

INSTITUTE OF INSOLVENCY PROFESSIONALS

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

*“It’s hard to beat a person who never gives up.”
– Babe Ruth*

KNOWLEDGE REPONERE- 81 (16st July-14th August, 2020)

Dear Professional Colleagues,

Trust this mail finds you well and safe.

ICSI IIP has been taking various initiatives to keep its professional members abreast with the latest amendments, notifications and case laws filed under the Code as well as other issues encompassing the law of insolvency in India and abroad. **Knowledge Reponere** is one of those initiatives of ICSI IIP, which is a fortnight Knowledge Bulletin circulated amongst its members fortnightly compiling all relevant latest happenings in IBC domain, during the said period.

We are pleased to share with you our 81th issue of the Knowledge Reponere on the recent highlights under Insolvency and Bankruptcy Code, 2016 (“**Code**”) along with recent news and initiatives of ICSI IIP.

IBC UPDATES

1. The Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

On 07th August, 2020, IBBI vide its IBBI(Insolvency Resolution Process for Corporate Persons) Fourth Amendment) Regulations, 2020 made amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

The amendment made to the Regulations provides that the three IPs offered by the interim resolution professional must be from the State or Union Territory, which has the highest number of creditors in the class as per records of the corporate debtor. This will facilitate ease of coordination and communication between the AR and the creditors in the class he represents.

Further, the amendment made to the Regulations also provides that the authorised representative shall seek voting instructions only after circulation of minutes of meeting and vote accordingly. He shall, however, circulate the agenda, and may seek preliminary views of creditors in the class before the meeting, to enable him to effectively participate in the meeting.

It is also provided vide this amendment that after evaluation of all compliant resolution plans as per evaluation matrix, the committee of creditors shall vote on all compliant resolution plans

simultaneously. The resolution plan, which receives the highest votes, but not less than sixty-six percent of voting share, shall be considered as approved.

The Regulations were made effective from 07th August 2020.

Link: <https://ibbi.gov.in/uploads/legalframework/691983ad021bf2a65a708f57d17595b8.pdf>

2. The Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016

On 05th August, 2020, IBBI vide its IBBI(Liquidation Process) (Second Amendment) Regulations, 2020 made amendment to the IBBI (Liquidation Process) Regulations, 2016.

As per the amendments, where a liquidator realises any amount, but does not distribute the same, he shall be entitled to a fee corresponding to the amount realised by him. Likewise, where a liquidator distributes any amount, which is not realised by him, he shall be entitled to a fee corresponding to the amount distributed by him.

The amended regulations are effective from 05th August 2020.

Link: <https://ibbi.gov.in/uploads/legalframework/99821042db3990a40cd7082f06019911.pdf>

3. The Insolvency and Bankruptcy Board of India amends the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017

On 05th August, 2020, IBBI vide its IBBI(Voluntary Liquidation Process) (Second Amendment) Regulations, 2020 made amendment to the IBBI (Voluntary Liquidation Process) Regulations, 2017.

As per the amendments, the corporate person may replace the liquidator by appointing another insolvency professional as liquidator by a resolution of members or partners, or contributories, as the case may be.

The amendments were made effective from 05th August 2020.

Link: <https://ibbi.gov.in/uploads/legalframework/41dae71b62c3fa756602c8fec7848b58.pdf>

4. IBBI issued Facilitation Letter for Insolvency Professionals conducting Liquidation Process

Vide its Facilitation Letter dated 05th August, 2020, IBBI stated that an Insolvency Professional (IP) plays a key role in various processes under the Insolvency and Bankruptcy Code, 2016 (Code). He acts as liquidator in liquidation and voluntary liquidation processes and the entire liquidation process revolves around him.

This letter was issued for the sole purpose of education and awareness of IPs and other stakeholders of liquidation processes. The directions and observations cited in the letter were only indicative.

Link: <https://ibbi.gov.in/uploads/legalframework/c3b3b6a01a710b85c8e12d12db52c33f.pdf>

5. IBBI issues Facilitation Letter for Insolvency Professionals on Red Flags in Avoidance Transactions

The Insolvency and Bankruptcy Board of India (IBBI) had vide its communication dated 8th May, 2020 provided some guidance on the role of RP / liquidator in respect of Avoidance Transactions for the purpose of educating the IPs and other stakeholders of corporate insolvency resolution and liquidation processes. In furtherance to its endeavour of achieving the objectives of the Code and keeping in mind the role of an IP, IBBI has facilitated the preparation of this Document for the use of IPs in understanding and identifying various red flags which may point to the need for a review of Avoidance transactions as covered under Sections 43, 45, 50 and 66 of the Code.

