



## IIPI Newsletter

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Knowledge SBU Initiative

### **No bar on invoking insolvency against personal guarantors: IBBI chairman**

While a latest ordinance has suspended insolvency proceedings for up to one year against fresh default from March 25 to give breather to thousands of firms battered by Covid-19, it doesn't stop creditors from initiating bankruptcy process against a personal guarantor to a corporate debtor even now.

### **The United Kingdom, where the Arbitration Award has been passed, is a reciprocating territory, thus, the Award would be capable of execution in India: NCLT Mumbai**

In the matter of Agrocorp International Private (PTE) Limited Vs. National Steel and Agro Industries Limited, the NCLT addressed the issue of foreign award 'not binding' upon parties in India. NCLT held that the United Kingdom, where the Arbitration Award has been passed in the present case, is a reciprocating territory in terms of section 44A vide notification No. 51 dated 01.03.1953 published in the Gazette of India, Extraordinary as SRO 399. Thus, the Award would be capable of execution in India, and the challenge by the Corporate Debtor on this score need to be repelled.

On a pre-existing dispute between the parties since the Foreign Award has not obtained finality issue, NCLT held that pendency of challenge to an arbitral award qualifies as 'pre-existing dispute' for the purposes of initiating corporate insolvency resolution process by the operational creditor. Since there is no challenge to the Arbitral Award dated 16.04.2018 in a manner known to law. Hence the same cannot be considered as a preexisting dispute, and the objection of the Learned Counsel for the Corporate Debtor on this count is rejected.

### **CoC has absolute power regarding selection of IRP, RP: NCLT**

An IRP cannot seek natural progression to a resolution professional in an insolvency matter; the prerogative to continue with the IRP as RP or to replace the IRP with another RP lies with the committee of creditors, the NCLT has observed.

## POINT TO PONDER

***"No one can whistle a symphony. It takes a whole orchestra to play it."***

***H.E. Luccock***

### **NCLT allows Jet Airways to sell office in Bandra Kurla Complex**

The NCLT has allowed Jet Airways to sell its premises in Bandra Kurla Complex to settle Rs 360 crore dues of mortgage lender HDFC, clear overseas debt and cover corporate insolvency resolution process costs. Jet Airways' insolvency resolution professional Ashish Chhawchharia had moved the NCLT to seek approval to sell its third and fourth floor in Godrej BKC building to clear overseas debt to transfer the title of six aircraft under Export-Import Bank of the US to the corporate debtor, which would help in maximising value of the defunct airline.

### **Insolvency filing by Minda Corp for its German unit to boost shareholder value**

The decision by auto-parts company Minda Corp to take into administration its non-viable European unit Minda KTSN could boost shareholder value and help improve overall profitability. Despite significant turnaround efforts and substantial investments by MCL over the past few years, MKTSN filed for insolvency with the insolvency courts in Germany. Minda Corp will take a write-off of about Rs 295 crore, including MKTSN's debt of Rs 160 crore, on a consolidated net worth of Rs 1,200 crore, leaving the company free to invest on profitable and growing businesses.

### **Credit Market's Big Worry After Bankruptcy Law Paused Over Virus Crisis**

Since the government announced last month that it would temporarily suspend its insolvency law amid the pandemic, credit investors have grown concerned that some weaker borrowers may use the development as an excuse to delay or avoid debt payments. Yield premiums jumped after Finance Minister Nirmala Sitharaman unveiled the suspension, and the extra spread that investors demand to hold short-term AA rated debt over AAA notes has risen to its highest in about nine years. "Suspension of bankruptcy filings can give firms a reason to take advantage of the situation and delay debt repayments," according to Rajat Bahl, chief ratings officer at Brickwork Ratings in Mumbai. "This will be a setback to bond investors and creditors."

**\*Feedback requested at [ipa@icai.in](mailto:ipa@icai.in)**