

## IBC News

### IBC does not include 'Success Fee' for Resolution Professionals: NCLAT

The NCLAT in the matter of Jayesh N Sanghrajka, Erstwhile R.P. of Ariisto Developers Pvt Ltd v. The Monitoring Agency nominated by the CoC has ruled that 'Success Fee' charged by RPs is not legally valid as per the IBC, 2016. "We hold that 'success fees' which is more in the nature of contingency and speculative is not part of the provisions of the IBC and the Regulations and the same is not chargeable," said the NCLAT. RP had challenged the decision of NCLT Mumbai on the ground that 'Success Fee' was approved by the CoC which is a commercial decision in which the AA does not have jurisdiction to interfere with. NCLAT not only disallowed the payment of Success Fee but also expressed its concerns over the practice.

**Source:** *Live Law.in, September 23, 2021*

<https://www.livelaw.in/news-updates/nclat-says-success-fees-paid-to-irp-contingent-and-speculative-not-part-of-ibc-182247>

### Failing Firms in US paid \$165 Million as Bonus

The Government Accountability Office has urged the US Congress to consider amending the U.S. Bankruptcy Code to include oversight of retention bonuses paid in the weeks preceding a Chapter 11 filing. The agency reviewed 7,300 bankruptcies that occurred during fiscal 2020 and found that 42 troubled companies awarded about \$165 million of retention pay shortly before seeking court protection.

**Source:** *Bloomberg.com, September 30, 2021.*

<https://www.bloomberg.com/news/articles/2021-09-30/failing-firms-paid-165-million-in-bonuses-ahead-of-bankruptcy>

### Bad Bank's IDRCL starts with paid-up capital of ₹80.5 lakh on an authorized capital of ₹50 crore

India Debt Resolution Company Ltd (IDRCL) will act as Asset Management Company (AMC) for the National Asset Reconstruction Company Ltd (NARCL), the Bad Bank, and work in tandem with will work in tandem to clean up bad loans, according to documents available with the Registrar of Companies (RoC).

The primary objectives of the company are to undertake all kinds of debt management, operational management,



resolution advisory, support and consultancy services in relation to debt resolution, and insolvency resolution. Arvind Sadashiv Mokashi has been appointed on the board as State Bank of India's (SBI's) nominee director. The other directors are Narayan Keelveedhi Seshadri and Anilraj Chellan. Shareholders of IDRCL include Bank of Baroda (BoB), Punjab National Bank (PNB), Bank of India (BoI), Bank of Maharashtra, SBI, Union Bank of India, Canara Bank, Indian Bank and IDBI Bank.

**Source:** *Live Mint, September 22, 2021*

<https://www.livemint.com/industry/banking/govt-sets-up-asset-management-company-for-bad-bank-11632310419226.html>

### The need is for at least four-five more SBI-sized banks: Finance Minister

Union Finance Minister Ms. Nirmala Sitharaman has said that there is an urgent need to scale up banking to not only meet the growing needs of the industry, but also to ensure that all economic centres of the country are covered with at least one physical or digital banking presence.

"We need to scale up banking. The need is for at least four-five more SBI-sized banks," said Ms. Sitharaman in her address to the 74th Annual General Meeting of Indian Banks' Association (IBA) in Mumbai on September 26, 2021. Ms. Sitharaman also lauded the change brought by digitisation and emphasised on futuristic thinking to keep pace with evolving technology. "The country's optic fiber network has covered two-third of about 7.5 lakh panchayats. This could be used to deliver banking services

in unconnected areas as well,” said the FM. She also asked the IBA to conduct a digitised mapping of each district of the country with regard to the presence of bank branch operation and their location. The finance minister asked banks to develop models and better understanding of businesses focused on exports as the country has set a \$2 trillion export target by 2030.

**Source:** *MoneyControl.com, September 26, 2021.*

<https://www.moneycontrol.com/news/business/banking-sector-needs-to-be-scaled-up-with-4-5-sbi-sized-banks-fm-sitharaman-7509791.html>

### **Moratorium under the IBC is only applicable to Corporate Debtors and not promoters: SC**

The Apex Court has held that the provisions for initiation of fresh proceedings or for withdrawal of existing ones do not protect the promoters of the stressed company but only the CD.

