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IIPI Newsletter

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Pre-Pack of MSMEs receives Parliament approval

Rajya Sabha on August 03 passed the IBC (Amendment) Bill 2021 which provides for Pre-Packaged Insolvency Resolution Process (PIRP) for MSMEs. The Lok Sabha had already passed it on July 28 in the ensuing monsoon session. The bill will replace Ordinance on PIRP for MSMEs promulgated by the Hon'ble President on April 04, 2021.

Speaking in the Rajya Sabha, Finance Minister Smt. Nirmala Sitharaman said that the passage of the bill enables 'an efficient alternative insolvency resolution framework for MSMEs. PIRP on MSMEs blends elements and virtues of both formal and informal insolvency proceedings.

For More Details, Please Visit:

<https://www.moneycontrol.com/news/business/fm-nirmala-sitharaman-highlights-features-of-the-insolvency-and-bankruptcy-code-bill-7274801.html>

News Update

**For Internal Circulation Only*

**Knowledge SBU Initiative*

Parliamentary Panel calls for thorough evaluation of the extent of fulfillment of the Code's original objectives

The Parliamentary Committee on Economic Affairs headed by Shri Jayant Sinha has expressed serious concerns on several issues of the IBC regime such as haircuts taken by creditors, Committee of Creditors (CoC), qualification for Insolvency Professionals (IPs), and vacancies among NCLTs among others.

“With haircuts as much as 95% and the delay in resolution process with more than 71% cases pending with NCLT for more than 180 days, clearly points towards a deviation from the original objectives of the Code intended by Parliament,” observed the Committee in the report titled ‘Implementation of IBC- pitfalls and solutions’, tabled in the Parliament on August 03, 2021. In the report, the committee has recommended ‘a professional code of conduct for the COC’ to define and circumscribe their decisions’, filling at least 50% vacancies in NCLT to expedite pending cases, benchmark for the quantum of haircuts to be taken by creditors as in line with global standards among others. Besides, the committee has expressed doubts on competency of fresh graduates being appointed as IPs to handle insolvency proceedings of huge and complex companies. The committee highlighted that the fundamental aim of the statute was to secure creditor rights so as to reduce borrowing costs with the reduction of risks. It noted that the IBC has undergone six amendments since its introduction in 2016, but the operationalization of these changes ‘may have altered or even digressed from the basic design of the statute.

For More Details, Please Visit:

<https://www.thehindu.com/business/Industry/insolvency-code-has-strayed-from-intent-parliament->

News Roundup

CIRP initiation by Financial Creditor is not ‘time barred’: Supreme Court

Allowing an appeal of Dena Bank (now Bank of Baroda), the Supreme Court on August 05 observed that the plea by Financial Creditor (FC) for initiation of CIRP against a Corporate Debtor (CD) before the Adjudicating Authority (AA) will not get time barred on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years. The SC set aside the order of NCLAT and upheld the decision of NCLT to admit the CIRP case of Kaveri Telecom Infrastructure Limited and its director.

For More Details, Please Visit:

<https://www.livemint.com/news/india/insolvency-plea-by-financial-creditors-exempt-from-3-year-time-limit-sc-11628093099518.html>

Videocon Promoter approaches NCLAT to set aside Resolution Plan

In the appeal to the NCLAT, Mr. Venugopal Dhoot, former Chairman of Videocon Group, has said that the commercial wisdom exercised by lenders is “arbitrary and irrational and does not reflect any applicability of mind by rejecting a proposal which was 10 times higher and submitted at an early stage of the process”. He has demanded the Appellate Tribunal to set aside the order of NCLT accepting the Resolution Plan and direct it to consider his settlement offer under Section 12 A of the IBC.

For More Details, Please Visit:

<https://www.livemint.com/companies/news/venugopal-dhoot-moves-nclat-against-approval-to-twin-star-s-resolution-plan-11627818466464.html>

Covid Relief Impact: USA witnesses lowest number of Bankruptcy Filings since 1985

As per the government data released on August 04, for the year ending June 30, 2021, the commercial filings fell 17.7% to 18,511 compared with the previous year, non-business filings plummeted 32.7% to 443,798. This is the lowest since 1985, said the Administrative Office of the USA Courts. The reason behind low filings is reportedly due to relief package to industry and various moratorium schemes.

