

IBC News

SEBI approves Special Situation Funds (SSFs) for investment in Stressed Assets and ARCs

The Securities and Exchange Board of India (SEBI) on December 28 has approved introduction of Special Situation Funds (SSFs) to be invested in stressed assets. SSFs will be introduced as a sub-category under Category-I Alternative Investment Funds (AIFs).

In a press release after the board meeting, SEBI said SSFs will “invest only in stressed assets” such as stressed loans available for acquisition in terms of the Reserve Bank of India (RBI) norms or as part of a resolution plan approved under the IBC. These funds will also be invested in security receipts issued by Asset Reconstruction Companies (ARCs), securities of companies in distress and any other “asset/security as may be prescribed by the board from time to time”. The SEBI-Board has also given node for amending Foreign Portfolio Investor (FPI) regulations and introducing a provision for appointment or re-appointment of any person, including as a Managing Director or a Whole Time Director or a Manager, who was earlier rejected by the shareholders at a general meeting. Besides, the share market regulator has decided to tighten norms for utilisation of IPO (initial public offering) proceeds by companies. The SEBI chairperson, Ajay Tyagi, has said that the market regulator has no intention to control the prices of IPOs in any manner. These amendments are mainly a reaction to several IPOs earlier this year and follow consultation papers issued by SEBI, he noted.

Source: *The Wire.in, December 30, 2021.*

<https://thewire.in/government/sebi-tightens-norms-for-ipo-proceeds-utilisation-amends-various-other-regulations>

UK witnessed record Low Number of Insolvency Cases in 2021

Despite the pandemic, a record low number of UK firms have fallen into administration, also indicating that furlough measures reduced the number of non-voluntary insolvencies throughout the year, however, an indication as well that the next year could see the rise. According to reports, this is expected to increase by the end of the year but will remain significantly short of the 1,121 from last year and the record low of 1,044 in 2015. Among sectors,



Energy Sector was strongly affected.

Source: *Business-live.co.uk, December 30, 2021*

<https://www.business-live.co.uk/economic-development/insolvencies-hit-record-low-2021-22604153>

RBI Report on 'Trend and Progress of Banking in India, 2020-21' presents a positive picture

The Capital to Risk weighted Assets Ratio (CRAR) of Scheduled Commercial Banks (SCBs) has strengthened from 14.8 % in at end of March 2020 to 16.3 % at end of March 2021 and further to 16.6 % at end of September 2021, partly aided by higher retained earnings, recapitalisation of public sector banks (PSBs) and capital raising from the market by both PSBs and private sector banks (PVBs). These are among the findings of the Reserve Bank of India (RBI) in its report titled 'Trend and Progress of Banking in India 2020-21', released on December 28, 2021. Furthermore, the report highlights that Return on Assets (RoA) of SCBs improved from 0.2% at end-March 2020 to 0.7% at end-March, aided by stable income and decline in expenditure. "SCBs' gross nonperforming assets (GNPA) ratio declined from 8.2 % at end-March 2020 to 7.3 % at end-March 2021 and further to 6.9 per cent at end September 2021," said the report. Besides, the Covid period, when IBC was suspended, constituted one of the major modes of recovery in terms of amount recovered, added the Report.

Source: *Reserve Bank of India, Press Release, December 28, 2021*

https://www.rbi.org.in/Scripts/BS_PressReleaseDisplay.aspx?prid=52956

UK Government invites views on creating a single regulator for Insolvency Practitioners

The key changes set out in the consultation include - establishing a single independent regulator to sit within the Insolvency Service, replacing the current four Recognised Professional Bodies; extending regulation to firms that offer insolvency services, as the current regime only covers individual Insolvency Practitioners; create a public register of all individuals and firms that offer insolvency services and create a system of compensation and redress.