The judgement was delivered by a bench of Justices DY Chandrachud, Vikram Nath and Hima Kohli allowing the home buyers to move against the promoters of the first respondent CD (Today Homes and Infrastructure Pvt Ltd), even though a moratorium was in effect due to ongoing CIRP. The said home buyers had invested in a Group Housing Project in Gurugram which was being developed by the respondent, but it was later abandoned. The home buyers contended that as per their agreement with the realty firm, the possession of the apartments was to be delivered within a period of thirty-six months, which in almost all cases was to be in 2014. The NCDRC allowed this claim and directed refund of the principal amount to the petitioners, following which the CD approached the Delhi High Court claiming protection under section 14 of the IBC. The High Court on March 27, 2019, directed that no coercive steps shall be taken against the Managing Director of the company in terms of the order passed by the NCDRC. This matter then reached SC.

**Source:** *The Business Standard, September 17, 2021.*

[https://www.business-standard.com/article/companies/moratorium-under-ibc-applies-only-to-corporate-debtor-not-to-promoters-sc-121091601418\\_1.html](https://www.business-standard.com/article/companies/moratorium-under-ibc-applies-only-to-corporate-debtor-not-to-promoters-sc-121091601418_1.html)

### **NCLTs, NCLAT should stick to 330- day deadline for resolution plans: SC**

The Supreme Court bench led by Justice D. Y. Chandrachud has instructed NCLTs and NCLAT to

maintain the sanctity of the 330-day deadline provided by the legislature under the IBC, 2016. The apex court dismissed an appeal filed by Ebix Singapore against the NCLAT order which refused withdrawal of the company's resolution plan for the bankrupt Educomp Solutions. NCLAT had quashed NCLT's order which had allowed Ebix Singapore to withdraw its resolution plan, as the CoC led by the SBI had already given their approval.

**Source:** *ETNOWNEWS.COM, September 13, 2021*

<https://www.timesnownews.com/business-economy/economy/article/wont-allow-ibc-to-fail-due-to-long-delays-or-depreciation-of-assets-of-corporate-debtor-sc/811482>

### **Financial Creditors realized ₹ 42,630 crore through CIRP in Q1 of FY 2021-22**

The latest data released by the Insolvency and Bankruptcy Board of India (IBBI) in its quarterly Newsletter reveal that the Financial Creditors (FCs) have realized ~ 25.46% of their total admitted claims through Corporate Insolvency Resolution Process (CIRP) in April – June quarter of the current financial year FY 22.

In this quarter, 36 Corporate Debtors (CDs) including Videocon Group were rescued with the Resolution Plans while 62 CIRP cases ended in liquidation. Furthermore, the realization of debts in comparison to the liquidation value of the CDs was recorded at 127.94% which stood at 25.46% in comparison to their total admitted claims.

The IBC regime has recently completed five years of its operations. As per the data of IBBI, total 4,541 CIRP cases were initiated till the end of June, 2021 out of which 2,859 were closed. During this period, the lenders could recover just ₹ 2.45 lakh crore or 36% of the total claims amounting to ₹ 6.82 lakh crore from 396 companies that were resolved till June 30. “About 75% of the CIRPs ending in liquidation (1,011 out of 1,349) were earlier with the Board for Industrial and Financial Reconstruction and/ or defunct. These corporate debtors had assets, on average, valued at around 7% of the outstanding debt amount,” reported the Newsletter.

**Source:** *The New Indian Express, September 08, 2021*

<https://www.newindianexpress.com/business/2021/sep/08/ibbi-financial-creditorsrealised-just-25-per-centof-total-claims-under-insolvency-2355838.html>

### **FSDC Flags Need to Keep a Continuous Vigil by Govt. and all Regulators on the Financial Conditions**

The high-powered Financial Stability and Development Council (FSDC) headed by the Union Finance Minister Ms. Nirmala Sitharaman has emphasized on the need to keep continuous vigil on various financial sectors during rollback of the Covid-19 relaxations. Besides the Minister, the meeting was also attended by RBI Governor Shaktikanta Das, SEBI Chairperson Shri Ajay Tyagi, IBBI Chairperson Dr. M. S. Sahoo and other senior officials. FSDC also deliberated on various issues related to the economy such as financial inclusion, framework for resolution of financial institutions and issues related IBC processes, data sharing mechanisms of government authorities, internationalization of Indian Rupee and pension sector related issues among others

**Source:** *Financial Express, September 04, 2021*

<https://www.financialexpress.com/economy/finance-minister-led-financial-stability-and-development-council-discusses-stressed-asset-issue/2323691/>

