INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **2nd September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (142): NCLT directs RPs to be careful for excess claims made by financial creditors against corporate debtor.

A petition (*S. A Consultants & Forwarders Pvt. Ltd. V. Cargo Planners Limited. C.P. No. IB- 867(PB)/2019*) was moved by Operational Creditor before the Hon'ble National Company Law Tribunal (NCLT), New Delhi against Cargo Planners (Corporate Debtor) to initiate CIRP.

While admitting the petition to initiate CIRP, the Bench observed that a general complaint had been received that financial creditors, banks, NBFCs and Asset Reconstruction Companies often claimed an amount in excess of what was actually owed to them by the Corporate Debtor, and many a times at unreasonably exorbitant rates of interest.

In aforesaid circumstances, the Hon'ble NCLT directed the RPs to be cautious of these claims made by creditors and settle them keeping in mind so that no injustice should be caused to the Corporate Debtor, as the Tribunal has no mechanism to rectify such claims.

NCLT *vide* its order dated 08.08.2019, admitted the petition.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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3rd September, 2019

Dear Professionals,

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (143): Liquidator can accept the resolution plans which were not accepted in CIRP as schemes or arrangements in liquidation process

An appeal (*Kautilya Industries Pvt. Ltd. V Parasrampuriya Synthetic Ltd. & Anr.,* Company Appeal (AT) (Insolvency) No. 282 of 2019) was filed before Hon'ble NCLAT impugning order dated 15th February, 2019 passed by the NCLT, Jaipur Bench, in which the order of liquidation of the CD u/s 33(2) was approved by the AA.

The appellant claimed that there was an interim order passed by Hon'ble HC of Rajasthan on 27th September, 2018 which was vacated on 3rd January, 2019. So the period of 97 days should be excluded for the purpose of counting the period of 270 days. However this was found that during that period of 97 days, 7 CoC meetings were held and there was no specific prohibition on the 'CoC' for considering 'Resolution Plans'. Also no 'Resolution Plan' was accepted by the CoC and ultimately the liquidation order was passed.

The NCLAT held as follows:

> *"The Liquidator is also required to ensure that during the liquidation the 'Corporate Debtor' remains a going concern and in case no Scheme is approved under Section 230 of the Companies Act, 2013, then to sell the Company as going concern alongwith employees as ordered in "Y. Shivram Prasad Vs. S. Dhanapal & Ors." (Supra) before taking recourse of final liquidation."*
>
> *"It is open to the Liquidator/class of creditors such as, 'Committee of Creditors' and 'Financial Creditors' or members or class of members of the 'Corporate Debtor' to consider the 'Resolution Plans' as were filed by one or other 'Resolution Applicants' but were not taken up for the purpose of preparation of Scheme, but ensure that such Scheme should not violate the Statement of Objects and Reasons of the 'I&B Code' which is the maximization of the assets of the 'Corporate Debtor', feasibility and viability of the Scheme and balancing the stakeholders as observed in "Y. Shivram Prasad Vs. S. Dhanapal & Ors." (Supra)."*

As conclusion, it is derived that the liquidator can consider the 'Resolution Plan' which was previously rejected by CoC/RP during CIRP, unless it violates the objective of the Code, i.e. maximization of the wealth of the CD or its stakeholders.

Regards,

CS Alka Kapoor

Chief Executive Officer

ICSI Institute of Insolvency Professionals

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4th September, 2019

Dear Professionals,

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (144): Appeal against the approved Resolution Plan Lies only under section 61(3) of IBC, 2016

An appeal (*Securities and Exchange Board of India, Vs. Assam Company India Ltd. & Anr.*, Company Appeal (AT) (Insolvency) No. 629 of 2018) was filed before the Hon'ble NCLATimpugning order dated 20th September, 2018 passed by the NCLT, Guwahati Bench in which the AA approved the Resolution Plan submitted by 'BRS Ventures Investment Ltd.'

The Appellant has challenged the order of approval of the resolution plan which was approved by 100% voting share of the CoC. The Resolution Plan involved delisting of shares of the CD to which SEBI (the appellant) objected stating that the CD was a shell company which was undergoing an investigationby Forensic Auditor on an interim order of WTM of SEBI.

Further the CD challenged the investigation before the Hon'ble High Court, Guwahati which set aside the investigation by order dated 7th March, 2019. The appellant moved to Division Bench against the said order; however no order of stay was passed.

