



IIPI Newsletter

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Knowledge SBU Initiative

SC upholds IBC spirit: Now, make it resolution-centric instead of liquidation-centric

The Supreme Court has upheld the constitutional validity of the Insolvency and Bankruptcy Code (IBC). The court, however, said that related parties in the act should mean a person connected with the business. The bench disposed of a batch of pleas filed by companies challenging various provisions of the IBC. It asserts that the defaulters cannot bid for the assets of the insolvent company in terms of amended section 29 (A) to regain control while lenders are forced to take a haircut. It also tames the attitude of Committee of Creditors and provides a clear and firm direction that its decisions cannot be arbitrary, as was seen in the recent stance in the Essar Steel case. It asserts that CoC is not the ultimate link in the value-chain of IBC and it also removes many of the apprehensions of key players engaged in implementing IBC. This judgment, thus makes it clear that the purpose and objectives of IBC is becoming sharper.

No need to hear out 3rd party during insolvency admission, NCLAT tells NCLT

The National Company Law Appellate Tribunal (NCLAT) has directed that except the applicant (financial creditor) and the corporate debtor, there is no requirement of hearing a third party including the intervener at the stage of admission.

Number of cases withdrawn under Sec 12A of IBC sees a spike in Q3 FY19.

At the end of December 2018, two years after the IBC came into effect, 586 cases have been settled one way or another.

Of these cases, 11 per cent were actually withdrawn under Section 12A, while resolution plans were approved in only 13 per cent of cases.

POINT TO PONDER

"THE THING I HAVE DISCOVERED ABOUT WORKING WITH PERSONAL FINANCE IS THAT THE GOOD NEWS IS THAT IT IS NOT ROCKET SCIENCE. PERSONAL FINANCE IS ABOUT 80 PERCENT BEHAVIOR. IT IS ONLY ABOUT 20 PERCENT HEAD KNOWLEDGE."

- DAVE RAMSEY

Criminal Proceedings Do Not Fall Under The Purview Of The Moratorium Under The Insolvency And Bankruptcy Code, 2016 – Bombay High Court

According to the Bombay High Court observations and interpretation of Section 14 of the Code, it was concluded that criminal complaints filed under section 138 of the NI Act, are excluded from the purview of Section 14 of the IBC. Further, the moratorium in Section 14 of the code only covers suit or proceedings of a similar nature including execution of judgment, decree or order in any court of law, tribunal, arbitration panel or other authority.

Corporate Debtor Can Withdraw Application Filed Under Sec.10 IBC On Making OTS Offer To Creditor : NCLT

The NCLT allowed the corporate debtor to withdraw the petition for its insolvency, though with costs, besides allowing the ex-director of the corporate debtor to make a one-time settlement offer to the financial creditor which was better than the resolution plan already under consideration for approval before the NCLT.

Government considers introducing 'deemed admission' under IBC

The government is considering introducing the procedure of "deemed admission" of companies under the Insolvency and Bankruptcy Code (IBC) for faster resolution of debt laden companies. In certain cases where the financial creditors have approached the National Company Law Tribunal (NCLT), their petitions could consider being admitted and the resolution professional (RP) can be appointed for faster resolution.

Exercise of 'put option' a 'financial debt' under IBC?

The NCLAT dismissed appeal filed by MCX Promoter Jignesh Shah challenging the NCLT order initiating insolvency proceedings against La-Fin Financial Services. The Appellate Tribunal ruled that a put-option, or buy-back arrangement, will constitute a 'financial debt'. The NCLT had initiated Corporate Insolvency Resolution Process based on a Section 7 application filed by IL&FS Financial Services.

***Feedback requested at ipa@icai.in**

