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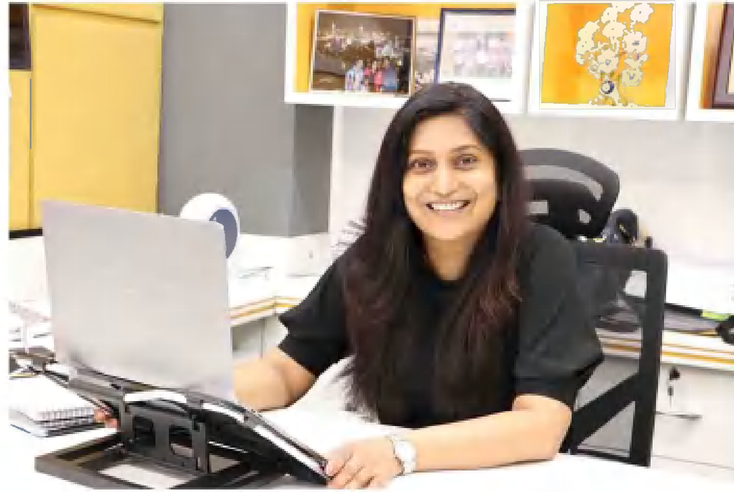
Editorial



IBBI has permitted IPEs to act as Resolution Professional

In a welcome move, the Insolvency and Bankruptcy Board of India (IBBI) in its press release No. IBBI/PR/2022/39 has permitted Insolvency Professional Entities (IPEs) to act as an Individual Resolution Professional. The decision was taken by IBBI, after considering the limitations on the part of an Individual Insolvency Professional in dealing with various processes under the Insolvency and Bankruptcy Code, 2016 (IBC,2016). For getting themselves registered as resolution professional, IPE has to submit application with IBBI in a specified form which must be accompanied with the fee of Rupees Two Lakhs.

The move is much appreciated as it will bring domain expertise to the distressed assets resolutions in a time bound manner, thereby promoting the objective of IBC,2016 i.e. the value maximization of the assets.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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NCLT dismisses Homebuyers application to reject Resolution Plan in respect of Lavasa Corporation

The Company owed over ₹6200 Crore to its financial creditors and more than ₹400 Crore to its 840 homebuyers

The National Company Law Tribunal (NCLT), has dismissed the application moved by the homebuyers of Lavasa Corporation seeking rejection of the Resolution Plan submitted by the Successful Resolution Applicant as the plan was in violation of the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

Lavasa Corporation had developed India's first privately developed city in the Mulshi and vehle areas in Pune. The project was entangled into various issues including environment violation and land acquisition. The Company owed over ₹6200 Crore to its financial creditors and more than ₹ 400 Crore to its 840 homebuyers. Therefore, in 2018, the company was admitted to the insolvency process for revival.

Being aggrieved by the manner in which the CIRP of the Corporate debtor was conducted and being mistreated as a class of creditors the homebuyers moved application before the National Company Law Tribunal (NCLT) seeking rejection of the Resolution Plan submitted by Drawin Platform Infrastructure, the Successful Resolution Applicant. NCLT dismissed the application filed by the home buyers of Lavasa Corporation.

Through the petition the homebuyers sought the Hon'ble Tribunal's intervention to reject the Resolution Plan submitted by Drawin Platform Infrastructure, the Successful Resolution Applicant, on the ground that the plan was in violation of the provisions of the Insolvency and Bankruptcy Code,2016 (IBC). Homebuyers also alleged misconduct in the Corporate Insolvency Resolution Process (CIRP) of the company and that they had been mistreated as a class of creditors.

State Bank drags Jai Prakash Associates into Insolvency proceedings

The Lender has filed for Insolvency claiming a default of ₹6,893.15 Crore

Country's biggest lender SBI has moved the Allahabad Bench of the National Company Law Tribunal (NCLT) seeking admission of Jaiprakash Associates Limited (JAL) into Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). The Company has defaulted in the repayment of ₹6893.15 Crore.

Jaiprakash Associates Limited (JAL) is a flagship company of the debt-ridden Jaypee Group which is engaged in the construction of river valley and hydropower projects. Various financial facilities were provided by SBI to the company but the company made persistent defaults in repayment of the debt. Therefore, SBI being the 'financial creditor' filed the Petition under Section 7 of the IBC. SBI in its petition, has proposed the name of Mr. Bhuvan Madan as Interim Resolution Professional.

JAL was included in the Reserve Bank of India's second list of 26 big loan defaulters. Currently, JAL has a huge outstanding debt estimated to be around 26,000 crores. Sources say that efforts have been made by the debt ridden company to convince its lenders for a restructuring proposal, but in vain.

Rajesh Landmark Projects goes into Insolvency

The process has been triggered by IREP Credit Capital for an unresolved financial debt of nearly 227 crores

The Mumbai Bench of the National Company Law Tribunal, Mumbai Bench (NCLT) has admitted an Insolvency plea filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) against real estate developer Rajesh Landmark Projects, a subsidiary of Mumbai-based realtor Rajesh Lifespace.

