

Indian Institute of Insolvency Professionals of ICAI (IIPI)

(Company formed by ICAI as per Section 8 of the Companies Act 2013)

IIPI Update -# 1

May 2017

IIPI will be bringing Updates on a regular basis towards professional development of members. It will provide Case Updates, News Update as well as give information on the initiatives of IIPI

INITIATIVES

Launch of LMS for the IBBI Limited Insolvency Examinations

Indian Institute of Insolvency Professionals of ICAI has launched the Learning Management System to enable the professionals to prepare and complete the Limited Insolvency Examinations of the Insolvency and Bankruptcy Board of India. This Platform which is available to all on a no cost basis comprises of the entire syllabus in the form of presentations and supplemented by mock tests in each component of the syllabus. A unique feature is that it enables the professionals to do practice at a modular level and prepare for the examination. The link is available on the IIPI website <http://www.iiipicai.in/index.php/learning> Professional members can click on the Knowledge Gateway, register and proceed.

Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016

Members may also refer “Frequently Asked Questions on the Insolvency and Bankruptcy Code, 2016”, as brought out by ICAI. It has been designed in a question and answer format and it is comprehensive and a handy book. Soft copy available at www.iiipicai.in

NEWS UPDATE

Insolvency and Bankruptcy Board of India has recently notified :

Insolvency and Bankruptcy Board of India (Information Utilities) Regulations 2017

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations 2017

IBBI invites public comments on Draft regulations for Fast Track Resolution process for Eligible Corporate Persons. (www.ibbi.gov.in) Comments are invited by 8th May 2017.

Disclaimer: Although due care has been taken in bringing out this update, Indian Institute of Insolvency Professionals of ICAI does not own the responsibility for any error or omission. The users are advised to cross check with the original material before acting upon the content herein.

CASE UPDATES

A. Cases Admitted

Bench	National Company Law Tribunal (NCLT), Principal Bench, New Delhi
Operational Creditor	M/s. Incredible Unique Buildcon Pvt. Ltd.
Corporate Debtor	M/s. Clutch Auto Ltd.
Amount of Default	12.88 Cr.
Date of Order	10-04-2017
Relevant Section	Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Initiation of corporate Insolvency resolution process by Corporate applicant
Facts of the Case	The ‘corporate debtor’ company is in default for the last more than 3 years. The list of ‘operational creditors’ which contains as many as 293 names and a total sum owed to them is declared to be Rs.12,88,32266. The petitioner has disclosed the details of property against which the loan of the corporate debtor is fully or partially secured along with details of the date of its creation, its estimated value etc. A copy of the audited financial statements of the ‘corporate debtors’ along with other relevant documents have been placed before the Tribunal. A reference was filed before the BIFR and the order of admission of reference passed in 2014 has also been placed before the Tribunal.
Decision of the Tribunal	A perusal of Section 10 would show that a corporate debtor may file such application for initiating the insolvency resolution process where it has committed a default. A perusal of the paper book would show that books of accounts and other attendant documents have been filed. The petitioner itself has admitted default. Accordingly, the Tribunal admitted the Petition and appointed the Insolvency Resolution Professional. The Tribunal dismissed the application filed by the operational creditor under section 9 of the Code with the observation that ‘operational creditor’ may file its claim before the Insolvency Resolution Professional.

Bench	National Company Law Tribunal (NCLT), Mumbai Bench, Mumbai
Financial Creditor	M/s. Edelweiss Asset Reconstruction Co. Ltd.
Corporate Debtor	M/s. Murli Industries Ltd.
Amount of Default	1365.40 Cr.
Date of Order	05-04-2017
Relevant Section	Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Initiation of corporate Insolvency resolution process by Financial Creditor
Facts of the Case	The corporate debtor entered into a master reconstructing agreement with Bank of Baroda (Monitoring Institution) and other Lender Banks. The agreement says that the corporate debtor has requested the lenders for various financial assistance for setting up/implementation of the project and for other requirement for its operations. The lenders sanctioned the term loan and working capital facilities to the corporate debtor and the corporate debtor from time to time created security by way of hypothecation of its moveable assets and/or mortgage of its immovable properties. The corporate debtor requested the lenders for debt restructuring as the project under implementation has come under strain due to various internal or external reasons. Hence, the lenders and the corporate debtor agreed to enter into the master restructuring agreement to give effect to the corporate debt reconstruction package.

	<p>Bank of Baroda which is a lead bank under consortium arrangement issued a notice to the corporate debtor u/s. 13 (2) of the SARFAESI Act for recovery of Rs. 1365.40 crores due to the consortium banks. Bank of Baroda has also issued a possession notice stating that it has taken symbolic possession of the property owned by the corporate debtor u/s. 13 (4) of the SARFAESI Act read with Rule 9 of security Interest (Enforcement) Rules 2002. Further, auditor’s report has stated that the company has defaulted in repayment of dues to financial institutions and banks amounting to Rs. 1896.65 crores.</p> <p>The Edelweiss Asset Reconstruction Company Limited in its capacity as financial creditor filed this petition for initiation of corporate insolvency resolution process.</p>
Decision of the Tribunal	<p>This petition clearly reveals that there is a debt as defined in Section 3 (11) of the Code and also there is default in this case within the meaning of Section 3 (12) of the Code. Further, Section 5 (7) clearly provides that an assignee of a financial debt is also a financial creditor and hence the petition is well within the ambit of Section 7 of the Code.</p> <p>The Tribunal therefore admitted the petition and appointed an interim resolution professional.</p>

