



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IIPI Newsletter

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RBI Governor calls for expediting resolution of CIRP cases under IBC

Shri Shaktikanta Das, Governor of the Reserve Bank of India (RBI), has highlighted the need to reduce the duration for resolving default cases under the Insolvency and Bankruptcy Code (IBC). He however, recognized that the restoration under the current system is more extensive than previous regimes i.e. restoration rate under the SARFAEESI regime was at 20%, but it is now about 40% under the IBC.

He said that the recovery rate is higher under IBC as it is a judicially reviewed by Adjudicating Authorities. It is necessary that the amount of time prescribed should be decreased for which the government has taken steps to simplify and rationalize the system. However, when it comes to recuperation, IBC is significantly superior to SARFAEESI and DRT.

For More Details, Please Visit:

<http://www.ecoti.in/VRoQ3Z>



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News Update

**For Internal Circulation Only*

**Knowledge SBU Initiative*

CIRP initiation application must be rejected if a dispute truly exists and is not fictitious: Supreme Court

Allowing an appeal against the order of NCLAT in the matter of Kay Bouvet Engineering Ltd. vs Overseas Infrastructure Alliance (India) Private Limited, the Supreme Court has held that the Adjudicating Authority has to reject an application seeking initiation of CIRP under Section 9 of Insolvency and Bankruptcy Code (IBC) if a dispute truly exists in fact and is not spurious, hypothetical or illusory.

"The authority is not required to be satisfied as to whether the defense is likely to succeed or not and it cannot go into the merits of the dispute," observed the Court. In the appeal before the Supreme Court, the Key Bouvet argued that the material placed on record reply of the Demand Notice and reply thereto, clearly showed that there was an "existence of dispute" and as such, the NCLT had rightly dismissed the petition. On the other hand, the Overseas Infra. contended that Kay Bouvet has admitted of receiving the amount from it and once the party admits of any claim, the same would come in the definition of "Operational Debt" as defined under subsection (21) of Section 5 of the IBC and enable the party to whom admission is made to file the proceedings under Section 9 of the IBC being an "Operational Creditor". Besides Section 8 and Section 9 of the IBC, the Court also referred to the judgment in *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, in which the terms "existence", "genuine dispute" and "genuine claim" etc. were interpreted, to derive the conclusion.

For More Details, Please Visit:

<https://www.livelaw.in/top-stories/supreme-court-cirp-application-dispute-existence-not-spurious-179372-panel/article35709274.ece>

News Roundup

NCLAT and NCLT have no residual equity based jurisdiction in dealing with a CoC approved Resolution Plan: Supreme Court

The Supreme Court observed that applying residual equity-based jurisdiction while dealing with CoC approved Resolution Plan, amounts to interference in the commercial wisdom of the Creditors.

“These authorities (NCLAT and NCLT) cannot enter into the commercial wisdom underlying the approval granted by the CoC to the resolution plan,” said the Bench of Justices DY Chandrachud and MR Shah. The Court highlighted that these authorities are confined by the provisions of Section 31(1) to determining whether the requirements of Section 30(2) have been fulfilled in the plan as approved by the CoC. The court also observed that the IBC establishes rights and duties that are to be carefully regulated and coordinated by the legislation and along with its rules.

For More Details, Please Visit:

<https://www.livelaw.in/top-stories/supreme-court-nclt-nclat-residual-equity-jurisdiction-resolution-plan-coc-179265>

NCLT Chennai set aside Shiva Industries ‘Ambiguous’ Settlement Offer, Orders Liquidation

The settlement offer was approved by the creditors led by IDBI Bank with 90% voting share, but the Adjudicating Authority rejected it by calling the proposal as a ‘business restructuring plan’. It is pertinent to mention that against a payable debt of about INR 5,000 crore, the creditors had approved the settlement offer of Shiva Industries amounting INR 500 crore. The Section 12 A of the IBC allows settlement of debt between the Creditors and Corporate Debtor (CD) but in this case, the settlement offer came in the limelight of media due to huge haircut to lenders.