Source: Gov. UK, December 21, 2021

<https://www.gov.uk/government/news/government-proposes-strengthening-insolvency-regulation>

Spain to reform its 'slow and convoluted' insolvency system for EU recovery funds

Under the pressure of European Union (EU), the government of Spain has agreed to reform its insolvency law which has been receiving criticism for being 'slow and convoluted'. The EU has put a condition before the Spain for reforms before providing recovery funds. "We do not want any viable business to have to close its doors because of one-off financial difficulties, nor do we want any entrepreneur to give up their business because of a failed project that will weigh them down for ever," said, Justice Minister Pilar Llop to media persons. Spanish companies have been among the most active in Europe in applying for state-backed credit and liquidity lines during the pandemic, said media reports. The draft proposal will now be sent to Congress as a bill and is expected to be added to the statute books by mid 2022.

Source: Reuters.Com, December 21, 2021

<https://www.reuters.com/markets/europe/spain-streamlines-bankruptcy-process-get-eu-recovery-funds-2021-12-21/>

Unpaid Listing Fee of Stock Exchange in not Operational Debt: NCLAT

The NCLAT in the matter of *Bombay Stock Exchange Vs. KCCL Plastic* of Gujarat has ruled that the unpaid Listing Fee comes under regulatory dues but not the operational credit. Therefore, the Stock Exchanges like BSE and NSE have no right to initiate insolvency proceedings of companies listed with on the ground of unpaid Listing

Fees. The court has upheld the NCLT decision of rejecting the BSE application. "The Insolvency Law Committee suggests that the regulatory dues are not to be recovered under 'operational dues' said the two member NCLAT Bench. Ahmedabad based KCCL Plastic was listed with the BSE on October 27, 1993. KCCL Plastic owes Rs. 10.7 lakh to the BSE.

Source: December 20, 2021

<https://timesofindia.indiatimes.com/business/india-business/unpaid-listing-fee-is-not-operational-debt-nclat/articleshow/88381181.cms>

UK's central bank raised interest rates since the Covid19 pandemic began

The UK's Central bank has hiked its benchmark interest rate in the face of troublesome levels of inflation for the first time since Covid-19 pandemic hit the country. The increase in its main rate to 0.25% from the record low of 0.1% seemed perplexing given the news around omicron's rapid spread across the UK hurting many businesses, particularly in the hospitality sector. Central banks raise rates to fight inflation and lower them when economies fall weak, as they were during the pandemic. After the rate increase, the pound soared in currency markets as it got trading 0.7% higher at \$1.3360.

Source: December 16, 2021

<https://ca.finance.yahoo.com/news/inflation-vs-omicron-bank-england-093922856.html>

Government frames policy for insolvency of non-strategic PSUs

PSUs will be no longer immune from insolvency process. In the new public sector companies' policy, the Central Government has authorised Department of Public Enterprises (DPE) to drive the privatisation or closure of state-run firms in cases where liabilities are exorbitantly high. As per the norms, the entire process of closure should be completed within nine months of approval by the Cabinet Committee on Economic Affairs (CCEA). The move is to be implemented for PSUs in sectors other than atomic energy, space, defence, transport, telecommunications, energy and minerals, and financial services. It is aimed at benefitting several companies which the government had proposed to sell and have not found buyers for the last several years. DPE in

consultation with Niti Aayog, Department of Investment and Public Assets Management (DIPAM) and Expenditure Department will prepare the list of companies eligible for insolvency.

Source: *The Times of India*, December 15, 2021

<https://timesofindia.indiatimes.com/business/india-business/psus-with-high-liabilities-may-face-ibc-based-closure/articleshow/88289170.cms>

NCLT cannot compel Creditors to Settle with Defaulter: Supreme Court

NCLT has the power to either summarily reject or entertain pleas for initiation of insolvency proceedings. However, it has no authority to ask creditors to settle with a defaulter.