### **Unitech Group's new Board of Management allowed to negotiate with ARCs**

The Supreme Court on 24th August allowed Unitech Group's new Board of Management (BOM) to negotiate with the three Asset Reconstruction Companies (ARCs) i.e., Suraksha ARC, JM Financial ARC and Edelweiss ARC and apprise on development in four weeks. In pursuance to the judgement, a sub-committee of four directors will negotiate with the ARCs, which collectively holds around 8,000 out of the 15,000 total flats, for one time settlement of the mutually agreed dues. Presently, there are 74 (residential) and 10 (Commercial) under construction projects out of which 35 projects have been assigned to ARCs. In its resolution plan, the BOM has submitted that the construction of 15,000 units must be done for delivery of possession to homebuyers in 3 to 4 years and at current price levels with an estimated cost of ₹5,500-6,000 crores.

**Source:** *Business Today, August 26, 2021*

<https://www.businesstoday.in/latest/corporate/story/sc-allows-unitech-group-sub-panel-to-hold-negotiations-with-three-arcs-305214-2021-08-26>

### **Nirav Modi's flagship firm now undergoing liquidation**

A special Prevention of Money Laundering Act (PMLA) Court has ordered release of properties worth ₹440 crore which were mortgaged by Nirav Modi's companies with the Punjab National Bank for liquidation.

**Source:** *The Economic Times, August 16, 2021*

<https://economictimes.indiatimes.com/news/india/nclt-passes-liquidation-order-against-nirav-modis-flagship-firm-firestar-international/articleshow/85408323.cms>

### **Recovery for secured Financial Creditors in peer economies should be actual benchmark of IBC's evaluation: Jayant Sinha**

Lok Sabha MP Shri Jayant Singh has expressed serious concerns on low recovery of debts from financially stressed corporates under the IBC Regime. Speaking to media persons, Shri Sinha said “If you take out some of the high-profile cases, recovery tends to be quite low, and in some cases, people are thinking of liquidation as the benchmark,”. He suggested that the liquidation should not be seen as the benchmark; instead, we should be looking at insolvency resolution around the world, especially in our peer economies. The recovery for secured financial creditors (in peer economies) should be the actual benchmark, he opined.

Shri Sinha also suggested that the Insolvency Professionals (IPs) should be allowed to dispose of the assets of Corporate Debtors in parts for value maximization. Shri Sinha is heading the Parliamentary Standing Committee on Finance that has recently submitted report to the Parliament on operation of the Insolvency and Bankruptcy Code (IBC, 2016) in the country. The House panel, led by Shri Sinha, also advocated for a Pre-Pack resolution mechanism for major businesses (which is presently confined to just MSMEs) and a common regulator for both IPs and IPAs. Currently, the IPs are governed by the Insolvency and Bankruptcy Board of India (IBBI), whilst the IPAs are supported by organizations like as the ICAI and ICSI, which are governed by separate laws.

**Source:** *The Financial Express, August 16, 2021*

<https://www.financialexpress.com/economy/insolvency-and-bankruptcy-code-peer-economies-should-be-our-benchmark-says-jayant-sinha/2311386/>

### **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.

**Source:** *Mint*, August 04, 2021

<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.

**Source:** *Mint*, August 02, 2021

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

### **Provide papers to assess 'pay-outs' for baby powder victims, US panel to Jhonson & Jhonson**

The panel is trying to learn how J&J's bankruptcy plans may affect people who have filed litigation alleging its baby powders were carcinogenic. The pharma faces legal actions from tens of thousands of plaintiffs, including women suffering from ovarian cancer and others with mesothelioma, alleging that its baby powder and other talc products contained asbestos and caused cancer. J&J is

reportedly exploring a plan to offload liabilities under USA's bankruptcy law.

**Source:** *The Economic Times*, July 29, 2021

<https://www.reuters.com/business/healthcare-pharmaceuticals/us-house-subcommittee-asks-jj-info-baby-powder-bankruptcy-plans-letter-2021-07-28/>

### **Pegasus maker Israel firm to face liquidation**

London-based Novalpina Capital, which bought the NSO Group in 2019, is being dissolved after a dispute between its co-founders, said media reports. Its liquidation leaves the future ownership of NSO unclear, just as the company is grappling with the fallout of a vast electronic espionage scandal.