The NCLAT stated that Section 61(3) shows the limited grounds on which an appeal can be preferred against an approved Resolution Plan, as quoted below:

> *61.(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:— (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force; (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period; (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board; (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or (v) the resolution plan does not comply with any other criteria specified by the Board."*

Thus NCLAT held that the appeal is not maintainable on merit, in absence of any violation of the provisions of the Code or any existing law or material irregularity.

The NCLAT also stated that the order passed by the NCLT/ NCLAT will not come in the way of the SEBI or any competent authority taking steps against erstwhile promoters, directors or officers or others, if any or all of them had violated any of the provisions under the SEBI Act or rule framed there under or any other law.

Regards,

CS Alka Kapoor

Chief Executive Officer

ICSI Institute of Insolvency Professionals

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **5th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (145): NCLT held that there is no procedure for restoration of the Company Petition available under IBC.

A restoration application (*Tata Power Trading Co. Ltd. V. Indusar Global Limited, M.A. 601/2017 in C.P. No. IB-1097(MB)/2017*) was moved by the Petitioner before the Hon'ble National Company Law Tribunal (NCLT), Mumbai Bench for restoration of Company Petition already dismissed in terms of consent terms arrived between the parties.

In the present case, Hon'ble NCLT held that there is no procedure for restoration of the Company Petition available under Insolvency and Bankruptcy Code, 2016 or Rules there to.

NCLT *vide* its order dated 15.02.2018, dismissed the application, granting liberty to the Petitioner to file a fresh Company Petition.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **6th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (146): NCLAT held that Adjudicating Authority has no jurisdiction to reject the application under Section 9 only on the ground that Corporate Debtor is MSME.

An appeal (*M/s. Bannari Amman Spinning Mills Ltd. v. M/s My Choice Knit & Apparels Pvt. Ltd*) was moved against an order of the Adjudicating Authority, rejecting a Section 9 application.

The Appellant had moved an application under Section 9 of IBC for initiation of CIRP against the Respondent (Corporate Debtor). Adjudicating Authority dismissed the application on the ground that Corporate Debtor is a Micro, Small and Medium Enterprise (MSME), and the Code provides some safeguards to run its business and also a mechanism is provided in the Code itself to settle their dispute arising out of the business transactions made by the MSME with the other business establishments.

NCLAT reasoned that, "*as there being a default of debt of more than Rs. 1 Lakh and, in absence of any pre-existence of dispute, we hold that the Adjudicating Authority has no jurisdiction to reject the application under Section 9 only on the ground that the 'Corporate Debtor' is MSME. There is no such provision under the Act which stipulates that a Company ('Corporate Debtor') which is MSME does not come within the purview of 'I&B Code' or application under Sections 7 or 9 or 10 is not maintainable*."

NCLAT *vide* its order dated 03.09.2019, set aside the impugned order and allowed the appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **9th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (147): NCLAT vide its order dated 10.04.2019 held that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the 'Corporate Debtor'

An appeal was preferred by Mr. Neeraj Jain, Shareholder of 'M/s. Namo Alloys Pvt. Ltd.'- ('Corporate Debtor') against the order dated 25th March, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, initiating the 'Corporate Insolvency Resolution Process' in the matter of M/s. Namo Alloys Pvt. Ltd admitted under Section 7 of the Insolvency and Bankruptcy Code, 2016.

The Appellant submitted that the Bank officials fraudulently withdrew the amount from the account of the 'Corporate Debtor' for which FIR No. 222/2018 has been lodged in Palwal Police Station alleging Applicant Bank's involvement in defrauding the 'Corporate Debtor'. Pursuant to the said FIR, charge sheet was already filed. Further the Appellant informed that actually the Chief Financial Officer of the 'Corporate Debtor' was involved who duly signed forged cheques and had withdrawn from the account.

NCLAT held that an application under Section 7 being an independent proceeding has nothing to do with the pendency of the Criminal Case relating to misappropriation of the funds by the Chief Financial Officer of the 'Corporate Debtor' and the employees of the Banks. The Bank which is the 'Financial Creditor' is a separate entity from the Chief Financial Officer of the 'Corporate Debtor' or the individual employees of the Bank(s), if any, involved. The pendency of the investigation or trial cannot be a ground to refuse an application under Section 7 if the application is complete and there is a debt and default.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **11th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (148): NCLAT held that application under Sections 7 and 9 will be maintainable against the 'Corporate Debtor', even if the name of a 'Corporate Debtor' has been struck-off.

