



# ASC

## INSOLVENCY TIMES



## Editorial



### Removing bottlenecks, finding ways to quicken the CIRP - iBBI is reientieess

Once again IBBI has risen to the occasion and has come out with a consultation paper which suggests various ways in cutting short CIRP delays. Every stakeholder in the Insolvency ecosystem is concerned with extra-ordinary time taken in concluding CIRPs. Managing almost defunct Corporate Debtor, to prepare financials of yesteryears, creating process documents like Information Memorandum and compiling documents asked by investing agencies (CBI, EOW, SFIO, etc.) was always a daunting task for a Resolution Professional.

Some innovative measures proposed by the IBBI requires Operational Creditors to substantiate their claims through GST returns, mandating COC to share financials, audit reports and valuation out of their records to the Resolution Professionals, imposing express obligation upon Promoters to provide necessary documents, requiring specific deliberations in the Resolution Plans on disposal of avoidance applications, and, requirement of third valuation if the difference between the first two is more than 25%.

The above measures are going to ease the burden on the Resolution Professionals and will definitely quicken the CIRP.

Expect more vibrancy from Insoivency Resoiution Process

Stay Aiert!

**Anju Agarwal**

Partner

ASC Insolvency Services LLP



## **NCLAT stays formation of Committee of Creditors in the insolvency process of Supertech**

*Supertech had sought time from the Appellate Bench to explore negotiations with the Bank*

The National Company Law Appellate Tribunal (NCLAT) has stayed the formation of Committee of Creditors (CoC) in the Insolvency process of Supertech giving some relief to the real estate developer who had sought time to negotiate with the bank. NCLAT's directions came on a petition filed by a director of the suspended board of Supertech Ltd, against the order passed by the Adjudicating Authority.

The Appellant submitted before the Appellate Adjudicating Authority that the adjournment was being sought in the matter taking into consideration the concerns of all stakeholders, including homebuyers.

Earlier, the National Company Law Tribunal, New Delhi Bench (NCLT) had initiated Insolvency proceedings against Supertech Ltd over a petition filed by the Union Bank of India for non-payment of dues worth around Rs 432 crore. NCLT had also appointed Hitesh Goyal as the Interim Resolution Professional (IRP) superseding the board of directors of Supertech Ltd.

The default pertains to the loan given by the Union Bank of India to Eco Village II project at Greater Noida (West) in Uttar Pradesh, which was being developed at a cost of Rs 1,106.45 crore. Supertech Ltd has 38,041 flats and out of them, it has delivered 27,111 flats. As many as 10,930 homes are yet to be delivered and among them, over 70 per cent of construction is complete with respect to over 8,000 homes, Supertech Group Managing Director Mohit Arora said last month.



## **NCLT initiates insolvency proceedings against McDowell Holdings, appoints iRP**

***The Bengaluru Bench of NCLT admitted the plea filed by Sun Star Hotels and Estate Pvt Ltd, a Financial Creditor of the erstwhile Vijay Maiya-promoted company, claiming default of Rs 16.80 crore***

The National Company Law Tribunal, Bengaluru Bench (NCLT) initiated corporate insolvency resolution process (CIRP) in respect of McDowell Holdings Ltd for a default of Rs. 16.80 crores committed by the company.

The Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiation of insolvency proceedings against the company was filed by Sun Stars Hotels and Estate Private Limited claiming default of 16.80 crores.

"In the present case, the occurrence of default is evidenced by the details furnished by the Petitioner, including the record of financial information issued by NESL (National E-Governance Services Ltd) in respect of the debt of the Corporate Debtor," the NCLT said in its order. The Adjudicating Authority further observed that even the Corporate Debtor has acknowledged the debt and its inability to pay the same.

## **IBC treats Decree Holders as separate class distinct from Financial or Operational Creditors: Holds the Supreme Court**

***The Apex Court upheld that the distinction of Decree holders as Creditors from 'Financial Creditors' and 'Operational Creditors', is intelligible and takes forward the purpose of IBC***

The Supreme Court has dismissed a Special Leave Petition filed against the decision of the High Court of Tripura at Agarthala, wherein the High Court had held that the distinction of decree holders as creditors from 'Financial Creditors' and 'Operational Creditors', is intelligible and takes forward the purpose of the Insolvency and Bankruptcy Code, 2016 (IBC), without being discriminatory or arbitrary.

The High Court in the case *Shubhankar Bhowmik v. Union of India & Anr*, had dismissed the Writ Petition which had contended to declare the provisions of Section 3(10) of the IBC read with Regulations 9(a) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 as ultra vires inasmuch as it fails to define the terms 'other creditors' and accordingly, to strike them down on the vice of Article 14 of the Constitution of India.

