



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IIPI Newsletter

March 05, 2021

Volume 06, Number 09

CONTENTS

News Update

News Roundup

Event Photos



Cheque dishonour cases can't be filed or continued against CD facing CIRP: SC

In a significant judgement in *P. Mohanraj & Ors Vs. M/S. Shah Brothers Ispat Pvt. Ltd*, the Supreme Court has ruled that Section 14 of the IBC provides protection to the Corporate Debtor against criminal proceedings in cheque bounce cases.

The court quashed cheque bounce cases filed against the Corporate Debtor under Section 482 of the CrPC after AA admitted CIRP application under Section 9 of IBC and moratorium ordered under section 14 of IBC.

In the 120-page judgement, the top court dealt in detail the various legal issues related to IBC and the Negotiable Instruments Act, 1881.

**For More Details,
Please Visit:**

<https://main.sci.gov.in/judgments>

**For Internal Circulation Only*

**Knowledge SBU Initiative*

News Update

Supreme Court Ordered immediate release of IRP Mr. Anuj Jain arrested in a case of accident on Yamuna Expressway

The Supreme Court on March 2, ordered immediate release of IRP Mr. Anuj Jain who was arrested by Uttar Pradesh police in the case of *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. Nbcc (India) Ltd & Ors.*

“Copy of this order be forwarded to the office of the concerned Judge and Police Station Beta-II, District Greater Noida, Uttar Pradesh through e-mail and the Registrar (Judl.) of this Court shall personally intimate the office of the concerned Judge on telephone to ensure immediate release of the applicant, Mr. Anuj Jain, without imposing any conditions,” ordered a Bench of Justice A. M. Khanwilkar and Justice Dinesh Maheshwari.

Mr. Jain was arrested from Mumbai in pursuant to an FIR related to an accident filed against caretakers of Yamuna Expressway to which he has been appointed as insolvency resolution professional (IRP). In this accident seven members of a family were killed on Yamuna Expressway in last week of February. The counsel of the Uttar Pradesh government argued that the investigating officer was of the view that Mr. Jain ‘may leave India at any time to avoid the prosecution’. Though the court agreed to examine this aspect in detail, it observed that the police official dealing with the case was not familiar with the provision of privilege of IRP appointed by the Court, in terms of Section 233 of the IBC. The court also directed the investigating officer to file his personal affidavit explaining the position within two weeks.

For More Details, Please Visit: <https://www.scconline.com/blog/?p=244917>

News Roundup



Greensill Capital seeking insolvency protection in Australia

Greensill, backed by Japan's SoftBank Group, is looking to invoke a "safe harbour" protection in Australia where its parent company is registered, said the media reports.

The finance firm, was founded by former Citigroup banker Lex Greensill in 2011. Greensill was backed by SoftBank's Vision Fund with \$1.5 billion in 2019. The company employs former U.K. prime minister David Cameron as an advisor.

Insolvency filing will reportedly allow private equity firm Apollo Global Management to acquire parts of the business out of administration.

Greensill provides working capital finance to businesses and individuals worldwide. It claims on its website that it "unlocks finance so the world can put it to work" and in 2020, it issued over \$143 billion in finance to over 10 million customers.

The company's main financial product is known as supply chain finance, which allows businesses to borrow money to pay their bills. However, critics argue that it can be used to disguise mounting debts.

For More Details, Please Visit:
<https://www.cnbc.com/2021/03/03/greensill-capital-is-reportedly-preparing-to-file-for-insolvency.html>

SC to examine whether Section 14 of IBC provides protection to CD against Section 27 consumer court proceedings

The Punjab and Haryana High Court had earlier ruled against the appellants, who are the erstwhile directors of a construction company undergoing insolvency proceedings. The High Court had dismissed a writ petition moved by the appellants with costs on finding that they have an alternate remedy before the national consumer forum.

A Supreme Court Bench led by Justice Rohinton Fali Nariman on March 4 issued notice in the appeal challenging this ruling and stayed the High Court judgment. The appellants have raised the following question of law i.e. whether the proceedings under Section 27 of the Consumer Protection Act against the erstwhile directors of a company can continue even after the declaration of a moratorium under Section 14 of the IBC?

