

Indian Institute of Insolvency Professionals of ICAI (IIPI)

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

IIPI Update -# 6 - Part I

September 2017

INITIATIVES

Programmes on Insolvency and Bankruptcy Code, 2016

Programmes on Insolvency and Bankruptcy Code, 2016 were held recently at Salem, Erode, Kolkata and Bengaluru. Programmes will be held next at Ahmedabad, Hyderabad and Jaipur.

Learning Management System (LMS) for IBBI Limited Insolvency Examination

The Learning Management System (LMS) as developed by IIPI is being used extensively by members to complete the Examination. LMS is a comprehensive e-learning platform which provides the study material as well as presentations and sample test questions. It also provides a mock test for the purpose of enabling the professionals to practice for the Examination. The Learning Management System is available at the link: <http://www.iiipicai.in/index.php/learning>

(No. of Registered Users for LMS as on date- 4200 and No. of tests taken -90390)

NEWS UPDATE

IBBI has issued Frequently Asked Questions (FAQs) on Limited Insolvency Examination (1st July 2017 to 31st December 2017).

The FAQs are available at the link <http://ibbi.gov.in/FAQsFINAL.pdf>

IBBI has recently issued the following Regulations:

- The Insolvency and Bankruptcy Board of India (Employees' Service) Regulations, 2017
- Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017
- Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) (Amendment) Regulations, 2017

The Supreme Court stayed an order passed by the Allahabad Bench of the National Company Law Tribunal (NCLT) for the insolvency proceedings against Jaypee Infratech

The Supreme Court has stayed the insolvency proceedings against Jaypee Infratech, ruling in favour of a petition filed by homebuyers. Under an order passed in August 2017 by the Allahabad Bench of the NCLT, insolvency proceedings against Jaypee Infratech were initiated under the Insolvency and Bankruptcy Code of India, 2016 for a default on over Rs 500 crore loan to IDBI Bank.

The Court set October 10 for the next hearing in the case.

The Supreme Court dismissed an appeal filed by Innoventive Industries against a National Company Law Appellate Tribunal (NCLAT) verdict and said that ICICI Bank could start bankruptcy proceedings against the company

The Apex Court said “Entrenched managements are no longer allowed to continue in management if they cannot pay their debts.”

The case of ICICI Bank (financial creditor) vs Innoventive Industries (corporate debtor), which was the first case admitted under the Insolvency and Bankruptcy Code in December 2016 in Mumbai, reached the Supreme Court challenging the NCLAT’s judgment.

Pursuant to default in payment of dues the financial creditor filed an application under section 7 of the IB Code. The corporate debtor filed an interim Application stating that the Industry, Energy and Labour Department of Maharashtra has passed a relief under the provision of the Maharashtra Relief Undertakings(Special Provisions) Act, 1958 (Bombay Act XCVI of 1958) (hereinafter referred to as MRU Act 1958) suspending the liabilities of the Corporate Debtor and remedies against the debtor for one year and therefore the financial Creditor could not have invoked this relief till July, 2017.

The Adjudicating Authority/Tribunal held that IB Code has come into existence subsequent to MRU Act 1958 and therefore, Non-Obstante clause in section 238 of IBC prevails upon any other law for the time being in force, hence it could not be said that Notification given under MRU Act 1958 will become a bar to passing order u/s. 7 of the IB Code. The Application filed by the Corporate Debtor was therefore dismissed.

From the aforesaid order, an appeal was carried to the NCLAT, which met with the same fate.

The important observations of the Supreme Court as made in the case are:

“...because this is the very first application that has been moved under the Code, we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law.”

“It is clear that the later non-obstante clause of the Parliamentary enactment will also prevail over the limited non-obstante clause contained in Section 4 of the Maharashtra Act. For these reasons, we are of the view that the Maharashtra Act cannot stand in the way of the corporate insolvency resolution process under the Code.”

“the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd.”

Reserve Bank of India has directed banks to refer as many as 50 accounts to bankruptcy court unless solutions found in about three months

As per media reports, RBI has set a deadline of about three months for banks to put in place a resolution plan for the bad loans, otherwise banks will have to refer the cases to bankruptcy court. The new list involves around 50 accounts with about Rupees 2 lakh crore dues. Earlier in June 2017 RBI had sent out the first list of 12 accounts.

Hope you find this Update helpful.

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