An appeal was preferred by Mr. Hemang Phophalia, Ex-Director and Shareholder of the M/s Penguine Umbrella Works Private Limited (Corporate Debtor) against the order dated 12th June, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench, initiating the Corporate Insolvency Resolution Process against the Corporate Debtor under Section 7 of the Insolvency and Bankruptcy Code, 2016.

Appellant submitted that name of the Corporate Debtor was struck-off from the Register of the Companies under Section 248 of the Companies Act, 2013, therefore, the application under Section 7 against non-existent Company ('Corporate Debtor') is not maintainable.

Hon'ble NCLAT held that :

> *'23. In view of the aforesaid provision, we hold that the Adjudicating Authority who is also the Tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of 'Corporate Insolvency Resolution Process' under Sections 7 and 9 of the I&B Code based on the application, if filed by the 'Creditor' ('Financial Creditor' or 'Operational Creditor') or workman within twenty years from the date the name of the Company is struck off under sub-section (5) of Section 248. In the present case, application under Section 7 having admitted, the 'Corporate Debtor' and its Directors, Officers, etc. deemed to have been restored in terms of Section 252(3) of the Companies Act.'*

NCLAT *vide* its order dated 5th September, 2019 held that the name of the Company having been struck-off, the Corporate Person cannot file an application under Section 59 for Voluntary Liquidation. In such a case and in view of the provisions of Section 250 (3) read with Section 248 (7) and (8), NCLAT further held that the application under Sections 7 and 9 will be maintainable against the Corporate Debtor, even if the name of a 'Corporate Debtor' has been struck-off and dismissed the Appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **12th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (149): NCLAT held that Section 29A is not applicable for entertaining/considering an application under Section 12A.

An appeal was preferred by Andhra Bank (Appellant) in the matter of *Andhra Bank v. Sterling Biotech Ltd. (Through the Liquidator) & Ors, Company Appeal (AT) (Insolvency) No. 612 of 2019* impugning order dated 08th May, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Mumbai Bench.

The Appellant submitted that Section 29A is not applicable to an application filed under Section 12A for withdrawal of application under Section 7 filed by Andhra Bank, if the Committee of Creditors accepts the same with more than 90% of the voting share.

NCLAT held that

> *"12. From Section 12A and the decision of the Hon'ble Supreme Court in 'Swiss Ribbons Pvt. Ltd. & Anr.' (Supra), it is clear that the Promoters/Shareholders are entitled to settle the matter in terms of Section 12A and in such case, it is always open to an applicant to withdraw the application under Section 9 of the 'I&B Code' on the basis of which the 'Corporate Insolvency Resolution Process' was initiated."*

In view of the aforesaid provision of law, NCLAT further held that Section 29A is not applicable for entertaining/considering an application under Section 12A.

Hon'ble NCLAT *vide* its order dated 28.08.2019 disposed off the appeals and set aside the impugned order dated 08th May, 2019, allowing the Appellant to withdraw the Application.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **13th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (150): NCLAT held that at the stage of admission of Application u/s 7, Adjudicating Authority is not required to consider if Resolution for a given Company would be possible or not and whether or not it would be possible to keep it a going concern.

An appeal (*Mr. Vineet Khosla Shareholders and (ex) Director Margra Industries Ltd. Vs. Edelweiss Asset Reconstruction, Company Appeal (AT) (Insolvency) No. 441 of 2019*) was preferred by Mr. Vineet Khosla Shareholders and (ex) Director of the Corporate Debtor before the Hon'ble National Company Law Appellate Tribunal (NCLAT), impugning order dated 15th March, 2019 issued Hon'ble NCLT, New Delhi (AA) wherein the application filed by Edelweiss Asset Reconstruction Company Ltd. u/s Sec 7 against M/s Margra Industries Ltd. was admitted.