IREP Credit Capital has sought to invoke the provisions of IBC for a resolution of an unresolved financial debt of nearly 27 crores. The dues include secured and redeemable non-convertible debentures worth 18 crores issued by the developer, redemption premium, interest, and penal interest.

The Adjudicating Authority at Mumbai has initiated the corporate insolvency resolution process (CIRP) and appointed an Interim Resolution Professional (IRP) who will take over the charge of management and control of the Company.

As per reports, the Company made efforts of settlement with the Financial Creditor, however the NBFC declined all offers and proceeded with the Insolvency plea. Since the plea has been admitted, the court appointed IRP shall endeavour to resolve the Company for value maximisation of its assets.

IBBI streamlines norms to aid Insolvency professional entities

The Amendment Regulations emphasize on enrolment of IPEs for administering distressed companies

The Insolvency and Bankruptcy Board of India (IBBI) has amended its regulations governing Insolvency Professional Entities to facilitate them to take on the task of administering companies that are going through corporate insolvency resolution processes (CIRPs).

The Model Bye-laws and Governing Board of Insolvency Professional Agencies (Amendment) Regulations, 2022 brought out by the IBBI streamlines the regulations regarding their enrolment for the task of administering sick companies. The regulations also make other consequential changes needed for facilitating this.

The move is significant as Insolvency Professional entities were, until last month, only allowed to assist the Resolution Professional hired by the Lenders to run the CIRP of companies in distress. However, vide the amendment regulations brought out by the IBBI, entities can bring certain advantages over individual professionals now.

The new regime allows entities to register themselves as Insolvency Professionals and perform associated duties. Earlier they were allowed only to provide support services to Insolvency Professionals.

Application for Fast Track Corporate Insolvency Resolution Process can be made in respect of 'Startups': Notifies MCA

The Startups, being eligible under the notification, shall be entitled to faster Resolution within 90 days as per the Fast Track procedure

In a significant move, the Ministry of Corporate Affairs (MCA) has notified that an application for Fast Track Corporate Insolvency Resolution Process may be made in respect of Start-ups defined in the notification of the Government of India in the Ministry of Commerce and Industry. The MCA has now widened the pool of start-ups that can avail themselves of the fast track CIRP, thereby enabling faster exits for such businesses.

The Insolvency and Bankruptcy Code, 2016 (IBC) provides provisions of Fast-track CIRP to accelerate the Insolvency resolution process of certain categories of Corporate Debtors with lesser complexities. The Fast Track CIRP process which can be initiated by a creditor or the Corporate Debtor itself cuts down the time taken to complete an Insolvency resolution to almost half as compared to the regular process under the Code. The time period given for the completion of Fast Track Resolution Process is 90 days, as against 180 days for CIRP.

The Ministry had earlier released a notification wherein definition of a Startup was clarified along with particulars of eligibility and manner of registration of entities as Startups. Later, the Ministry clarified that only those entities which fall within the meaning of the term 'Startup' under its notifications shall be eligible and amenable to apply for Fast Track Insolvency resolution facility.

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Supreme Court rejects Review plea filed against Vidarbha Industries Judgment

The Apex Court had held in Vidarbha that power of NCLT to admit CIRP was discretionary even after debt and default were proved

The Hon'ble Supreme has upheld its previous judgment in the Appeal filed by Vidarbha Industries wherein it had held that even when debt and default were proved by the Financial or Operational Creditor, the discretion still lies with the Adjudicating Authority to admit or reject the application for initiation of corporate insolvency resolution process (CIRP) of the Corporate Debtor. However, the Supreme Court while rejecting the review made it clear that the observations made in the Vidarbha judgment were in the context of facts of the case and should not be interpreted as the words of the Statute itself.

The Apex Court in the Judgment challenged titled as Vidarbha Industries Power Ltd v. Axis Bank Ltd had held that power of the National Company Law Tribunal (NCLT) to admit an application for initiation of corporate insolvency resolution process (CIRP) by a Financial Creditor under Section 7(5)(a) of the Insolvency and Bankruptcy Code (IBC), is discretionary and not mandatory. The judgment had laid down that the Code was enacted for the purpose of resolution and rehabilitation of companies undergoing distress, and not for the purpose of recovery from solvent companies.

RECENT JUDGMENTS

Maitreya Doshi v Anand Rathi Global Finance Limited.

CIRP proceedings can be initiated against two Corporate Debtors but the same amount cannot be realized from both: Supreme Court

The Supreme Court of India has recently held that if there are two borrowers or if two corporate bodies fall within the ambit of corporate debtors, there is no reason why the proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) cannot be initiated against the Corporate Debtors.

The Apex Court further clarifies that if the dues are realized in part from one Corporate Debtor, the balance may be realized from the other Corporate debtor being the co-borrower. Thus, once the claim of the Financial Creditor is discharged, there can be no question of recovery of the claim twice over.