Link: <https://ibbi.gov.in/uploads/legalframwork/72438989cca02508e20db38d5f18958e.pdf>

RECENT ORDERS/ JUDGEMENTS

1. In matter of *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries Private Limited*, while setting aside the order of the NCLAT on the ground that the application filed under Section 7 of the Code was barred by limitation, the Hon'ble Supreme Court noted that the primary focus of the Code is to ensure revival and continuation by protecting the CD from its own management and, as far as feasible, to save it from liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being mere recovery legislation for creditors.

Link: <https://ibbi.gov.in/uploads/order/320634f0a711d9ce38341c894f27d5ef.pdf>

2. In a matter of *Bhupinder Singh v. Unitech Limited*, in a respite to over 12,000 hassled home buyers of Unitech, the Hon'ble Supreme Court had allowed the Centre to take total management control of the realty firm and appoint a new board of nominee directors and a resolution plan was submitted by the newly-constituted board of the realty firm under the IBC. The Supreme Court ordered that the resolution plan of the newly-constituted board for Real estate Corporate Debtor may be shared on its portal to solicit suggestions from the stakeholders to help the resurrection.

Link: https://main.sci.gov.in/supremecourt/2016/36817/36817_2016_34_301_23196_Order_31-Jul-2020.pdf

3. In matter of *Univalue Projects Pvt. Ltd. Vs The Union of India & Ors.*, Hon'ble High Court at Calcutta vide order dated 18.08.2020 disposed off the petitions and held that any delegatee under the IBC, and the Companies Act, 2013, that is, the Central Government, the IBBI and the NCLT cannot make regulations that have a retrospective effect.

Link: <https://ibbi.gov.in/uploads/order/c2408a81f80576fadd8d0b4220955f58.pdf>

4. In a matter of *CA. Venkata Siva Kumar v. Insolvency and Bankruptcy Board of India (IBBI) and Ors.*, writ petition was filed challenging and seeking the striking down of Regulation 7(2)(ca) and 13(2)(ca) of IBBI(Insolvency Professionals) Regulations 2016 r/w Section 196(1)(c) of IBC, which stipulates the requirement that the IP should pay a fee calculated at 0.25% of the professional fee earned for services rendered as an IP in the preceding financial year to the IBBI. Given the fact that direct or arithmetical correlation as between the fee received and service rendered is not necessary especially in the context of regulatory fees, we are of the view that Regulation 7(2)(ca) of the IP Regulations does not suffer from any constitutional infirmity on account of the absence of quid pro quo.

Link: <https://ibbi.gov.in/uploads/order/0a7eb72631ad531fc16d6bf5e0954afd.pdf>

5. In the matter of *Sh. Sushil Ansal v. Ashok Tripathi and Ors.*, hon'ble NCLAT held that 'decree-holder' is undoubtedly covered by the definition of 'Creditor' under Section 3(10) of the IBC. However, such an entity "would not fall within the class of creditors classified as 'Financial Creditor' unless the debt was disbursed against the consideration for the time value of money or falls within any of the clauses thereof as the definition of 'financial debt' is inclusive in character"

Link: <https://nclat.nic.in/Useradmin/upload/386586195f364d7da63bc.pdf>

6. In the matter of *Invent Assets Securitization and Reconstruction Pvt. Ltd. v. Xylon Electrotech Pvt. Ltd.*, hon'ble NCLAT stated that the determination of the claim of the proceedings before the DRT would neither extend the time nor exclude the period of limitation. The limitation commenced from the date of default reckoned on the basis of classification of Corporate Debtor's account as NPA would not admit of any extension or exclusion on the basis of pursuit of a remedy under the 'SARFAESI Act, 2002 or in a recovery proceedings before the DRT.

Link : <https://nclat.nic.in/Useradmin/upload/6980677445f3510ab35043.pdf>

7. In a matter of *Bharat Heavy Electricals Ltd. v. Mr. Anil Goel, Liquidator of Visa Power Limited*, hon'ble NCLAT held that the Appellant cannot rely on Sale of Goods Act or Transfer of Property Act and claim to be secured creditor under IBC and that the Appellant is claiming to be Secured Creditor on statutory basis. Admittedly, the Appellant is not relying on any contractual provision, or transaction creating security interest to claim benefits of lien/charge.

Link: <https://nclat.nic.in/Useradmin/upload/20804575845f312e8d4d64f.pdf>

NEWS HEADLINES

1. **NCLAT sets aside insolvency proceedings against Ansal Properties and Infrastructure**
The appellate tribunal set aside the orders of the Delhi bench of the National Company Law Tribunal (NCLT), which had on March 17 directed to initiate insolvency proceedings against

Ansal Properties and Infrastructure Ltd (APIL) and appointed an interim resolution professional replacing the board of the company.

