



## IIPI Newsletter

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Knowledge SBU Initiative

### **SC sets aside insolvency of Jignesh Shah's firm La-Fin Financial Services**

The Supreme Court on Wednesday set aside an order of the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT), thereby quashing the insolvency proceedings against Jignesh Shah and Pushpa Shah's La-Fin Financial Services.

A three judge-Bench of the apex court said that since the winding up petition filed by IL&FS Financial Services was more than three years after the debt had occurred, it had to be struck down since it did not pass the muster of time limitation mentioned in Article 137 of the Limitation Act.

### **IBC- Article 137 Limitation Act Applies To Section 7 Applications; Not Article 62: SC**

The Supreme Court has held that Article 62 of the Limitation Act would only apply to suits and not to "an application" which is filed under Section 7 of the Insolvency and Bankruptcy Code, which would fall only within the residuary Article 137.

The bench of Justice Rohinton Fali Nariman, Justice R.Subhash Reddy and Justice Surya Kant was considering an appeal against the CLT order (upheld by NCLAT) that admitted a Section 7 application on the ground that, as per article 62, the limitation period was 12 years from the date on which the money sued has become due. Before NCLT, a section 7 application was filed seeking to recover the original debt together with interest which now amounted to about 124 Crores of rupees.

### **Supreme Court resuscitates Amtek Auto, allows fresh bids for company**

The Supreme Court (SC) on Tuesday granted the resolution professional (RP) of Amtek Auto 21 days to invite fresh bids, giving a fresh lease of life to the insolvent component maker whose liquidation it had earlier stayed.

The lenders to the company will have two weeks after that to decide on a final resolution plan and place it before the court, said a three-judge Bench led by Justice Arun Mishra. The next hearing is on November 5. The SC had, on the plea moved by the Amtek Auto lenders, stayed the firm's liquidation in the interim.

## POINT TO PONDER

**"Bankruptcy is good. Unemployment is good. They are necessary evils. Unemployment makes workers available to industries that are rising. Bankruptcy makes resources available to the industries that are rising." -William Strauss**

### **Debt recovery: DHFL, lenders to meet as trustee plans to move DRT**

Dewan Housing Finance Corporation, the stressed financier, and its lenders are set to meet on Wednesday to discuss the draft resolution plan. The company will also hold a meeting with all institutional creditors, including mutual funds, on September 27. According to banking sources, the agenda of the meeting is to get all lenders together on the same page over the resolution plan.

Bankers have also indicated they will wait for the company's AGM to secure shareholders' approval on bankers taking over a majority stake in the company and existing management stepping back. "After bankers take over, we will consider infusion of capital to ensure the company remains a going concern. For the moment the company has its internal cash flows, for which we have appointed Alvarez and Marsal to oversee cash flows."

### **Government moves NCLAT against NCLT orders directing probe into companies' affairs by SFIO**

The Centre on behalf of the Serious Fraud Investigation Office (SFIO) has moved the NCLAT against the NCLT orders directing the probe agency to investigate into the affairs of two firms, contending that the insolvency tribunal has no jurisdiction to pass such probe orders. The SFIO also contended that the investigation was ordered by the NCLT in purported exercise of its powers under the Companies Act but while hearing the matter under the IBC. In the first matter, the NCLT was supervising the insolvency resolution process of Zynke Exports, against whom the insolvency process was initiated on June 8, 2018.

### **Suzlon Energy may become another bankruptcy case**

Creditors are believed to have said no to a 50 per cent haircut in their exposure in debt-ridden Suzlon Energy and may push the company into bankruptcy as there are no takers for its assets. The plans of reviving the wind turbine manufacturer will end here, if no buyer turns up at the last moment. Banking sources point out that there is no option left before the company to repay its debts and protect it from going to bankruptcy court, National Company Law Tribunal (NCLT).

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