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INSOLVENCY TIMES

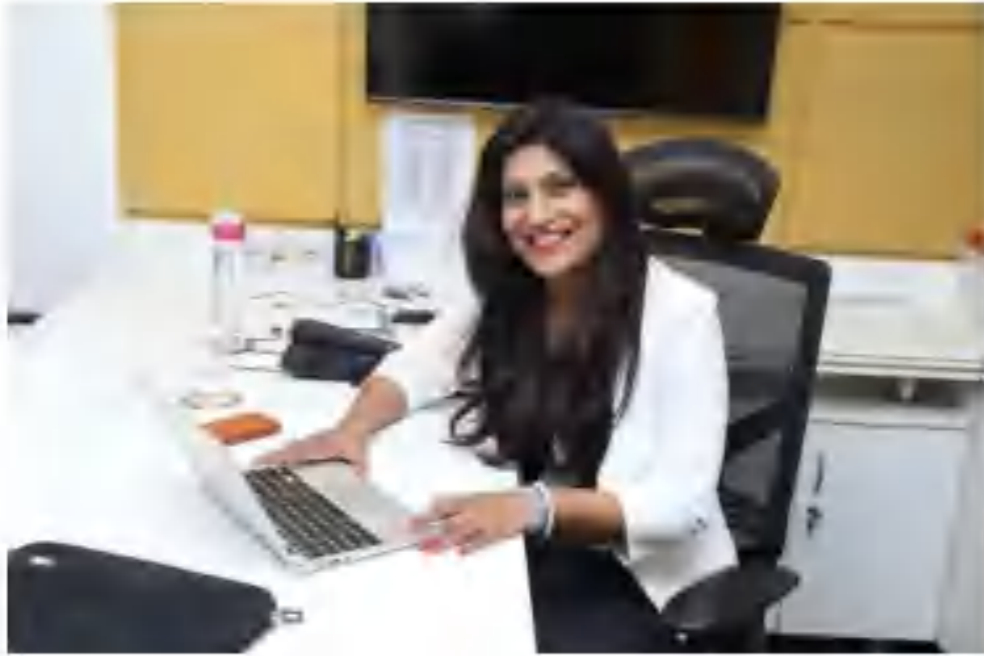
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INSOLVENT?





From the Editor's Desk



Dear Insolvency Professionals,

Insolvency Proceedings suspended for six months

The Union Cabinet has cleared a proposal to give companies relief from insolvency for the next six months i.e., October, 2020 by amending the Insolvency and Bankruptcy Code, 2016 & has suspended Sections 7, 9 and 10 of IBC during these six months.

This amendment has been proposed to give a six-month window. Lenders or creditors during these six months, under the current impact due to the pandemic of COVID-19, cannot move a fresh case of default for bankruptcy.

Section 7 of the IBC deals with financial creditors and initiates insolvency action whereas, Section 9 allows operational creditors to initiate an action before the National Company Law Tribunal/ Adjudicating Authority, and Section 10 allows a defaulting company to approach the National Company Law Tribunal (NCLT) to declare it as insolvent.

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!

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NEWS FLASH FROM THE LAST MONTH

Aadhar Authentication under the Goods and Services Act, 2016 for an Insolvency Professional

As per the Notification No. 11/2020- Central Tax issued by the Ministry of Finance dated 21st March, 2020, it has been made mandatory for individuals to get themselves registered for done aadhar authentication/ verification from the website of the UIDAI of the Central Government of India. They shall follow the procedure of getting themselves registered for availing special benefits for obtaining the aadhar authentication. They shall be treated as a distinct/ separate person of the corporate debtor/ company undergoing the process of Corporate Insolvency Resolution (CIRP), and shall therefore, be liable to obtain a new registration in each of the States or Union Territories where the corporate debtor was earlier registered, within thirty days of the appointment of the IRP/RP.

Note: The Insolvency Professionals (IPs) are individuals as per the law, so it applies also applies on them to get themselves registered for aadhar verification.

“Jaypee Infratech- NCLAT gives conditional approval”

The National Company Law Appellate Tribunal (NCLAT) on April 22, 2020 refused to stay the execution of the resolution plan submitted by NBCC to take over embattled firm Jaypee Infratech and complete 20,000 stuck housing units. It also allowed the IRP to proceed with constituting the interim monitoring committee for execution of the plan.

IRP Anuj Jain has been directed to constitute an interim monitoring committee, which comprises representatives of the NBCC and its three main lenders, i.e., IDBI Bank, IIFCL and LIC.

According to the sources, no construction can begin immediately due to the COVID-19 situation, there will now at least be an interim arrangement in place to start the ball rolling.