Link: <https://economictimes.indiatimes.com/industry/services/property/-construction/nclat-sets-aside-insolvency-proceedings-against-ansal-properties-and-infrastructure/articleshow/77549717.cms>

2. AGR Case: Supreme Court asks Rcom to explain fall in asset valuation from Rs 35,000 crore to Rs 5,304 crore

The top court directed RCom's legal representative to explain how the Rcom and its units value eroded from Rs 35,000 crore in 2019 to Rs 5,304 crore as on date of liquidation with a fair value around Rs 10,000 crore.

Link: <https://economictimes.indiatimes.com/industry/telecom/telecom-news/agr-case-supreme-court-asks-rcom-to-explain-fall-in-asset-valuation-from-rs-35000-crore-to-rs-5304-crore/articleshow/77592429.cms>

3. NCLAT dismisses plea to initiate insolvency proceedings against Tata Chemicals

A three-member NCLAT bench upheld the order of the Mumbai bench of the National Company Law Tribunal (NCLT) that dismissed the plea of Allied Silica to initiate insolvency proceeding against the Tata group firm.

Link: <https://economictimes.indiatimes.com/news/company/corporate-trends/nclat-dismisses-plea-to-initiate-insolvency-proceedings-against-tata-chemicals/articleshow/77504787.cms>

4. Plea against Insolvency code ordinance; Delhi High Court seeks Centre stand

The Delhi High Court Tuesday sought the Centre's reply on a plea challenging the Insolvency and Bankruptcy Code (IBC) Ordinance which suspended proceedings against defaults arising on or after March 25 for six months in view of the COVID-19 pandemic.

Link: <https://www.livemint.com/news/india/plea-against-insolvency-code-ordinance-delhi-high-court-seeks-centre-stand-11595922523199.html>

5. Bankruptcy court admits BSE-listed Bothra Metals & Alloys for insolvency resolution

The Mumbai bench of NCLT, while admitting the insolvency resolution plea of the Syndicate Bank against BSE-listed Bothra Metals and Alloys observed that an acknowledgement of debt in the balance sheet of the company satisfies the requirements of the limitation.

Link: <https://economictimes.indiatimes.com/news/company/corporate-trends/bankruptcy-court-admits-bse-listed-bothra-metals-alloys-for-insolvency-resolution/articleshow/76875108.cms>

6. IL&FS: Delays to key India shadow bank insolvency show coronavirus pandemic fallout

Payments to creditors from Infrastructure Leasing & Financial Services Ltd., whose default in September 2018 triggered a lingering credit crisis in India, are likely to spill over to the

financial year beginning April 2021, management said in a call on Monday. It had previously aimed to resolve a bulk of those by this month.

Link: <https://economictimes.indiatimes.com/industry/banking/finance/ilfs-delays-to-key-india-shadow-bank-insolvency-show-coronavirus-pandemic-fallout/articleshow/77083113.cms>

7. Home-buyers Cannot Invoke Insolvency Process to Recover RERA Awards

The National Company Law Appellate Tribunal (NCLAT) has ruled that home-buyers cannot drag realty companies through the insolvency process for recovering monies awarded to them by a real estate regulator. The NCLAT ruled that a home-buyer cannot be treated as a financial creditor when the real estate company is unable to honour a decree awarded by the State-level Real Estate Regulatory Authority (RERA). Home-buyers need to take recourse to the civil law to recover the money. Prashant Thakur, Director & Head – Research, ANAROCK Property Consultants, said the NCLAT’s observation is in line with the 2019 amendment that only a minimum of 100 buyers or 10 per cent of all home-buyers in a project (whichever is lower) can file for bankruptcy.

Link: <https://globalinsolvency.com/headlines/home-buyers-cannot-invoke-insolvency-process-recover-rera-awards>

INTERNATIONAL INSOLVENCY NEWS

1. 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. The Personal Bankruptcy Regulations of the Shenzhen Special Economic Zone (Draft for Comments) has a total of 157 articles across 13 chapters, and public consultation ended on 18 June 2020.

Link: [https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/insol-europe-lexisnexis-coronavirus-\(covid-19\)-tracker-of-insolvency-reforms-shenzhen-china?utm_source=QB_RandI%20Blogs%20Newsletter%20Signups&utm_medium=email&utm_content=%20%3dv\(%40title\)%3d%20%20&utm_campaign=Blog+Newsletter+-+Restructuring+and+Insolvency](https://www.lexisnexis.co.uk/blog/restructuring-and-insolvency/insol-europe-lexisnexis-coronavirus-(covid-19)-tracker-of-insolvency-reforms-shenzhen-china?utm_source=QB_RandI%20Blogs%20Newsletter%20Signups&utm_medium=email&utm_content=%20%3dv(%40title)%3d%20%20&utm_campaign=Blog+Newsletter+-+Restructuring+and+Insolvency)

2. Avianca Seeking Debtor In Possession Financing During Bankruptcy

Colombian airline Avianca, currently in Chapter 11 bankruptcy reorganization proceedings in US Federal Court has announced that it has been working with its advisors, led by investment bank Seabury Securities LLC to put in place a DIP (Debtor In Possession) financing structure, Finance Colombia reported. Debtor in Possession financing under US law allows a firm in Chapter 11 bankruptcy to borrow money under strict conditions that subordinate existing debt and claims, with the goal of allowing the firm to emerge from bankruptcy as an operating business, and existing creditors to receive more than they otherwise would should the firm be liquidated.

