



## IIPI Newsletter

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Knowledge SBU Initiative

### **I-T department, other tax agencies can initiate insolvency: NCLAT**

The Income Tax department of the central government, the sales tax department of the state government and other local authorities “who are entitled for dues arising out of the existing law” can now initiate corporate insolvency resolution process against such companies who owe them the dues, the National Company Law Appellate Tribunal (NCLAT) has held.

### **Reliance vs Ericsson: Unsecured Creditor Walks Away With Money; Banks Clueless About Recovery**

In the recent Reliance-Ericsson dispute, the unsecured operational creditor managed to upstage the financial creditors.

Ericsson Indian Pvt Ltd of Reliance Communications has managed to claim nearly 50% of its dues by going through the IBC route while the Joint Lenders Forum (JLF) led by the State Bank of India are still groping in the dark to figure out means to recover their dues worth Rs 46,000 crores. In the scheme of the Insolvency and Bankruptcy Code, the claims of operational creditors rank lower than the claims of secured financial creditors. But in this case the unsecured operational creditor managed to upstage the financial creditors.

### **RBI moves NCLAT against curbs on NPA tag for IL&FS group companies**

The Reserve Bank of India has moved the National Company Law Appellate Tribunal (NCLAT) against its order restricting financial institutions from classifying the accounts of group companies of debt-laden Infrastructure Leasing and Financial Services (IL&FS) as non-performing assets (NPAs). The NCLAT had in February ordered that no financial institution declare any account of IL&FS group entities as non-performing assets (NPA) without first taking the permission of the appellate tribunal. The total debt of the IL&FS group is around Rs 91,000 crore.

## POINT TO PONDER

"Frugality includes all the other virtues."  
-Cicero

### **Outstanding listing fee can't be recovered under IBC, rules NCLT**

Ruling that the National Company Law Tribunal (NCLT) is not the right forum to initiate recovery proceedings for non-payment of 'annual listing fees,' the tribunal's Mumbai Bench has said that the listing agreements are subject to the control and supervision of the Securities and Exchange Board of India (SEBI).

The ruling came in a plea filed by the Bombay Stock Exchange (BSE) against Asahi Infrastructure & Projects.

### **Jyoti Structures not to face liquidation, NCLAT upholds ultra-high-net-worth individuals' offer**

Jyoti Structures was saved from going into liquidation after the National Company Law Appellate Tribunal (NCLAT) directed that a resolution plan for the company put forth by a group of ultra-high-net-worth individuals led by Netmagic CEO Sharad Sanghi be accepted, albeit with minor modifications.

### **Moratorium Is-À-Vis Invocation of Bank Guarantee**

In the matter of Levcon Valves (P) Ltd. Vs. Energo Engineering Projects Ltd. [C.A.No. 453(PB) / 2017, order dated August 24, 2018], the Hon'ble National Company Law Appellate Tribunal, inter alia, held that the performance guarantee furnished by the banks would not enjoy the benefits of a moratorium keeping in view of the amendments (in June 2018) made in Section 14 of IBC. Hence, the legal position is clear now that an irrevocable bank guarantee can be invoked even during a moratorium period.

### **NCLAT Refuses To Stay ArcelorMittal's Takeover Of Essar Steel**

The appellate tribunal has refused to stay the National Company Law Tribunal's order approving ArcelorMittal's bid to take over insolvent Essar Steel Limited. The ArcelorMittal resolution plan will be implemented subject to the final orders of the appellate tribunal. The case has lingered for over 580 days compared with the 270-day resolution period prescribed in the Insolvency and Bankruptcy Code.

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