This judgement was delivered on December 14, 2021 by a bench of Justices D Y Chandrachud and A S Bopanna in the matter of *E S Krishnamurthy Vs. M/s Bharath Hitech Builders*. "The Adjudicating Authority must either admit the application under Clause (a) of sub-section (5) or it must reject the application under clause (b) of sub-section 5. The statute does not provide for the Adjudicating Authority to undertake any other action, but for the two choices available," said the judges. The court observed that while the NCLT and NCLAT can encourage settlements, they cannot direct them by acting as courts of equity. In this case the NCLT declined to admit a petition filed under Section 7 of the IBC for initiating CIRP and instead directed the Corporate Debtor to settle the claims within three months. The NCLAT also upheld the order. "The NCLT is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the Adjudicating Authority must then either admit or reject an application respectively," observed the Bench. It further added, "What the Adjudicating Authority and Appellate Authority, however, have proceeded to do in the present case is to abdicate their jurisdiction to decide a petition under Section 7 by directing the respondent to settle the remaining claims within three months and leaving it open to the original petitioners, who are aggrieved by the settlement process, to move fresh proceedings in accordance with law".

Source: *Live Law.in*, December 14, 2021

<https://www.livelaw.in/top-stories/supreme-court-sec-7-ibc-nclt-cannot-direct-settlement-187638>

Public Sector Banks Restructure 10 Lakh MSMEs Loans till November 2021

MSMEs loan accounts have jumped by 58 per cent as they have been restructured by public sector banks (PSBs). About 6.19 lakh loan accounts got restructured by January 31, 2020 and involved Rs 22,650 crores. As of November 26, 2021, this number increased to 9.8 lakh accounts which amount to Rs 58,524 crores. According to the government data shared in the Rajya Sabha, the inputs received from PSBs, apart from MSME loans, portray resolution plan/restructuring as implemented in 8.5 lakh accounts of individual borrowers which amount to Rs 60,662 crores as of November 15, 2021.

Source: *Financial Express*, December 07, 2021

<https://www.financialexpress.com/industry/sme/msme-fin-msme-loans-restructured-accounts-by-psbs-jump-58-in-nearly-two-years-of-covid/2383925/>

RBI Files Application for Initiation of CIRP of Reliance Capital

The Reserve Bank of India (RBI) on December 02, 2021, referred Reliance Capital Ltd to the Mumbai bench of the National Company Law Tribunal (NCLT) after it superseded its board and seized control. In a press statement, the RBI has informed that it has "filed an application for initiation of corporate insolvency resolution process (CIRP) against Reliance Capital Ltd".

Reliance Capital is the third financial services provider (FSP) to be sent to the tribunal after the government notified the insolvency framework for FSPs on November 15, 2019. Unlike insolvency proceedings for companies from other sectors, an FSP creditor or debtor cannot approach the tribunal, as the same has to be referred by a regulator i.e., RBI. Dewan Housing Finance Corp Ltd (DHFL) and two Srei group firms were similar cases in the past. The bondholders of Reliance Capital had urged RBI to consider referring the company for insolvency process, citing challenges faced in the asset monetization process and non-cooperation from the company. The trustee for bondholders, Vistra ITCL, constituting 96% of Reliance Capital's debt, put up several company assets, including its insurance ventures, asset reconstruction firm and securities arm on sale. RBI stated, "As per Rule 5 (b) (i) of the FSP Insolvency Rules, an interim moratorium shall

commence on and from the date of filing of the application till its admission or rejection.”

Source: *Mint*, December 03, 2021

RBI refers Reliance Capital to insolvency tribunal (livemint.com)

NCLAT Rejected Kotak Bank's Appeal for 'Restructuring' of MSEL's Loan to Avoid Likely 'Haircut' under Insolvency Process

Restructuring of loans is more beneficial to the creditors as they will not have to take a haircut, Kotak Mahindra Bank had submitted. In the eventuality of a resolution plan being implemented or liquidation process being initiated, financial creditors, including Kotak Mahindra Bank, will have to take a haircut, it added. While rejecting the plea, the NCLAT said that the tribunal was aware of the proposal, but the lenders' consortium has not filed any application for deferment of the proceedings before it. Besides, the courts also rejected other arguments of the Kotak Bank such as date of default, and locus standi etc.