One of the questions raised by the Appellant in the appeal was - *Whether the provisions of the IBC can be invoked when it is already known to the financial creditor that there is no possibility whatsoever of keeping the Company as a "going concern" while finding any resolution, and its sole aim is to liquidate the remaining assets?*

Hon'ble NCLAT held that:

> *"12. The Adjudicating Authority at that stage is not required to consider if or not Resolution for a given Company would be possible or not and whether or not it would be possible to keep it a going concern as the Corporate Debtor is trying to claim. When efforts are being made to resort to Section 230 of the Companies Act, 2016 even at the stage of liquidation, to see if there could be compromise or arrangements with creditors as can be seen from the Judgement of this Tribunal in the matter of "Y. Shivram Prasad Vs. S. Dhanapal & Ors." in Company Appeal (AT) (Insolvency) No. 224 of 2018 dated 27th February, 2019, there is no substance in this claim made by the Appellant that if it appears that there is no possibility of keeping the Company a going concern, IBC cannot be invoked. We reject the argument."*

In view of the aforesaid observation, Hon'ble NCLAT *vide* its order dated 06.09.2019 dismissed the appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **16th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (151): NCLT held that an operational creditor cannot raise its claim under Section 9 of the code under a joint venture agreement.

An application (*Akshar Properties. v. Reliable Exports (India) Pvt. Ltd.*) was moved under Section 9 of the Code.

The applicant had entered into a joint venture agreement with the respondent for developing certain properties in an agreed ratio among themselves. As per the agreement the applicant had paid ₹19,80,00,000/- to Reliable Exports, a related firm to the corporate debtor towards a refundable deposit. The agreement was later revised and it was agreed that the applicant would get a full payment of fifteen crores upon cancellation of the agreement. The applicant contended that the firm failed to honour the cheques provided, which made them liable to pay interest as agreed upon. This firm was later taken over by the corporate debtor. The applicant also sent a demand notice claiming the unpaid money. The applicant claimed the interest to be paid by the respondent as per the joint venture agreement entered into by the parties.

The application was declared to be not maintainable by the tribunal as an operational creditor cannot raise its claim for interest under Section 9 of the Code under a joint venture agreement. Further, in the facts and circumstances of this case, the claim of the Petitioner for interest alone would not be covered under section 9 of the Code as it does not amount to Operational Debt as defined in the Code.

NCLT, Mumbai Bench *vide* its order dated 30.07.2019, set aside the application as not maintainable.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **17th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (152): NCLAT was of the view that any reason stated by CoC for replacement of IRP will affect the career of the person.

An appeal was preferred by Bank of Baroda (Appellant) in the matter of *Bank of Baroda v. M/s Maa Tara Ispat Industries Private Limited Through Mr. Pramod Kumar Singh., Company Appeal (AT) (Insolvency) No. 868 of 2019* impugning order dated 07th August, 2019 passed by the Adjudicating Authority (National Company Law Tribunal).

NCLAT observed that Committee of Creditor by its majority decision of 100% had decided to replace Mr. Pramod Kumar Singh, Interim Resolution Professional by its decision dated 1st July, 2019 and in view of the same held that the Adjudicating Authority in accordance with the provisions of Section 22 of the Insolvency and Bankruptcy Code, 2016, should have replaced the 'Interim Resolution Professional'.

NCLAT was also of the view that the 'Committee of Creditors' should not have given any reason against the 'Interim Resolution Professional', which otherwise would have affected the career of the person.

For the aforementioned reason, Hon'ble NCLAT *vide* its order dated 12.09.2019 set-aside the impugned order dated 7th August, 2019 and disposed off the Appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **18th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (153): NCLAT held if the assets of a Corporate Debtor are the result of "proceeds of crime", it would always be open to the Enforcement Directorate to seize the assets in accordance with the *Prevention of Money Laundering Act, 2002.*

A bunch of appeals (*Shweta Vishwanath Shirke & Ors. v. The Committee of Creditors & Anr.*) were filed against a liquidation order passed against the Corporate Debtor.

The CoC approved a settlement with the promoters of the Corporate Debtor with 90% approval and sought withdrawal of the Section 7 application. NCLT passed the liquidation order as the settlement was opposed on the ground that the assets of the Corporate Debtor are based on the proceeds of the crime and therefore, it cannot be given to any person.