For More Details, Please Visit:

<https://www.reuters.com/legal/transactional/bankruptcy-filings-lowest-since-1985-amid-pandemic-relief-2021-08-04/>



Avoidance Transactions: RPs of 700 CDs file claims for recovery of ₹ 1.6 lakh crore at the NCLT

The IBC mandates a Resolution Professional (RP) to conduct audit of all transactions prior to two years from the commencement of CIRP to assess preferential transactions by the CD, if any. These transactions could be in the form of undue payments or transfer of property.

These unlawful transactions were committed by the Corporate Debtors (CDs) before their Corporate Insolvency Resolution Process (CIRP) were admitted by the concerned NCLTs. They include Aircel, Videocon, Reliance Communications, Jaypee Infratech, LancoInfratech, Bhushan Power and Steel, Bhushan Steel and Educomp Infra etc.

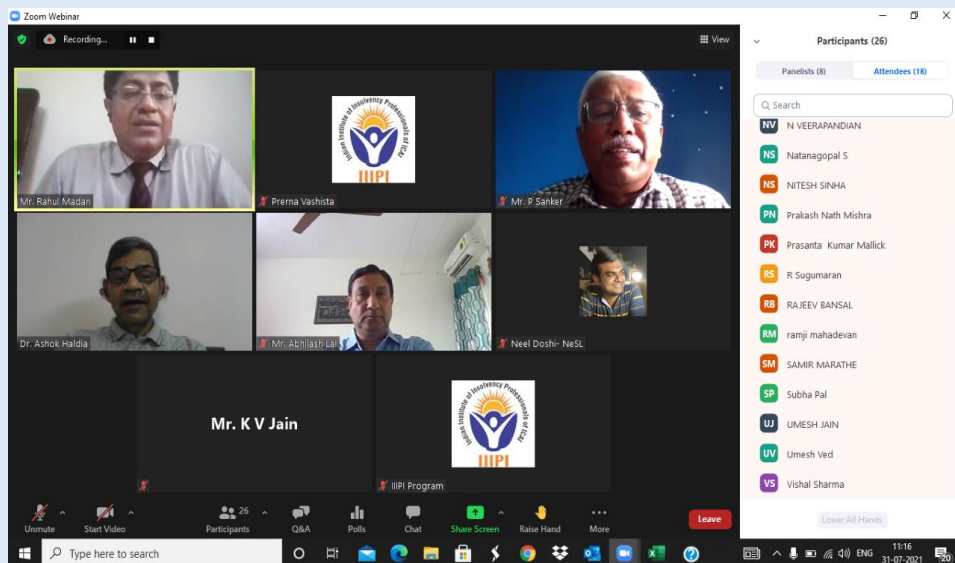
In several cases, the RPs have discovered ‘related party transactions’ which are pending before NCLTs. However, the RPs are not much optimistic about recovery of such transactions due to two main reasons – firstly, the law is not clear on who will carry forward the litigation after the CIRP completes and RP moves on, and secondly, the money had already siphoned off and the recipients may have created assets abroad.

For More Details, Please Visit:

<https://economictimes.indiatimes.com/news/economy/finance/unlawful-deals-claims-of-rs-1-6-lakh-crore-filed-at-nclt-by-resolution-professionals-of-companies-gone-bankrupt/articleshow/84846888.cms>

Event Photographs

IIPI organised a Webinar on ‘Office Infrastructure and Usage of Technology by IPs’ on Saturday, 31 July 2021.



IBC has reduced haircuts to creditors from 78% to 61%: Dr. M. S. Sahoo

Responding to the IBC's criticism on massive haircuts to the creditors, the IBBI Chairperson Dr. M. S. Sahoo has said the law has actually reduced the potential haircuts of creditors on an average ~ 17%.

“The companies, which have been rescued through the IBC until March 2021, had assets valued, on an average, at 22% of the amount due to creditors when they entered the IBC. This means that the creditors were staring at a haircut of 78% to start with. The IBC not only rescued these companies, but also reduced the haircut to 61% for financial creditors,” said Dr. M. S. Sahoo.

He further explained that the haircut depends on several factors including the nature of business, business cycles, market sentiments, and marketing effort. “It, however, critically depends on at what stage of stress, the company enters the IBC, as much as at what stage a patient arrives in the hospital,” he added.

For More Details, Please Visit:

<https://www.financialexpress.com/industry/about-19000-insolvency-cases-closed-liquidation-remains-minimal-ibbi-chief-sahoo/2304251/>

