



## IIPI Newsletter

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### HAPPY INDEPENDENCE DAY

#### IBBI gives relief to creditors during liquidation process; allows insolvency professional from same state

In the new process, the interim resolution professional will have to offer a choice of three IP in the public announcement and the creditors to choose one of them to act as their authorised representative. Also, the three Insolvency Professionals must be from the State or Union Territory, which has the highest number of creditors in the class.

#### IBBI comes out with 'Red flag' document to aid insolvency professionals

The IBBI has come out with a 'Red Flags' document that would serve as a guide to insolvency professionals during the CIRP and help detect if the corporate debtor has been subjected to any 'avoidance transactions'.

Dr. MS Sahoo, told that Insolvency law frowns on alienations of property prior to the commencement of the insolvency proceeding, if it vitiates the sanctity of equitable distribution (*pari passu* treatment of the creditors of the same class) and maximisation of the value of the assets of a corporate debtor.

#### NCLAT sets aside nod for Ricoh acquisition by Dharamshi-Jhunjhunwala consortium

The NCLAT has set aside the bankruptcy court's approval to a consortium led by investor Kalpraj Dharamshi and including Rekha Jhunjhunwala to acquire Ricoh India. The order deals a setback to the efforts of Dharamshi and Rekha Jhunjhunwala, the wife of ace investor Rakesh Jhunjhunwala, to revive the printing and document solutions company that their consortium has now renamed Minosha India.

Kotak Investment Advisors, the private equity arm of Kotak Mahindra Bank which was one of the bidders for Ricoh India, had challenged the NCLT decision before the appellate body. It had argued that the Dharamshi-Jhunjhunwala consortium was allowed to submit its bid after the expiry of the deadline and when the bids by other bidders had already been opened.

#### **POINT TO PONDER**

*"The delicate balance of mentoring someone is not creating them in your own image, but giving them the opportunity to create themselves." **Steven Spielberg***

## **AGR: SC asks govt to explain if spectrum of telcos under IBC can be sold**

The Supreme Court asked the Centre to explain if spectrum can be sold/auctioned in the insolvency proceedings of telecom companies under the IBC, while observing that recovery of government dues may not be possible from telcos undergoing insolvency.

The apex court observed that the government must prepare a plan for recovery of the Adjusted Gross Revenue-related dues from bankruptcy facing telcos.

## **4 Critical Questions Relating To Avoidance Transactions In Voluntary Liquidation**

The law relating to voluntary liquidation has been moved from the Companies Act, 2013 to IBC. Voluntary liquidation is the option available to solvent corporate persons having committed no default. The voluntary liquidation, interalia, requires a special resolution of the members of the company and approval of such resolution by the creditors representing two-thirds in value of the debt of the company within seven days of special resolution.

So far so good but applicability of sections 43 to 51 dealing with avoidance transactions leaves following 4 questions unanswered: -

1. Is it incumbent upon the voluntary liquidator to identify and determine the avoidance transactions and make application to the Adjudicating Authority?
2. If yes, what will be the starting point of look back period?
3. Is it possible to dissolve the company while avoidance applications are pending for adjudication?
4. What will be the treatment of any recoveries made out of avoidance transactions?

**"Wishing a very Happy Independence Day to all the readers"**

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