforms can show India the way**

The United Kingdom has recently enacted the Corporate Insolvency and Governance Act 2020 (CIGA). The CIGA has introduced important reforms to the UK insolvency law, including provisions such as a 'free-standing' moratorium and a new 'restructuring plan' regime, with 'cross-class cram down'. These may serve to inform reforms to the provisions for schemes of 'compromise or arrangement' under the Companies Act, 2013. Introducing certain provisions that form part of the UK's new law on corporate insolvency can help save Indian companies that can still be rescued from going into the insolvency process.

**Link:** <https://www.livemint.com/opinion/online-views/uk-s-insolvency-reforms-can-show-india-the-way-11595430383515.html>

### **2. Corporate Insolvency and Governance Act 2020**

Having received its first reading in the House of Commons on 20 May 2020, the Corporate Insolvency and Governance Bill has been published, resulting in the Corporate Insolvency and Governance Act 2020 (CIGA 2020). The CIGA 2020 represents the biggest change to the UK's insolvency framework in 20 years. The overarching objective of the CIGA 2020 is to provide businesses with the flexibility and breathing space they need to continue trading during the current coronavirus (COVID-19) pandemic.

**Link:** <https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/corporate-insolvency-and-governance-act-2020>

### **3. Spike In Personal Insolvencies Could Happen In Run-up to Christmas**

The majority of personal insolvency experts who think there will be an increase in cases in the coming year think the spike will happen towards the end of 2020, although a significant proportion predict it will be in early 2021, according to the findings from insolvency and restructuring trade body R3. More than two-fifths (41.6%) of those who work in personal insolvency predict the number of people going financially insolvent in the next 12 months will be significantly higher than last year

**Link:** <https://globalinsolvency.com/headlines/spike-personal-insolvencies-could-happen-run-christmas-survey-finds>

### **4. Shenzhen the first to pilot Personal Bankruptcy in China**

China is looking to enact the personal bankruptcy regime in Shenzhen, one of its largest cities. On 2 June 2020, the Shenzhen Municipality published the draft of China's first ever personal bankruptcy regulations for public consultation.

**Link:** [https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/insol-europe-lexisnexis-coronavirus-\(covid-19\)-tracker-of-insolvency-reforms-shenzen-china](https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/insol-europe-lexisnexis-coronavirus-(covid-19)-tracker-of-insolvency-reforms-shenzen-china)

## **NEWS FROM ICSI IIP**

- 1. Webinar | Treatment of Pending Tax Liability Under IBC | July 25, 2020 | 03:00 PM - 04:30 PM IST**

A webinar is being hosted by ICSI IIP on Treatment of pending Tax Liability with Mr. Gopal Krishna Raju as the main speaker. Registrations are now open. It is a free Webinar.

2. **Webinar | MSME/Udhyam: New Criteria for classification of MSME ~ Gazette Notification - 1st June, 2020 | July 08, 2020**

A webinar was hosted by ICSI IIP on MSME/Udhyam: New Criteria for classification of MSME ~ Gazette Notification - 1st June, 2020 with CS Dipti Mehta as the main speaker. The webinar was informative and interactive. It is now available on Youtube channel of ICSI IIP.

**Link:** <https://www.youtube.com/watch?v=jsDsUSplBgQ>

3. **Interactive Meet | Discussion Paper | Restricting the number of assignments to be handled by IP | July 05, 2020**

A very interactive and useful interactive meet was organized by ICSI IIP on the Discussion Paper on restricting the number of assignments of an IP. The inputs from the meet were collated and presented to IBBI. The Interactive Meet is now available on Youtube Channel of ICSI IIP.

**Link:** <https://www.youtube.com/watch?v=gW4MdLAht3E>

4. **Webinar: e-Filing Procedure Before NCLT on June 27, 2020**

A webinar was conducted by ICSI IIP on the e-filing procedure of NCLT which was taken up by Mr. Shiv Ram Bairwa and was moderated by Mr. G.P.Madaan. The webinar proved to be very useful, given the need for e-filing in the current times. The webinar is now available on the Youtube channel of ICSI IIP.

**Link:** [https://www.youtube.com/watch?v=5\\_ruz7acNYs&t=149s](https://www.youtube.com/watch?v=5_ruz7acNYs&t=149s)

In order to address the concerns/challenges and the obligations of Insolvency Professionals, ICSI IIP organizes webinars/seminars on a regular basis. The program schedule for the same is being notified on the website of ICSI IIP. The members may register for such webinars/seminars in order to equip themselves to face the rapidly changing environment and understand and prepare for the issues of the future vis-a-vis the new Code.

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.

Best Wishes!!

**Team ICSI IIP**

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