NCLAT held that the Enforcement Directorate has the power to seize the assets of the Corporate Debtor in accordance with the Prevention of Money Laundering Act, 2002, however, *"it will not come in the way of the individual such as 'Promoter' or 'Shareholder' or 'Director', if he pays not from the proceeds of crime but in his individual capacity the amount from his account and not from the account/assets of the 'Corporate Debtor' and satisfies all the stakeholders, including the 'Financial Creditors' and the 'Operational Creditors'. There is nothing on the record to suggest that the individual property of the 'Promoter' / 'Shareholder'/ 'Director' who proposed to pay the amount has been subjected to restraint by the 'Enforcement Directorate'. Therefore, even if the asset of the 'Corporate Debtor' is held to be proceeds of crime, the Adjudicating Authority cannot reject the prayer for withdrawal of application under Section 7, if the 'Promoter' / 'Director' or 'Shareholder' in their individual capacity satisfies the creditors."*

NCLAT *vide* its order dated 28.08.2019, disposed off all the appeals with liberty to the Enforcement Directorate, the Central Bureau of Investigation, the Ministry of Corporate Affairs, Securities and Exchange Board of India and the other Authorities to continue/take any action against the Company, Promoter/ Shareholder/Director under the existing laws and will continue irrespective of the settlement made by the individual Promoter/ Shareholder/ Director with the creditors under Section 12A of the 'I&B Code'.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **19th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (154): NCLAT held that issue of viability, feasibility and other conditions of the CD cannot be looked into by the Adjudicating Authority or by Appellate Tribunal.

An appeal (*Sreeram E. Techno School Pvt. Ltd.. v.Beans and More Hospitality Pvt. Ltd. Through R.P. Prabhjit Singh Soni*) was preferred by a dissenting financial creditor challenging the approved Resolution Plan on various grounds.

The resolution plan was submitted by one Mr. Abhay Jain (Promoter), considered by the Committee of Creditors and approved with 74.19% of voting share. The Adjudicating Authority approved the plan by impugned order dated 19th July, 2019.

The Resolution Plan was contended on the ground that the Corporate Debtor is not a going concern. NCLAT in this regard held that "*a 'resolution plan' cannot be rejected on such ground if the resolution applicant can show the feasibility to run the company in future. The question of viability, feasibility and other conditions as prescribed by the 'Insolvency and Bankruptcy Board of India (for short, 'the Board) of a 'Corporate Debtor' can be looked into by the 'Committee of Creditors' which has expert (sic.) in the financial field. Such issue of viability, feasibility and other conditions of the 'Corporate Debtor' cannot be looked into by the Adjudicating Authority or by this Appellate Tribunal. The 'Committee of Creditors' having gone through the financial aspects, including the viability, feasibility and other conditions of the 'Resolution Plan' and having approved the plan with 74.19% of voting share, this Appellate Tribunal is not inclined to decide such issue.*"

NCLAT dismissed the appeal stating that the successful resolution applicant had proposed to pay 100% dues of all the financial creditors with interest including that of the Appellant and hence, no interference is called for.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

ICSI INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **20th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (155): NCLAT held that Professional fee of Resolution Professional and cost incurred by the Resolution Professional, if approved by the 'Committee of Creditors', it should be allowed as 'resolution cost' by the Liquidator .

An appeal was preferred by Mr. Sanjay Kumar Ruia, the Resolution Professional (Appellant) in the matter of Sanjay Kumar Ruia Vs. Catholic Syrian Bank Ltd., *Company Appeal (AT) (Insolvency) No. 876 of 2019* with prayer for direction to pass appropriate order relating to his fees and cost of 'Resolution Process' in the light of decision of the Appellate Tribunal dated 3rd January, 2019 in Company Appeal (AT) (Insolvency) No.560 of 2018.

Hon'ble NCLAT remitted the matter to the Liquidator, in view of the fact that liquidation proceeding has already been started. Further held that *if the amount based on bills and ledger have been approved by the Committee of Creditors, the Liquidator cannot reject, the same being the* ***'resolution cost'*** *and not claim of any creditor.*

Hon'ble NCLAT *vide* its order dated 11.09.2019 disposed off the appeal and made it clear that the *fee of the Resolution Professional and the cost incurred by Resolution Professional, will be treated as 'resolution cost'*. Further allowed the Liquidator to determine the claim under Section 40 of the Code. Once the amount is shown as 'fees' and 'resolution cost' the same to be paid in terms of Section 53 of the Code.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **23rd September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (156): NCLAT instead of setting aside the Resolution plan, gave opportunity to Resolution Applicant to modify the plan.

An appeal (*Hero Fincorp Ltd. V. Rave Scans Pvt. Ltd. & Ors., Company Appeal (AT) (Insolvency) No. 745 of 2018*) was preferred by Hero Fincorp Limited-(Financial Creditor/ Appellant) challenging the resolution plan approved by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi by impugned order dated 17th October, 2018.