Source: *Zee News*, December 01, 2021

<https://zeenews.india.com/companies/nclat-rejects-kotak-banks-plea-to-set-aside-insolvency-proceedings-against-msel-2415222.html>

Piyush Goyal Listed Out Five Guiding Principles for IPs

Addressing the Insolvency Professionals (IPs) on the 5th Foundation of IIPI, Union Cabinet Minister Shri Piyush Goyal listed out five guiding principles for IPs – integrity, objectivity, competency, confidentiality, and transparency. He also emphasized that insolvency assignment is not just an assignment but a national service.

“This has a big impact on 'saving jobs and reviving companies' and by creating new banking opportunities,” said Goyal. He further added that IIPI members are serving the nation's interest by saving businesses and entrepreneurship in the country. Stating that the IIPI being the largest body of such professionals in the country, he called on developing innovative technologies for IPs. Goyal said the Centre suspended the IBC for a year – from March 2020 till March 2021 — in view of the coronavirus disease (Covid-19) pandemic. “This helped India bounce back much faster. The economy is doing well and five years down the line the outlook looks very, very bright,” he added. Shri Goyal said that the IBC has brought about a marked shift in attitudes of lenders and borrowers, acting

as an effective deterrent against unscrupulous borrowers and imparted banks the tool to follow due diligence and confidence about recovery. Commenting on suspension of IBC from March 2020 to March 2021, due to Covid19 pandemic, he said, “This helped India bounce back much faster. The economy is doing well and five years down the line the outlook looks very, very bright.”

Source: *Hindustan Times*, November 25, 2021

<https://www.hindustantimes.com/india-news/piyush-goyals-calls-insolvency-and-bankruptcy-code-gamechanger-reform-101637853120828.html>

IPs Must Work on Time as Valuation Falls Every day, Says Dr. Navrang Saini, IBBI Chairperson

IBBI Chairperson Dr. Navrang Saini has said that the value of a stressed asset declines every passing day. It has also been observed in some cases that the resolution value was almost close to the liquidation value.”

He was addressing a webinar in Kolkata on 13th November 2021. He further said that IPs should be transparent, and they should also ensure that the resolution plans are worked out in a time-bound manner as in some cases, it had crossed more than 400 days and there are some hitches still left in the resolution process which will go away with time. He said there are around 3900 IPs in the country but many of them are not getting any assignment as some are monopolising them and that IBBI is aiming at giving equal opportunity to all of them in the interests of the stakeholders. IBBI has also provided a code of conduct for the IPs, but perfection will come with time, he added.

Source: *The New Indian Express*, November 13, 2021

<https://www.newindianexpress.com/business/2021/nov/13/valuation-falls-everyday-professionals-must-work-on-time-insolvency-and-bankruptcy-board-of-india-2383203.html>

Strategic Investors Are Bringing More Value to the Table than Financial Investors in CIRP under IBC

According to a report, as in 12 large insolvency resolutions where strategic investors were involved, lenders could recover nearly 50% on average, while recovery was far less at around 12% when financial investors bought distressed companies. In comparison to the Essar Steel in which lenders recovered 87% of their admitted claims through CIRP, creditors of the Videocon get only 5%. The size of loan recovery is also a function of the quality of

underlying assets as well as the long-term perspective of the investors.

Source: *The Economic Times*, November 10, 2021

<https://economictimes.indiatimes.com/news/company/corporate-trends/strategic-investors-offer-higher-value-for-distress-companies/articleshow/87631239.cms>

RBI Committee Recommends for Allowing ARCs as Resolution Applicants under IBC

A six-member committee of the Reserve Bank of India (RBI) headed by its former Executive Director (ED) Shri Sudarshan Sen has recommended for allowing Asset Reconstruction Companies (ARCs) to participate as Resolution Applicant in insolvency process under the IBC, 2016.