The order passed by the Honorable NCLAT said that the implementation of the ‘Successful Resolution Plan’ would involve participation of the ‘Successful Resolution Applicant’, i.e., NBCC (India) Ltd. as also the three major Institutional Financial Creditors, who are Members of the ‘Committee of Creditors’ i.e., IDBI Bank Ltd., IIFCL and LIC.

Jet Airways’ RP asks SpiceJet to pay for leased engines

The Resolution Professional (RP) of the grounded Jet Airways has served a notice to SpiceJet in order to seek payment for engines that were leased out to the latter, i.e., SpiceJet.

Jet Airways was dragged to the National Company Law Tribunal (NCLT)/ Adjudicating Authority over unpaid dues in June 2019. The NCLT had considered Jet Airways as a ‘going concern’, after which a few assets of Jet Airways’ were leased out to the competitors of industry to recover some cost.

A notice has been served to SpiceJet for payment of lease amounts on the engines of Jet Airways.

Spice Jet has paid lessors on whose aircraft these engines are mounted in full. The lessor has agreed to hold Spice Jet harmless against any disputes which are emanating from the operations of previous operator of these engines/aircraft. This is also as the Indian aviation industry is severely hit due to the on-going pandemic of COVID-19 and the nation-wide lockdown.

It can thus be concluded that the RP of the grounded airlines i.e., Jet Airways has issued/ served a notice to SpiceJet to pay for leased engines to SpiceJet.



Resolution Plan for debt-ridden Orchid Pharma implemented by Dhanuka Laboratories

The Resolution Plan of Gurgaon-based Dhankua Laboratories for the revival of Chennai-based debt-ridden company Orchid Pharma Ltd. has been implemented, which is potentially fetching secured lenders around 32.3 per cent of recovery.

The culmination of the long-drawn resolution process for the pharmaceutical company, Dhankua Lab, which saw its first approved resolution plan by the NCLT, by US-based company Ingen Capital, got annulled due to the non-payment of the required amount. The NCLT, by annulling the resolution plan, allowed the Resolution Professional (RP) to go for an option for another round of resolution process. The Committee of Creditors (CoCs) have approved the proposal of Dhanuka Laboratories, in the second attempt of resolution process, following which an unsuccessful bidder company Accord Life Spec had approached the NCLT against the decision of the CoCs.

It was observed by the division bench of the Honorable Supreme Court that the judgement of the NCLAT has to be set-aside in view of a recent judgement where it was held that no provision of the IBC, 2016 or its Regulations are brought to the notice of the tribunal/ court, under which the bid of any resolution applicant has to match the liquidation value which is arrived at in the manner provided in the relevant regulations.

Relaxation by MCA on Passing Ordinary and Special Resolution due to COVID-19

The Ministry of Corporate Affairs vide circular dated 8th April, 2020 has relaxed provisions related to passing Ordinary and Special Resolution in its meeting of members in view of the current extraordinary circumstances prevailing in the country due to the pandemic caused by Noval Coronavirus, COVID-19, which requires social distancing.

The companies are requested to take all decisions of urgent nature which requires the approval of the members, other than items of ordinary business or businesses where any person has a right to be heard (*audi alteran partem*), through the mechanism of postal ballot/ e-voting in accordance with the provisions of the Act and rules made thereunder, without conducting a General Meeting.

Further, MCA has also laid down the procedure for convening Extraordinary General Meeting wherever holding such meeting is unavoidable on or before 30th June, 2020 under the following sub-categories:

- For companies which are required to provide the facility of e-voting under the Act, or any other company which has opted for such facility.
- For companies which are not required to provide the facility of e-voting under the Act.



LATEST JUDGEMENTS

Bimalkumar Manubhai Savalia v. Bank of India- NCLAT Company Appeal (AT) (Insolvency) No. 1166 of 2019- NCLAT

The issue/dispute in this case was whether SARFAESI & DRT proceedings will extend limitation period under IBC or not?

The NCLAT reversed the order passed by the honorable Adjudicating Authority/ NCLT and held that SARFAESI & DRT proceedings will not extend the period of limitation since those proceedings are independent and as per the provisions of Section 23 of IBC, 2016, the Insolvency & Bankruptcy Code is a complete Code and will have an overriding effect on other laws. Therefore, the proceedings initiated or pending in DRT, either initiated under SARFAESI or under DRT cannot be taken into consideration for the purposes of limitation. It was contended by the Respondent, i.e., Bank of India that the period of limitation ought to be counted from the date on which the Guarantors have transferred the amount to the account of the Corporate Debtor i.e., Bimalkumar Manubhai Savalia as per Section 19 of the Limitation Act, was also rejected by the NCLAT. It was held that Section 19 of Limitation Act will fall under the category of first division of schedule which applies to suits. However, Section 7 of IBC is not a suit. Therefore, Article 137 will apply to the applications filed under the provisions of Section 7 & 9 of the IBC.