The Petitioners before the High Court had also contended that the impugned provisions may be interpreted harmoniously to include the words 'decree holder' as existing in Section 3(10) to be at par with 'financial creditors' under Regulation 9(a), to save them from unconstitutionality.

The High Court had noted that IBC treats decree holders as a separate class and does not provide for any malleability or overlap of classes of creditors to enable decree holders to be classified as financial or operational creditors. The Court had further noted that the resolution professional cannot look to the nature of the original claim that resulted in the decree and in the books of a corporate debtor, it will show only as a liability and not as a financial debt or operational debt.

## **NCLT, Debi initiates insolvency proceedings against a Group company of Realty Developer ATS**

### ***Anand Divine Developers Private Limited had defaulted over dues of 25 crores***

The Delhi Bench of the National Company Law Tribunal (NCLT) has initiated Insolvency proceedings against Anand Divine Developers Private limited, a group company of realty developer ATS over dues of Rs 25 crore. According to the NCLT order, ICICI prudential venture has moved the tribunal after the developer defaulted on payment.

“In the present case, the Corporate Debtor has not filed any reply and written submissions till now. However, in view of the debt and default clearly mentioned in the application under section 7, this bench is inclined to admit the present petition,” the tribunal said in the order.

Reports have suggested that the parties are exploring recourse to settlement. “We have received a copy of the order and we are in the middle of studying the same. However, the amount under consideration is a very small sum and the related project is completed and handed over. This will have no bearing on our other projects. Meanwhile, we have mutually closed this dispute/matter with Applicant Financial Creditor and will be filing a settlement soon,” the Chairman and Managing Director of the Group told a prominent news agency.

In this case, A default under the Investment Agreement occurred, when the Corporate Debtor failed to pay Interest due for the relevant period.

## **iBBI amends norms on Vountary Liquidation Reguiations**

### ***The IBBI has inter aiaa introduced a Compiiance Certificate/checkiist for the Vountary Liquidation process, aiong the iines of the one presentiy provided under the CIRP***

The Insolvency and Bankruptcy Board of India (IBBI) has amended regulations governing Voluntary Liquidation of stressed firms to make the exit process quicker and more efficient so that the idle assets are released expeditiously for more productive uses without substantial value erosion.

The regulator has stipulated that the period for the distribution of Liquidation proceeds will be cut to just 30 days from the current six months. In cases where claims are received from creditors, the Liquidator has to complete the Liquidation process and submit the Final Report with the Board and the Registrar of Companies (ROC) within 270 days from the date of start of the process. However, in cases, where no claims are received from any creditor, this process has to be wrapped up in 90 days.

The IBBI has also introduced a compliance certificate/checklist for the voluntary liquidation process, along the lines of the one for provided under the CIRP (Corporate Insolvency Resolution Process) currently. It has to be submitted along with the final report to the adjudicating authority.

The latest move is aimed at assisting the NCLT to process the dissolution applications expeditiously and ensure consistency across its benches. This would help save judicial time and resources and thus, reduce the burden on the NCLT as well.

## **Insolvency Resolution Process against legal heirs of Personal Guarantor by Financial Creditor not permissible: NCLT Kolkata**

***The Adjudicating Authority pointed out that definition of Personal Guarantor under IBC cannot be construed to include the legal heirs of the guarantor***

The National Company Law Tribunal, Kolkata Bench while dismissing the application filed by the Financial Creditor/ Bank of Baroda held that the application is not maintainable against legal heirs of the Personal Guarantor under the Code.

Kilburn Chemicals Limited/Corporate Debtor had approached the Petitioner/Financial Creditor to provide credit facilities for setting up of Rutile Grade Titanium Dioxide manufacturing plant. A loan consortium Agreement was executed to that effect. The Petitioner had sanctioned a total credit facilities to a sum of Rs.103,90,00,000/- (Rupees One Hundred Three Crore Ninety Lakh only).

Since the Corporate debtor and personal guarantor failed to pay the loan amount, a Petition under Section 7 of the IBC was filed before Adjudicating Authority and the Corporate Debtor was admitted into CIRP. In the meantime, due to the demise of the Personal Guarantor, the Petitioner issued a demand notice to the legal heirs of Mr. Sandeep Kumar Jalan. A petition was filed under section 95(1) of the Insolvency and Bankruptcy Code, 2016 for initiating the Insolvency Resolution Process against Ms. Divya Jalan, legal heir of Personal Guarantor by the Financial Creditor.