**Source:** *The Economic Times*, July 28, 2021

<https://www.ndtv.com/world-news/pegasus-scandal-israeli-spyware-firm-nsos-owner-to-be-liquidated-pegasus-scandal-fallout-2496849>

### **Supreme Court dismissed PIL seeking to prohibit NCLT from acting as Appellate Authority**

The petitioner demanded the SC to declare that the matters decided by the SC should be considered as fundamental rule by NCLTs. Besides, the SC was also urged to issue directions to NCLTs not to act as an appellate authority to the decisions of the top court and find flaws to circumvent the "rule of law" laid down. Justifying the invocation of Article 32, the petitioner submitted that the NCLT has misinterpreted the judgments of the SC.

However, the court did not agree with the argument. “It is not necessary for this court to return any finding on the question sought to be raised in the abstract without any live challenge to an order of the NCLT. In any event there are appellate remedies available under the IBC,” said the judgement delivered by Justices D. Y. Chandrachud and M. R. Shah.

**Source:** *The Economic Times*, July 24, 2021

<https://economictimes.indiatimes.com/news/india/sc-junks-pil-to-declare-that-nclt-cannot-act-as-appellate-authority/articleshow/84703358.cms>

### **Creditors got ₹ 2.37 trillion through approved Resolution Plans of top 100 CIRPs: Minister in Lok Sabha**

Responding to a query in Lok Sabha on July 19, Union Minister of State for Finance Shri Pankaj Chaudhary

informed that the financial creditors have realized ₹ 2.37 trillion through approved resolution plans of top 100 CIRPs, which is over 36 per cent of the admitted claims. He further informed that the first quarter of FY 22, the creditors have realized ₹ 2.45 trillion from 394 resolution plans approved under the Insolvency and Bankruptcy Code (IBC), 2016. "Separate framework for resolution of systemically important Financial Service Providers (FSPs) other than banks, has led to approval of a resolution plan that will help in realizing ₹ 37,167 crore," said Shri Chaudhary.

It is pertinent to mention that DHFL has been the first FSP of which the Resolution Plan was recently approved by the NCLT. He also acknowledged the adverse impact of Covid-19 pandemic in financial recovery by creditors during FY21. "Scheduled Commercial Banks (SCBs) recovered ₹ 4.18 trillion during the last three financial years, with recovery as a percentage of their gross NPA increasing from 13.1 per cent in FY18 to 15.1 per cent in FY19. The recovery increased to 15.8 per cent in FY20 to drop to 12.8 per cent in FY21 in the backdrop of the pandemic," he added.

**Source:** *Business Standard, July 19, 2021*

[https://www.business-standard.com/article/finance/creditors-got-rs-2-45-trn-from-394-resolution-cases-under-ibc-finmin-121071901160\\_1.html](https://www.business-standard.com/article/finance/creditors-got-rs-2-45-trn-from-394-resolution-cases-under-ibc-finmin-121071901160_1.html)

**Resolution Plan can't be subjected to statutory claims which weren't known prior to its approval: NCLAT**

In the matter of DHFL, the NCLAT has ruled that the successful Resolution Applicant is not liable for dues which were not known till the time of approval of the Resolution Plan. Therefore, Piramal Group need not move to statutory authorities for waiver of such dues. All such dues will be considered as waived off. Through this order, the NCLAT has nullified the part of the NCLT Mumbai order while approving the Resolution Plan that had made it mandatory for the successful Resolution Applicant to approach various authorities for waiver of statutory liabilities. The order of the Appellate Tribunal is line to the 2019 Essar steel judgement and 2020 Ghanshyam Mishra judgement of the Supreme Court

**Source:** *Times News, July 12, 2021*

<https://www.timesnownews.com/business-economy/companies/article/nclat-relief-for-piramal-capital-to-speed-up-dhfls-insolvency-process/783899>

**NCLT revokes liquidation of Lotus City Project on Yamuna Expressway, asks RP to invite fresh Resolution Plans**

Lotus City Plot Buyers Associations, an association of over 250 homebuyers, argued that NCLT had not included the ₹211 crore due to allottees which would stand satisfied after giving possession of flats. Furthermore, the NCLT had not included ₹50.5 crore, the Resolution Applicant had paid to the former promoters of the project. Launched in 2012 by 3 C Homes Pvt. Ltd., the Lotus City project went for insolvency on September 06, 2019. Ace Infrastructure was the lone bidder to submit the Resolution Plan which was approved by the CoC. However, the NCLT rejected the Plan contending that the liquidation value of the project amounting ₹480 crore was much higher than the ₹95 crore required to complete it.

**Source:** *The Times of India, July 10, 2021*

<https://timesofindia.indiatimes.com/city/noida/lotus-city-not-to-be-liquidated-tribunal-rules-on-plot-buyers-plea/articleshow/84280159.cms>



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