Ultra Tech Nathdwara Cement Ltd. v. Union of India- D.B.CW-9480/2019- NCLT

Ultra Tech Nathdwara Cement Ltd. (formerly known as Binani Cement) suffered huge losses and was unable to pay the debts to the Financial Creditor i.e., Bank of Baroda, which preferred an insolvency application before the NCLT, Kolkata Bench/Adjudicating Authority under Section 7 of the IBC, 2016. A Corporate Insolvency Resolution Process was initiated by the NCLT under the provisions of the IBC 2016.

It was held by the NCLT that the impugned demand notices are ex-facie illegal, arbitrary and per-se cannot be sustained. Any further demands pending as on the finalization of the resolution plan issued/raised by the respondents CGST Department, Govt. of India are quashed and struck down. The authorities should have adopted a pragmatic approach and should have immediately withdrawn the demands rather than indulging in a totally frivolous litigation, thereby adding unnecessarily to the overflowing dockets of cases in the courts. Hence, the writ petition is allowed accordingly. No order is there as to costs.

State of Gujarat through Chief Secretary v. Amber Builders- 199(IBC) 159/2020- Supreme Court

Honorable Supreme Court held:

- Section 13 of the IBC, 2016 specifically bars the jurisdiction of the Civil Courts. This means that powers vested in a Civil Court under the Arbitration & Conciliation Act, 1996, such as



the powers to grant interim relief in terms of Section 9 of the Arbitration & Conciliation Act, 1996 and the powers for setting aside an award under Section 34 of the Arbitration & Conciliation Act, 1996 cannot be exercised by the Civil Courts insofar as the awards made under the Gujarat Act are concerned.

- That the appropriate remedy available for the contractor was to approach the arbitral tribunal which is constituted under the Gujarat Act since that would have jurisdiction to decide whether the notice issued by the Government was a legal notice and whether the Government was, in fact, entitled to recover any amount from the contractor. To decide whether the contractor has made out a prima facie case for grant of interim relief, would also be within the jurisdiction/powers of the Arbitral Tribunal. It would not be proper to make any comments on the merits of the case because once the Tribunal has the jurisdiction to entertain and adjudicate upon the dispute, it would not be proper to make any comments on the merits.
- On a conjoint reading and after doing a careful analysis of both the Acts together, we are of the view that insofar as the powers vested in the Arbitral Tribunal in terms of Section 17 of the Arbitration & Conciliation Act, 1996 are concerned, such powers can be exercised by the Arbitral Tribunal constituted under the Gujarat Act because both these two Acts are not inconsistent as far as the grant of interim relief is concerned. This power is already vested in the Arbitral Tribunal under the Gujarat Act and Section 17 of the Arbitration & Conciliation Act, 1996 already compliments these powers and therefore, it cannot be said that the provisions of Section 17 of the Arbitration & Conciliation Act, 1996 are inconsistent with the Gujarat Act.
- In view of the above discussion, both the appeals filed by the State of Gujarat are allowed, and the judgements of the High Court of Gujarat are set-aside. However, Contractor(s) have been given liberty to approach the Gujarat Public Works Contract Disputes Arbitration Tribunal and if the Tribunal is approached within 2 months from today, it shall not dismiss the claim on the issue of limitation. The Tribunal shall decide on the same merits. If there are any pending application(s), they shall stand disposed-off.

Rajendra K. Bhutta v. Maharashtra Housing and Area Development Authority & Anr.- 2020 SCC Online SC 292- Supreme Court

Issues Raised:

1. Whether the Maharashtra Housing & Area Development Act (MHDA Act, 1976) would be prevailing over the Bankruptcy & Insolvency Code?

It is held by the Honorable Supreme Court that on the plain terms of Section 238 of the Bankruptcy & Insolvency Code, 2016, the Code must prevail. The idea behind the moratorium under Section 14 of the IBC is to alleviate/remove corporate sickness and a statutory status quo is pronounced under the said provision, the moment a petition is admitted/filed under Section 7 of the Code, so that the Corporate Insolvency Resolution Process (CIRP) may proceed without any hindrance by any of the obstacles that would otherwise be caused and that are dealt with under Section 14 of IBC.



2. Whether Section 14(1)(d) of the Insolvency & Bankruptcy Code will be applicable to a statutorily freeze 'occupation' that may have been handed over under a Joint Development Agreement?

The Honorable Supreme Court has held that Section 14(1)(d) of the IBC, 2016, when it speaks about the recovery of property "occupied", it does not refer to rights or interests created in property but only the actual physical occupation of the property.

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- Appointment of Insolvency Professionals,
- Assets Management of the Company,
- Fresh Start Process,
- Hearing of Cases or any other enquiries

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