It was held by the NCLT that as defined in section 5 (22) – personal guarantor refers to an individual who gives surety in a contract of guarantee on behalf of the Corporate Debtor. As per regulation 3 (1)(a)(e) of Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor Regulation, 2019, clearly defines that a personal guarantor to a Corporate Debtor is a person against whom guarantee has been invoked and there is outstanding dues left, partly or fully. The definition does not include the 'legal heirs'.





# LANDMARK JUDGMENTS

## CFM Asset Reconstruction Pvt. Ltd. Vs. S. S. Natural Resources Pvt. Ltd.

***Sending a Corporate Debtor into Liquidation just because the Liquidation value is more than the enterprise value, would not be in keeping with the objectives of the Code-NCLT Koikata***

In the present case, a Financial Creditor was pursuing its application for Liquidation because the Liquidation value was more than the enterprise value. The Adjudicating Authority held that but that cannot be a ground for sustaining the application, nor is it in line with the objects of the Code. Sending the Corporate Debtor into liquidation just because the liquidation value is more than the enterprise value, would not be in keeping with the objectives of the Code.

The Adjudicating Authority explained that the Code is not about maximising value at all costs even if it means corporate death, which will inevitably ensue if the company is sent into liquidation. “In so far as the use of the term “shall” in section 33(4) is concerned, we are convinced that this will have to be construed in the conspectus of facts that each case presents itself with. A mechanical interpretation that once a default is established, then liquidation should be the result, would not sub-serve the purposes of the Code” The NCLT observed.

## Sh. Manoj Kumar Singh Vs. M/s. EBPL Ventures Pvt. Ltd.

***Within a period of less than 24 hrs the CIRP initiation order stayed by NCLAT***

The National Company Law Appellate Tribunal (NCLAT) has stayed the corporate insolvency resolution process (CIRP) in respect of the Corporate Debtor. As a matter of fact, the Appellate Adjudicating Authority stayed the Insolvency proceedings within 24 hours of initiation of CIRP by the Adjudicating Authority.

Strikingly, the NCLAT has further held that the Interim Resolution Professional (IRP) was not entitled to any remuneration/ fee or other expenses except the expenses for publication of public announcement in the newspaper.

Factually, the order of the National Company Law Tribunal (NCLT) which was impugned in the Appeal was uploaded on the website of the Adjudicating Authority in the evening of the day the order was passed. The NCLAT stayed the order the next day directing that no further steps be taken in pursuance of the order by the NCLT admitting the Insolvency Petition.



As per opinions, the order of the Appellate Adjudicating Authority was unreasonable as not even a minimum professional fee has been ascribed towards the services discharged by the IRP in the limited time period without any fault of his in the stay accorded to the Insolvency proceedings of the Corporate Debtor.

## **Mr. Babumanoharan Jai Kumar Christhuran Vs. Indian Bank & Ors.: NCLAT**

***There is no bar for the Financial Creditor to proceed against the Principal Borrower as well as Corporate Guarantor either in CIRP's or file claims in both the CIRP's.***

The National Company Law Appellate Tribunal (NCLAT) has recently ruled that a right or a cause of action would indubitably ensure to the lender (Financial Creditor) to proceed against the principal borrower, as well as the guarantor in equal measure in case they commit default in repayment of the amount of debt acting jointly and severally.

The Appellate Bench went on to say that the obligation of the guarantor is co-extensive and conterminous with that of the principal borrower to defray the debt, as predicated in Section 128 of the Contract Act. As a consequence of such default, the status of the Guarantor metamorphosis into a debtor or a Corporate Debtor if it happens to be a corporate person, within the meaning of Section 3(8) of the Code.

The Court noted that there is no reason to limit the width of Section 7 of the Code despite law permitting initiation of CIRP against the Corporate Debtor, if and when the default is committed by the principal borrower. The liability and obligation of the guarantor to pay the outstanding dues would get triggered coextensively.

## **Aditya Kumar Tibrewal RP Vs. Om Prakash Pandey, Suspended Director: NCLAT**

***The timeline prescribed for transactions under Section 46 does not cover the transactions covered by Section 49 and 66 of the Code***

The National Company Law Appellate Tribunal has observed that the question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and this is to be ascertained, not only from the phraseology of the provisions but also by considering their nature, design and the consequences which would follow from construing it one way or the other.

Referring to the facts of the case, the Appellate Adjudicating Authority held that in the event the actions taken by the Resolution Professional after the timeline prescribed in Regulation 35A of the CIRP Regulations are to be annulled, the undervalued and fraudulent transactions will go out of the reach of resolution process, reach of the Court and shall cause great inconvenience and injustice to the Corporate Debtor.