Balkrishna Rama Tarle (D) v Phoenix ARC Private Limited.

CMM/DM not required to adjudicate disputes between the borrowers/ third party and secured creditors: Supreme Court

The Supreme Court of India has held that the application under Section 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFESI) Act, 2002 the powers exercisable by CMM/DM are ministerial step. Once all the requirements under Section 14 are complied with then it is the duty cast upon the CMM/DM to assist the secured creditors in obtaining the possession as well as documents related to the secured assets even with the help of any officer subordinate to him or with the help of an advocate appointed as Advocate Commissioner.

The Apex Court further held that at the time of exercising his power under Section 14 of the Act the CMM/Dm is required to adjudicate the dispute between the borrower and the secured creditor or between any other third party and the secured creditor with respect to the secured assets and the aggrieved party is to be relegated to raise objections in the proceedings under section 17 of SARFAESI Act before Debt Recovery Tribunal.

Namdeo Ramchandra Patil & Anr v Vishal Ghisulal Jain & Anr

Providing land to a developer in exchange of certain portion in the project does not come within the ambit of 'Financial Creditor' : NCLAT

In the instant case, appeal was filed by the Landowners/Appellant who were aggrieved from the order of the Adjudicating Authority. The Landowners/Appellants entered into a development agreement with Corporate Debtor and as a consideration for developing the land of Appellants were promised 45% of the constructed area. Further, CIRP of the Corporate Debtor was initiated by the Bank U/s 7 of the IBC 2016. Appellants raised claim as Financial Creditor before the RP which included total value of the flats and shops along with the interest for delayed possession. The issue that arose for the consideration before this Tribunal was whether landowners who were allotted flats as a consideration for land given by them for development can claim to be financial creditor within the ambit of Section 5 (8) of the IBC 2016.

Hon'ble NCLAT held that the sine qua non for a debt to be a financial debt is 'disbursement against the time value of money' and when any amount is raised from an allotment under real estate. Disbursement has been defined by the Hon'ble Tribunal to mean 'paying out of money from a fund or for settlement of a debt or towards a liability that is owned to a third party or an amount of money paid for a particular purpose'.

NCLAT held that when money is raised from the allottee of a real estate project the same is covered under Section 5(8) of IBC. However, the same is not the case for the landowner who give his land to a developer in exchange of some portion of the project. The NCLAT noted that even if the Appellants who are allotted flats are allottee within the meaning of Section 2(d) of the RERA that cannot imply that their transaction is financial debt within the meaning of Section 5 (8).

Further, Hon'ble tribunal reiterated that the essential element of a financial debt 'Disbursement against time value of money' has to be fulfilled for a transaction to become a financial debt and same is missing in the land development agreement between the Appellants and the Corporate debtor, hence it is not a

Ritu Kapur v Invest Care Real Estate LLP

The loan which has been converted into capital contribution without the consent of the Lender cannot be treated as capital contribution : NCLAT

In the instant case, the application was filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 and was dismissed on the ground that the loan advanced by the appellant was converted into equity by her own act and conduct and as such it does not fall within the definition of financial debt which is due and payable. Aggrieved by the same, an appeal was preferred before the Hon'ble NCLAT and the same was upheld. The appellant thereafter preferred a Civil Appeal before the Hon'ble Supreme Court, where the appeal was allowed. The matter was remanded back to the NCLAT for fresh disposal.

The issue that arose for consideration before the Hon'ble NCLAT was whether the amount of loan is debt or; has the same been converted into capital?

The Hon'ble NCLAT held that the loan advanced by the appellant that has been converted into capital contribution without her consent cannot be treated as a capital contribution in order to dismiss the application filed by her under Section 7 of the Code. Accordingly, the matter was remanded back to Hon'ble NCLT for further proceedings after admitting the Petition filed under Section 7 of the Code.

Bhawanishankar Harishchandra Sharma v Feedback Highways Omt Pvt. Ltd.

An order passed by a bench in which one of the members was not a member who heard the matter, is patently illegal and void ab-initio: NCLAT

In the instant matter, an Appeal has been preferred against two orders dated 10.01.2018 and 25.02.2022 passed by the Hon'ble Adjudicating Authority (AA), arising out of the Application filed under section 9 of the Code. That the case was heard by one Bench and the order was pronounced by another bench, which had not heard the case.

The issue that arose for consideration was whether a member of the bench who has not heard the arguments can pronounce the order of a reserved judgment. The Hon'ble NCLAT held that the law does not permit a case being heard by one entity and the order pronounced by another which has not heard the case at all.

The Hon'ble NCLAT further held that when the order is passed by a bench in which one of the members was not a member of the bench who had heard the matter at the time when it was reserved, is patently illegal and void ab-initio.

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For enquiries related to:

- Insolvency Process,
- Bankruptcy Process,
- Filing petition with NCLT/DRT,
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- Hearing of Cases or any other enquiries

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