Link: <https://globalinsolvency.com/headlines/avianca-seeking-debtor-possession-financing-during-bankruptcy>

3. Jet Airways Sells Property, Acquires Aircraft Title In Insolvency

AZB & Partners and De Brauw Blackstone Westbroek advised the resolution professional managing the insolvency of Jet Airways when the airline sold two floors of a Mumbai building to a company controlled by Brookfield Asset Management, the Indian Business Law Journal reported. Khaitan & Co advised Brookfield. The National Company Law Tribunal (NCLT) had given the go-ahead for the ₹4.9 billion (US\$65 million) sale after both HDFC, to which Jet Airways had mortgaged the premises, and the committee of creditors of Jet Airways had approved it. Wadia Ghandy advised HDFC, and Cyril Amarchand Mangaldas advised the committee of creditors. Jet Airways then made a US\$13 million bullet payment to the US Exim Bank to acquire title to six Boeing 777 aircraft. Vedder Price advised the bank

Link:<https://globalinsolvency.com/headlines/jet-airways-sells-property-acquires-aircraft-title-insolvency>

4. Thai Court Extends Thai Airways Bankruptcy Hearings Until Aug 25

Thailand's bankruptcy court said on Monday it had scheduled two more days of hearings to consider Thai Airways International Plc's request for restructuring, Reuters reported. The Central Bankruptcy Court said in a statement 16 creditors opposed the airline's restructuring proposals, of which three were institutional creditors and the rest, individual creditors. The court scheduled Aug. 20 and Aug. 25 for additional hearings for those opposing the plan. Thai Airways acting president, however, remained confident after the first hearing on Monday. "The hearings are promising and went smoothly," Chansin Treenuchagron said in a statement. The airline submitted its bankruptcy and restructuring petition in May, giving it a stay on debt repayment.

Link:<https://globalinsolvency.com/headlines/thai-court-extends-thai-airways-bankruptcy-hearings-until-aug-25>

5. Business Media Firm CNN Money Switzerland Files For Bankruptcy

CNN Money Switzerland (CNNMS) will cease operations and file for bankruptcy after the coronavirus pandemic hit revenues, the Swiss business media company said on Monday, Reuters reported. While audience figures for the company's audiovisual programmes rose sharply over the past six months, revenues contracted as business partners hit by the crisis cancelled or postponed contracts, CNNMS said in a statement. Its board of directors came to the conclusion on Sunday that the uncertainty surrounding the economy and the future of the Swiss media market did not point to "a sustainable profitability solution" for the channel's activities, CNNMS said. The probation commissioner will preside over the liquidation of the company, CNNMS said.

Link:<https://globalinsolvency.com/headlines/business-media-firm-cnn-money-switzerland-files-bankruptcy>

NEWS FROM ICSI IIP

1. UPCOMING: Webinar | Limitation Act vis-à-vis IBC (Based on Supreme Court Judgement dated August 14, 2020) | August 21, 2020 | 04:00 PM - 05:30 PM

A webinar is being hosted by ICSI IIP on Limitation vis-à-vis IBC discussing recent Supreme Court Order on the same with Guest of Honor Hon'ble Shri Balvinder Singh, Member (Technical), NCLAT and moderator IP Sanjeev Ahuja. Registrations are now open. It is a free Webinar.

Link: [https://icsiip.com/Portals/0/Webinar%2021 08 2020.pdf](https://icsiip.com/Portals/0/Webinar%2021%2008%202020.pdf)

2. UPCOMING: Training Program | LIT UP | Preparation of Limited Insolvency Examination | 28-30 August, 2020

A workshop for preparation of LIE examination by expert faculties is being conducted by ICSI IIP. Register Now for ease in passing the Limited Insolvency Examination!

Link: <https://icsiip.com/Portals/0/LIT%20UP%2028%20-%2030%20Aug%2C%202020.pdf>

3. Webinar | Importance of ADR in IBC | August 08, 2020

A very interactive and useful Webinar was organized by ICSI IIP on the Importance of ADR in IBC with Speaker Miss Rimali Batra. The Webinar is now available on Youtube Channel of ICSI IIP.

Link: <https://www.youtube.com/watch?v=-xk8LGRLEOg>

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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