Hence the Appellate Bench ruled that timeline prescribed under Regulation 35A of the CIRP Regulations is only directory and any action taken by the Resolution Professional beyond the time prescribed under



the said regulation cannot be held to be non-est or void only on the ground that it is beyond the period prescribed under the provision. Moreover, the Bench justified, there may be genuine and valid reasons for the Resolution Professional not to file application for avoiding the transactions within time prescribed which are questions relating to each case and has to be examined on case-to-case basis and if there are reasons due to which the Resolution Professional could not file the application within time the same has to be examined on merit.

## **Vikas Prakash Gupta. Vs. Vinod Kuwadia & Anr.: NCLAT Delhi**

### ***Adjudicating Authority having found the suspended directors of Fraudulent trading under the provisions of Section 66, awarded punishment under section 74 of the Code***

The Resolution Professional of the Corporate Debtor filed an application under Section 66 of the Code before the National Company Law Tribunal, Mumbai Bench (NCLT) for reversal of transactions illegally conducted by handing over the property of the Corporate Debtor to a third party. The Adjudicating Authority noted that the Corporate Debtor was well aware of the impending corporate insolvency resolution process (CIRP) in the matter and it was clear that just before the insolvency commencement date, when the suspended directors knew that there is no reasonable prospect of avoiding CIRP in respect of the Corporate Debtor, carried on with the intent of defrauding the creditors by sub-leasing a large chunk of the only asset of the Corporate Debtor to a related party who happened to be the son-in-law of one of the suspended directors.

The Bench found that the each of the Corporate Director's promoters were liable under Section 66 for undergoing the said transactions and also under Section 14 of the Code for entering into tripartite agreement during the time when moratorium was imposed in respect of the Corporate Debtor. The Bench exercising its jurisdiction under Section 74 of the Code also imposed fine of Rs. 5 lakhs on each ex-director of the Corporate Debtor.

The NCLT further set aside the tripartite agreement entered into by the promoters of the Corporate Debtor and reversed the transaction carried out in pursuance of the same. The Adjudicating Authority concluded its order by directing the Resolution Professional to file compliance report within three weeks of the pronouncement of the order.

**For enquiries related to:**

- **Insolvency Process,**
- **Bankruptcy Process,**
- **Filing petition with NCLT/DRT,**
- **Appointment of Insolvency Professionals,**
- **Assets Management of the Company,**
- **Hearing of Cases or any other enquiries**



**Delhi Head Office**

73, National Park, Lajpat Nagar IV,  
New Delhi - 110024 (India)  
Phone: +91-11-41729056-57, 41601289  
www.ascgroup.in, info@ascgroup.in

**Noida Corporate Office**

C-100, Sector-2, Noida- 201301  
Uttar Pradesh (India)  
Phone No: +91-120-4729400

**Gurgaon Office**

605, Suncity Business Tower  
Golf Course Road, Sector-54,  
Gurugram - 122002, Haryana (India)  
Phone No.: +91-124-4245110/116

**Mumbai Office**

MBAI SAGAR TECH PLAZA, A WING, OFFICE NO.  
315-316, ANDHERI KURLA ROAD, SAKINAKA,  
ANDHERI (E), MUMBAI - 400037, INDIA.  
022-67413369/70/7171

**Bengaluru Office**

0420, Second Floor,  
20th Main, 6th Block, Koramangala,  
Bangalore - 560095, Karnataka (India)  
Phone No.: 80-42139271

**Chennai Office**

Level2 - 78/132,  
Dr RK Salai Mylapore  
Chennai - 600004, Tamil Nadu (India)  
Mobile No: +91-8860774980

**Pune Office**

UNE OFFICE NO. 4, 1ST FLOOR SILVER OAK,  
SN NAGAR ROAD, WADGAON SHERI,  
PUNE- MH - 411014  
LANDMARK: NEAR INORBIT MALL

**Singapore Office**

11 Woodlands Close, #04-36 H,  
Woodlands 11, Singapore - 737853  
Mobile No: +65-31632191  
www.ascgroup.sg,  
info@ascgroup.sg

**Canada Office**

885 Progress Ave Toronto  
Ontario M1H 3G3 Canada

Business related discussion contact Deepak Maini (IP, Advocate) at +91 97111 91523

Please write us at: [anju@insolvencyservices.in](mailto:anju@insolvencyservices.in), [mahima@insolvencyservices.in](mailto:mahima@insolvencyservices.in)

Disclaimer:

This e-bulletin is for private circulation only. Views expressed herein are of the editorial team. ASC or any of its employees do not accept any liability whatsoever direct or indirect that may arise from the use of the information contained herein. No matter contained herein may be reproduced without prior consent of ASC. While this e-bulletin has been prepared on the basis of published/other publicly available information considered reliable, we do not accept any liability for the accuracy of its contents.