The Appellant challenged that the plan was discriminatory, as the Secured Financial Creditor' has been discriminated with other 'Secured Financial Creditors'

Hon'ble NCLAT held that 'Resolution Plan' was violative of Section 30(2) (e) of the Code but did not set aside the approved plan on such ground.

Hon'ble NCLAT *vide* its order dated 17.09.2019 gave an opportunity to Successful Resolution Applicant to remove the discrimination of Appellant by providing similar treatment as provided to other similarly situated Financial Creditors and allowed the appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

INSTITUTE OF INSOLVENCY PROFESSIONALS
A wholly owned subsidiary of ICSI and registered with IBBI

Dear Professionals, **24th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (157): The question of whether the promissory notes are void or not cannot be determined by AA at the time of admission of application.

An appeal (*Ashish Manik Vs. SR Marine & Offshore Engineering Pvt. Ltd. & Anr., Company Appeal (AT) (Insolvency) No. 927 of 2019*) was preferred by Mr. Ashish Manik (*Director/shareholder of the Corporate Debtor)* against the impugned order dated 23rd July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Chennai Bench, wherein an application u/s 7 filed by SR Marine & Offshore Engineering Pvt. Ltd. (Financial Creditor) was admitted.

The Appellant submitted that the promissory notes being void, transaction was not binding on the Corporate Debtor and, therefore, the Application under Section 7 was not maintainable.

Hon'ble NCLAT held as follow:

> *"It is also not in dispute that the Corporate Debtor has shown the amount as loan borrowed from the Financial Creditor (first Respondent). For the said reason, while we leave it open as to whether promissory notes are void or not, as the fact remains that the Corporate Debtor has borrowed the loan amount and defaulted to pay the amount, we hold that the Application under Section 7 was maintainable and rightly admitted by the Adjudicating Authority."*

Hon'ble NCLAT *vide* its order dated 09.09.2019 dismissed the Appeal.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

INSTITUTE OF INSOLVENCY PROFESSIONALS
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Dear Professionals, **25th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (158): NCLAT allowed group insolvency of group companies for Adel Landmarks Limited.

An appeal (*In the matter of Edelweiss Asset Reconstruction Company Limited Vs. Sachet Infrastructure Pvt. Ltd. & ors.*) was preferred by Edelweiss Asset Reconstruction Company Limited (EARCL) against an order passed by the Adjudicating Authority i.e. National Company Law Tribunal, Special Bench, New Delhi. Corporate Insolvency Resolution Process of Adel Landmarks Limited was admitted by the Adjudicating Authority by order dated 5th December, 2018. During its pendency, Edelweiss Asset Reconstruction Company Limited, in whose favour Corporate Guarantee was given, filed an insolvency application under Section 7 IBC against nine Corporate Guarantors, which were dismissed by the Adjudicating Authority.

Resolution Professional of Adel Landmarks Limited also submitted that in the given circumstances, the resolution process would not succeed if the whole project was not taken over by the Resolution Professional for a consolidated Resolution Plan as to keep the project a going concern.

Hon'ble NCLAT held that:

> *"33. We find that it is a case of joint consortium of different 'Corporate Debtors' and thereby a group insolvency is required to develop the township on the land of 'Sachet Infrastructure Pvt. Ltd.'; 'Magad Realtors Pvt. Ltd.'; 'Mehak Realtech Pvt. Ltd.'; 'Sameeksha Estate Pvt. Ltd.' and 'Jamvant Estates Pvt. Ltd.' and others along with 'Corporate Insolvency Resolution Process' as initiated against 'Adel Landmarks Limited' who is the sole Developer."*

Hon'ble NCLAT *vide* its order dated 20.09.2019 set aside the impugned order dated 7th March, 2019 passed by Adjudicating Authority and remitted the case to the Adjudicating Authority with direction to admit the applications under Section 7 filed by 'Edelweiss Asset Reconstruction Company Limited' against the five above mentioned companies and to appoint the Resolution Professional of Adel Landmarks Limited as common Resolution Professional to ensure joint corporate insolvency resolution process.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **26th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (159): NCLAT held that AA cannot reject the application under sec 7 on the ground that civil suit is pending at various authorities.

An appeal (*Vinayaka Exports Vs. M/s. Colorhome Developers Pvt. Ltd., Company Appeal (AT) (Insolvency) No. 06 of 2019*) was preferred by Vinayaka Exports against impugned order dated 25th October, 2018 passed by the Adjudicating Authority (AA) i.e. National Company Law Tribunal, Chennai Bench, wherein an application was preferred against M/s Colorhome Developers Pvt Ltd under Section 7 to initiate CIRP was rejected by AA. Further, the Adjudicating Authority observed that the petition / application was liable to be dismissed under Section 5(6) and Section 5(6)(a) of IBC and there was a civil suit pending and a dispute existed in the amount of debt between both the parties.