“Expertise acquired through IBC in resolving borrower insolvency will help ARCs in maximizing recovery of dues,” said the committee. The committee was formed to review extant guidelines governing the ARC sector. “Acquisition of assets in the books of ARCs may lead to conflict of interest as ARCs may prefer to focus more on the resolution of assets held in their own books compared to the assets for which they may be acting as manager,” added the committee.

Source: *Bloomberg*, November 3, 2021

<https://www.bloombergquint.com/business/rbi-panel-calls-for-allowing-arcs-as-resolution-applicants-under-ibc>

Indian e-Commerce Firm Meesho Announces USD 5.5 mn ESOP Liquidation Program to Raise Funds

In yet another initiative to attract investments, E-commerce firm Meesho has announced a USD 5 million Employee Stock Ownership Plan (ESOP) Liquidation Program. In November 2020, the company had announced a USD 5 million ESOP Dilution Program.

The latest ESOP Liquidation Program will be open for all eligible current and former employees with vested stocks. The program will start in early November and will be completed by December. However, the company which has nearly 1,200 full-time employees, did not disclose how many people are expected to be benefitted by the initiative. .

Source: *Business Standard*, October 29, 2021

https://www.business-standard.com/article/companies/e-commerce-firm-meesho-announces-5-5-mn-esop-liquidation-programme-121102900770_1.html

After Evergrande, Three More Chinese Real Estate Firms Heading for Bankruptcy

Real Estate companies in China are facing bankruptcy due to shutdown of factories and lack of electricity. China's foreign creditors are showing signs of distress. After Evergrande, which owes more than \$300 billion dues, three more companies Sinic Holdings, China Properties Group and Fantasia are heading for bankruptcy.

Source: *Wionews.com*, October 19, 2021

<https://www.wionews.com/world/chinese-companies-default-amid-rising-debt-bubble-422114>

Justice Ashok Bhushan Appointed NCLAT Chairperson and Justice Ramalingam Sudhakar as NCLT President

Justice Ashok Bhushan, former Judge of the Supreme Court has been appointed as Chairman of the National Company Law Appellate Tribunal (NCLAT) for a period of four years, or “till he attains the age of 70 years, or until further orders.”

Justice Bhushan's appointment as full time Chairperson of the NCLAT has been made at the place of Justice S. J. Mukhopadhyaya, who retired in March 2020. In his capacity as Judge in the Supreme Court, Justice Bhushan was part of several key verdicts, including the 2019 ruling in the Ayodhya case and the SC's suo motu intervention in the migrant crisis during the Covid-19 pandemic in 2020.

The Central Government has also appointed Justice Ramalingam Sudhakar, former Chief Justice of the Manipur High Court as the President of the National Company Law Tribunal (NCLT), for a period of five years, or till he attains the age of 67 years, or until further orders. Justice Sudhakar will be the second full time President of NCLT after its first chairperson, Justice M M Kumar, retired in January 2020.

These appointments are considered crucial for the IBC regime when the insolvency proceedings are receiving criticism for delays due to long pendency in NCLTs and NCLATs. Presently, NCLAT has two benches – New Delhi and Chennai; while NCLT has 14 Benches. The Government has recently appointed 11 judicial and 10 technical members to the NCLT.

Source: *The Indian Express*, October 30, 2021

<https://indianexpress.com/article/india/justice-ashok-bhushan-is-new-nclat-chairperson-7598209/>

Supreme Court Allows Appointment of PMC for Stalled Projects of Unitech Group

A bench of Justices DY Chandrachud and M R Shah said that the new board of management of Unitech Group can proceed ahead with the appointment of PMCs for completion of the stalled projects.