For More Details, Please Visit:

<https://www.moneycontrol.com/news/business/companies/nclt-rejects-siva-industries-settlement-offer-orders-liquidation-7324931.html>

Bankruptcy Process initiates for USA’s Purdue Pharma, accused of fueling Opioid Crisis

The trial, expected to last up to 11 days, will address the adequacy of Purdue’s reorganization plan, which rests on a settlement that the company says is worth more than \$10 billion. Over 500,000 Americans have reportedly died since 1999 from opioid overdoses. However, promoters have denied any wrongdoing.

For More Details, Please Visit:

<https://www.reuters.com/business/healthcare-pharmaceuticals/oxycontin-maker-purdues-creditors-vote-favor-bankruptcy-plan-2021-07-27/>



IBBI sings MoU with NSE for Research Collaboration

IBBI and NSE inked a Memorandum of Understanding (MoU) on 6th August, 2021 for a research partnership. The collaboration's goal is to establish a robust research environment in the field of Insolvency and Bankruptcy in India.

“Evidentiary or research-based foundations for policy making, devoid of discretion, fosters transparency and help in bringing complete harmony between policy initiatives and market expectations,” said Shri Sudhaker Shukla, WTM highlighting the relevance of research for developing IBC regime. “The synergy between IBBI and NSE will harness the research potential of both the organisations, aiding and improving evidence based policy discourse in the country,” he added.

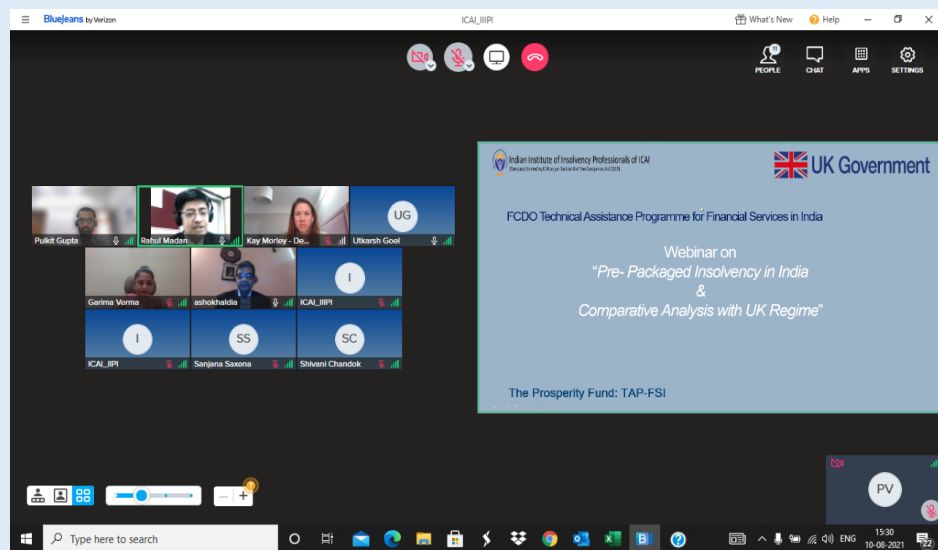
Speaking on this occasion, Shri Vikram Limaye, MD & CEO, NSE said, “Insolvency and bankruptcy laws play an important role in an economy as they enable efficient and orderly allocation of productive resources and provide an effective resolution mechanism for debtors and creditors. We are happy to collaborate with IBBI for developing an extensive research framework in the field of insolvency and bankruptcy in India”.

For More Details, Please Visit:

<https://www.ibbi.gov.in/whats-new>

Event Photographs

IIPI and Foreign Commonwealth and Development Office (FCDO)/ British High Commission jointly organized ‘Webinar on Pre-Package of MSMEs’ on August 10, 2021.



IIPI is organizing Roundtable Discussion on “Monetary Penalties to be imposed by an Insolvency Professional Agency”

The IIPI is organizing a Round table discussion on CIRCULAR of IBBI “ IBBI/IPA/43/2021 dated 28th July 2021” on “Monetary Penalties to be imposed by an Insolvency Professional Agency” Monday 16th August 2021 at 4pm. The copy of the circular enclosed for your reference.

The preliminary focus would be to seek feedback, suggestions and clarity on the same.

For More Details, Please Visit:

<https://www.iiipcai.in/forthcoming-events/>