For More Details, Please Visit:

<https://www.barandbench.com/news/litigation/moratorium-ibc-section-27-consumer-court-proceedings-supreme-court-notice>

CIRP application maintainable even if winding up petition pending, Supreme Court

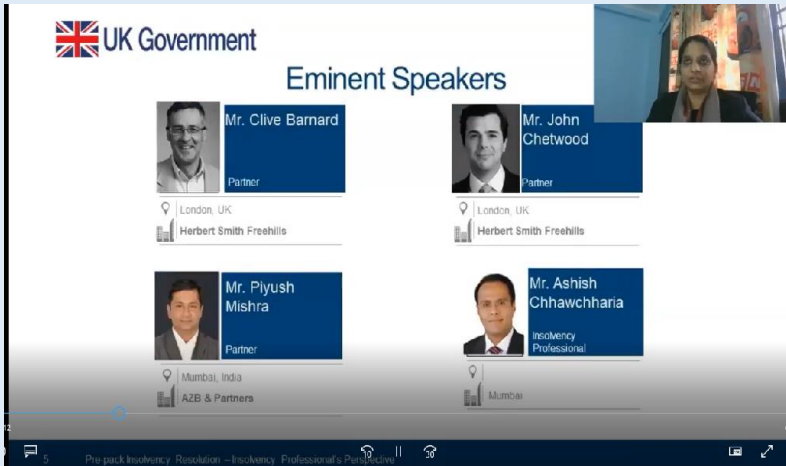
While a winding up petition was pending against the company, secured creditor filed a CIRP application under Section 7 of the IBC. The AA rejected the application vide order dated 18.05.2018 for being not maintainable as a winding up petition was pending in the Bombay High Court. Appeal against the AA order was also dismissed by NCLAT. Finally, the matter came up before the Supreme Court in the form of *A. Navinchandra Steels Private Limited Vs. SREI Equipment Finance Limited & Ors.*

Delivering its judgement in the matter on March 01, the Supreme Court relied on judgement in *Swiss Ribbons (P) Ltd. v. Union of India, (2019) 4 SCC 17* and concluded "it is clear that the IBC is a special statute dealing with revival of companies that are in the red, winding up only being resorted to in case all attempts of revival fail. Vis-à-vis the Companies Act, which is a general statute dealing with companies, including companies that are in the red, the IBC is not only a special statute which must prevail in the event of conflict, but has a non-obstante clause contained in Section 238, which makes it even clearer that in case of conflict, the provisions of the IBC will prevail,".

For More Details, Please Visit:

https://www.livelaw.in/pdf_upload/a-navinchandra-steels-private-limited-vs-srei-equipment-finance-limited-ii-2021-sc-122-389881.pdf

Event Photos



Speakers in the 'Pre-Pack Insolvency Resolution Process: Report of the Sub-Committee of ILC' on February 27, 2021

IIPI in Association with British High Commission organized Webinar on Pre-Pack Insolvency Resolution Process

The one day Webinar titled 'Pre-Pack Insolvency Resolution Process: Report of the Sub-Committee of ILC' was organized from 11 AM to 1.00 PM on Feb. 27. It was aimed at providing an overview of the framework, timelines and role of insolvency professionals in the Pre-Pack Insolvency Resolution Process as envisaged by the sub-committee of the Insolvency Law Committee (ILC).

In the Webinar, Mr. Clive Barnard and Mr. John Chetwood, Partners, Herbert Smith Freehills provided United Kingdom's perspective on Pre-Pack Insolvency to the participants while Mr. Piyush Mishra, Partner, AZB & Partners, India and Mr. Ashish Chhawchharia presented an analysis of the recommendations of the ILC in Indian context and changing dimensions of insolvency ecosystem. Besides, Ms. Shikha Parekh, Senior Financial Policy Advisor (FCDO), British Deputy High Commission also addressed the Webinar. Dr. Ashok Haldia, Chairman, IIPI and CA. Rahul Madan, MD, IIPI delivered Welcome Address.



A snapshot of the ongoing 41st Batch of Pre-Registration Educational Course on March 04, 2021