Hon'ble NCLAT relied upon the judgement of Hon'ble Supreme Court in the matter of *"Innoventive Industries Ltd. Vs. ICICI Bank and Anr."* – (2018)1 SCC 407 and concluded as below:

> *"13. We find that there is a debt due and payable which is more than Rs. 1 lakh and the same has been defaulted by the Respondent and being satisfied with the grounds as mentioned by the Appellants and in view of the judgment of Hon'ble Supreme Court (supra), we hereby set aside the impugned order dated 25th October, 2018, and hold that it is a fit case to trigger Insolvency Resolution Process."*

Hon'ble NCLAT *vide* its order dated 23.09.2019 set aside the impugned order dated 25th October, 2018 passed by Adjudicating Authority and directed the Adjudicating Authority to admit the application under Section 7 of IBC.

Regards,
CS Alka Kapoor
Chief Executive Officer

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Dear Professionals, **27th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals presents:

Learning Curve (160): Hon'ble Supreme Court held that Resolution Process may be revived if there is still time left as per third proviso to Section 12 of the Code.

A civil appeal [*Committee Of Creditors Of Amtek Auto Limited Through Corporation Bank v. Dinkar T. Venkatsubramanian & Ors. (Civil Appeal No(S). 6707/2019)*] was filed owing to the fact that resolution plan of Amtek Auto failed due to non-fulfilment of the commitment by Liberty House which consumed the time as given in Section 12 of the Code.

Reliance was placed on the decision of the Hon'ble Supreme Court in "*Arcelormittal India Pvt. Ltd vs. Satish Kumar Gupta and Ors.*" wherein it was reiterated that the object of the legislation is resolution and the third proviso to Section 12 added by virtue of the Amendment Bill, 2019 with effect from 16.08.2019, which states that,

> *"Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019."* ;

The resolution process may be permitted to be completed within 90 days from the date of the commencement of the Amendment Act, and hence the date of completion of resolution now would be 15th November 2019.

Hon'ble Supreme Court *vide* order dated 24.09.2019 permitted the resolution professional to invite fresh resolution plans for the CoC to consider. The CoC was asked to take a decision regarding the fresh resolution plans within two weeks and place the same before the Hon'ble Court.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals

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Dear Professionals, **30th September, 2019**

IBC Learning Curves – from ICSI IIP

ICSI Institute of Insolvency Professionals in its continuous endeavour to develop and educate the Insolvency Professionals, presents:

Learning Curve (161): NCLAT directed to restore the application filed u/s 9 of the Code which was dismissed by AA for non-prosecution.

An appeal was preferred by Saran Equipments & Engineers Pvt. Ltd. (Appellant) in the matter of *Saran Equipments & Engineers Pvt. Ltd. Vs. Pioneer Fabricators Pvt. Ltd.., Company Appeal (AT) (Insolvency) No. 865 of 2019* vide which impugned order dated 25th July, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi was challenged. By the impugned order, the Adjudicating Authority rejected the application filed by the Appellant/ Applicant, whereby the Appellant prayed for restoration of the petition by recalling the order dated 11th April, 2019, which was dismissed for non-prosecution.

NCLAT held:

> *"2. It is not the question of stage at which the Appellant filed application for restoration as the application under Section 9 was never decided on merit. The Section 9 application has been dismissed for non-prosecution. It is always open to the Appellant/ Applicant to file a fresh application under Section 9. However, that will amount to increasing the number of cases. Therefore, on hearing the counsel for the parties, we are of the view that instead of giving opportunity to the Appellant to file another application under Section 9, it was desirable to recall the order dated 11th April, 2019 and to restore the application as was filed by the Appellant/ Applicant."*

For the aforementioned reason, Hon'ble NCLAT *vide* its order dated 19.09.2019 set-aside the impugned order dated 25th July, 2019 of the Adjudicating Authority and restored the said petition to its original file with direction to the Adjudicating Authority to consider the application under Section 9 on merit after notice and hearing the parties.

Regards,
CS Alka Kapoor
Chief Executive Officer

ICSI Institute of Insolvency Professionals