Bench	National Company Law Tribunal (NCLT), Chandigarh Bench, Chandigarh
Operational Creditor	
Corporate Debtor	M/s. Sky Blue Papers Pvt. Ltd. (Corporate Applicant)
Amount of Default	18.29 Cr.
Date of Order	07-04-2017
Relevant Section	Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Initiation of corporate Insolvency resolution process by Corporate applicant
Facts of the Case	This is an application filed by a ‘Corporate Debtor’ company itself in Form 6 as prescribed by Rule 7(1) of the Application to Adjudicating Authority Rules. The total amount of default in respect of Financial and Operational Creditors is Rs. 18.29 crores. Due to default in making the payment of dues the Punjab National Bank has issued notices under section 13(2) and also under section 13(4) of SARFAESI Act, 2002.
Decision of the Tribunal	<p>Section 10 of the Code confers a discretion on the Tribunal to either admit or reject the application and in case of rejection, to give an opportunity to the applicant before such rejection, to rectify the defects within seven days from the date of receipt of such notice from the Adjudicating Authority. The term ‘Corporate Debtor’ has been defined under Section 3 (8) of Part-I of the Code to mean a Corporate Person, who owes a debt to any person and ‘default’ is defined under Section 3 (12) of Part-I of the Code to mean “non-payment of debt when whole or nay part or instalment of the amount of debt has become payable and is not repaid by the debtor or the ‘Corporate Debtor’, as the case may be”.</p> <p>The Financial Statements of the company indicates the losses and fall in revenue. It seems that the applicant has fallen into debt trap and is competent to set in motion the insolvency resolution process as contemplated under the Code. On the basis of the Financial Statements of the company the total debt raised by the ‘Corporate Applicant’ with regard to the financial and operational creditors is Rs.18.48 crores and it is further represented that the total amount of default is Rs.18.29 crores.</p> <p>The Tribunal therefore held that petition deserves to be admitted and accordingly appointed an interim resolution professional.</p> <p>The Tribunal however, observed that the Applicant Company save some sketchy particulars has not given any road map as to how it is going to keep itself afloat</p>

	as a going concern. However, Keeping in perspective the objects for which the Code has been brought into force and to balance the interest of all stakeholders, it is satisfied that the instant application warrants to be admitted to prevent further erosion of capital and to safeguard the assets of the Applicant Company/Corporate Debtor.
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B. Case Rejected

Bench	National Company Law Tribunal (NCLT), Special Bench, New Delhi
Corporate Creditor	M/s. Nowfloats Technologies Pvt. Ltd. (Applicant)
Corporate Debtor	M/s. Getit Infoservices Pvt. Ltd. (Respondent)
Amount of Default	1.93 Cr.
Date of Order	11-04-2017
Relevant Section	Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016 – Application for initiation of corporate Insolvency resolution process by operational creditor
Facts of the Case	<p>The respondent company and the applicant had entered into a service agreement wherein the applicant company had agreed to render certain IT related services to the respondent company and that from time to time for the services rendered invoices since the year 2014 had been raised for the payment of service fee. However the respondent company had been defaulting in the payment of dues and that presently a sum of Rs. 1,93,37,105/- is due excluding interest payable by the respondent company to the applicant.</p> <p>In relation to the respondent company the Hon’ble High Court of Delhi has appointed the Official Liquidator as the provisional Liquidator in proceeding for winding up initiated before it in terms of section 450 of the Companies Act, 1956.</p>
Decision of the Tribunal	<p>The provisions of Companies Act, 1956 will govern in relation to the proceedings pending before the Hon’ble High Court of Delhi and not the Companies Act, 2013 as contended by the applicant. If that be so, no suit or other legal proceeding shall be proceeded with, against the company, except by leave of the Court which is seized of the winding up proceedings. In the present instance no leave has been obtained by the applicant to proceed with present proceedings initiated by the applicant company before this Tribunal and obviously the Tribunal is therefore handicapped in proceeding further in relation to the above company petition.</p> <p>It is to be borne in mind that both winding up proceedings under the erstwhile Companies Act 1956 as well as the Insolvency Resolution Process is initiated for the benefit of the general body of creditors and is a representative action and not for the recovery of money of the individual creditor for which necessarily claims are required to be submitted to the Official Liquidator or the Interim Resolution Professional as the case may be. In the instant case in view of the matter pending before the Hon’ble High Court of Delhi which has also thought it fit to appoint the Official Liquidator as the Provisional Liquidator of the respondent company, the Interim Resolution Professional, if appointed will again be put on a collusive course with the Official Liquidator even in accepting the claims as may be filed as envisaged under Section 21 of the Code.</p> <p>Taking into consideration the above aspects and legal position the Tribunal rejected the application.</p>

Hope you find this Update helpful.

Suggestions if any, may be mailed to ipa@icai.in