The bench said that work can be awarded to the PMCs in part A projects and also fixed a fee for their work. The top court also took note of the Action Taken Report (ATR) filed by the new board of management about the settlement of claims with Suraksha ARC saying no resolution has been found yet. Furthermore, the Court also observed that looking at the transaction of Suraksha between the erstwhile management of Unitech it appears that there is a need for a probe into money laundering by the Enforcement Directorate.

Source: *Moneycontrol.com, October 29, 2021*

<https://www.moneycontrol.com/news/business/sc-allows-new-board-of-unitech-to-appoint-pmc-for-completion-of-stalled-projects-7648961.html>

Germany's Frankfurt Hahn Airport, an International Low-Cost Flights Hub, Files for Insolvency

The airport, which is primarily used by low-cost airlines such as Ryanair and cargo airlines and served about 1.5 million passengers in 2019, is 82.5% owned by Chinese airport group HNA, while the German state of Hesse has a 17.5% stake.

In February, a Chinese court opened insolvency proceedings against HNA at creditors' request, though China's Liaoning Fangda Group and Hainan Development Holdings have since said they could settle the debt HNA owes to retail investors. It was not immediately clear how the insolvency would affect flight operations.

Source: *Reuters, October 19, 2021*

[https://www.reuters.com/business/german-cheap-flight-hub-frankfurt-hahn-files-insolvency-2021-10-19/#:~:text=BERLIN%2C%20Oct%2019%20\(Reuters\),insolvency%20would%20affect%20flight%20operations.](https://www.reuters.com/business/german-cheap-flight-hub-frankfurt-hahn-files-insolvency-2021-10-19/#:~:text=BERLIN%2C%20Oct%2019%20(Reuters),insolvency%20would%20affect%20flight%20operations.)

Finance Minister Highlights Investment Opportunities at Home in Meeting with CEOs of Major USA Corporates

In her visit to the USA, the Union Finance Minister Ms. Nirmala Sitharaman met global industry leaders and highlighted investment opportunities in India generated

by various initiatives of the government under the committed leadership.

“With the current reset in the global supply chain and clear headed and committed leadership in India, I see opportunities galore in India for all investors and industry stakeholders,” said Ms. Sitharaman during her address to global business leaders and investors at a roundtable organised in the USA by FICCI and the US-India Strategic Partnership Forum in New York on Saturday. “Start-ups in India have grown tremendously, and many are now raising money through capital markets. This year itself, more than 16 of them will qualify as unicorns,” she added. The recently launched initiative of National Infrastructure Master Plan #GatiShakti, digitization, technology in the financial sector were reportedly discussed in the roundtable. Mastercard Executive Chairman Ajay Banga and Mastercard CEO Michael Miebach, FedEx Corporation President and Chief Operating Officer Raj Subramaniam, CitiCEO Jane Fraser and IBM Chairman and Chief Executive Officer Arvind Krishna, Executive vice president and head of Prudential Financial, Inc's International Businesses Scott Sleyster and Legatum Chief Investment Officer Philip Vassiliou were among the eminent personalities present in the roundtable.

Source: *The Economic Times, October 17, 2021*

<https://economictimes.indiatimes.com/news/economy/foreign-trade/with-current-reset-in-global-supply-chain-opportunities-galore-in-india-for-investors-and-industry-stakeholders-nirmala-sitharaman/articleshow/87077767.cms>

UK Government has Introduced Legislation Designed to Support Small Businesses

Although there will no longer be restrictions on presenting statutory demands, from 1 October until 31 March 2022, the threshold for presenting a winding up petition will be increased from £750 to £10,000. It will be possible for more than one creditor with a total aggregate debt of £10,000 or more to jointly present a winding up petition. The extra time to trade is limited to a 21-day period. After the statutory demand, creditors must write to a company providing 21 days for repayment proposals to be made before they can present a winding up petition.

Source: *The Scotsman, October 08, 2021*

<https://www.scotsman.com/news/opinion/columnists/small-businesses-facing-insolvency-are-getting-extra-support-joanne-gillies-3410546>