



**INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI**

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# IIPI Newsletter

**May 30, 2022**

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## CONTENTS

**News Update**  
**News Roundup**  
**Event Photos**



### **IBBI rescinds seven Circulars issued between 2018 to 2021**

IBBI through a circular on May 23, 2022, has pronounced its decision to rescind seven Circulars it had issued in line to the IBBI (Mechanism for Issuing Regulations) Regulations, 2018 and under Section 196 of the IBC, 2016.

“It was observed that certain circulars are no longer required on account of being already provided in IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 or IBBI (Insolvency Professionals) Regulations, 2016. After reviewing the circulars, it has been decided to rescind circulars,” said the Circular.

**For More Details, Please Visit:**

<https://www.ibbi.gov.in/uploads/legalframework/e2f51931db6d2895b10df3d69021f8ae.pdf>

## **News Update**

*\*For Internal Circulation Only*

*\*Knowledge SBU Initiative*

### **Article 1 of Limitation Act, 1963 deals with “suits relation to accounts” hence not applicable on IBC processes: NCLAT**

NCLAT Principal Bench, New Delhi has held that Article 1 of Limitation Act, 1963 is not applicable to the petition filed by the Operational Creditor under Section 9 of the IBC, 2016. The court also accepted the argument of the respondent that only Article 137 of the Limitation Act, 1963 is applicable in such a case.

The appellant had challenged the order of NCLT Mumbai which had rejected his claim on the ground that the petition was filed on the basis of invoices which were prior to three years from the date of filing the petition under Section 9 of the IBC. Therefore, it was barred by limitation. According to the appellant, he had been providing transport services to the respondent. In the course of time the respondent owed dues about ₹76.04 lakhs running across 174 invoices. After the reconciliation efforts turned futile, the appellant filed petition under Section 9 of the IBC. On the issue of limitation, appellant content that the parties maintained a running account and the same is reflected in the ledger account of the respondent.

NCLAT relied on the Supreme Court judgements in the matter of *K Educational Services Pvt. Ltd. Vs. Parag Gupta* and *Babulal Vardharji Gurjar Vs. Veer Gurjar Aluminium Industries* wherein it was held that the period of limitation for filing an application under Section 7 or 9 of the IBC is to be decided as per Article 137 of the Limitation Act not as per the Article 1 as the later deals with accounts.

**For More Details, Please Visit:** <https://www.livelaw.in/ibc-cases/nclat-insolvency-and-bankruptcy-code-article-1-of-limitation-act-operational-creditor-200088>

## News Roundup

### National Textiles Corporation (NTC), a Central Govt. PSU, faces insolvency for a default of ₹ 13.84 lakh

NTC is reportedly the first Public Sector Unit (PSU) under the Central Government which will through insolvency process after NCLT, New Delhi admitted the CIRP application filed by a solar energy contractor, in its capacity as an operational creditor. As per the IBC, 2016, the board of the company has been suspended and an IRP appointed to spearhead the process.

In May 2016, the NTC had awarded a work order to the contractor for two grid-connected rooftop solar power projects. The contractor alleged that the company retained ₹ 13.84 lakh out of total ₹ 4.07 crore dues, which was against the terms of the agreement as there was no provision for levying any penalty.

**For More Details, Please Visit:** <https://www.ndtv.com/business/company-law-tribunal-orders-insolvency-proceedings-against-national-textile-corporation-3019062>

### CIRP cannot be initiated against a Corporate Debtor solely on the basis of the un-paid interest: NCLT

Corporate Debtor had paid the principal amount of ₹1.5 crores to the financial creditor during the pendency of the CIRP application and only an amount of ₹64 lakh was left to be paid towards the interest. However, the financial creditor filed for the insolvency of the corporate debtor contending that the term “financial debt” as defined under Section 5(8) of IBC includes the interest component. The Bench observed that CIRP cannot be initiated against a corporate debtor solely on the basis of the un-paid amount of interest, where the entire principal amount has already been discharged by the Corporate Debtor.

**For More Details, Please Visit:** <https://www.livelaw.in/ibc-cases/nclt-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-corporate-debtor-200228>

### USA’s Christian Care Centers Inc. files for bankruptcy due to losses caused by Covid pandemic

Christian Care Centers, a faith-based non-profit, which was established in 1947, filed its Chapter 11 case in the U.S. Bankruptcy Court for the Northern District of Texas. Christian Care Centers reported about \$65 million in debt and is one of several senior living or skilled nursing facilities to seek bankruptcy protection since the onslaught of the COVID-19 pandemic.

**For More Details, Please Visit:**

<https://www.reuters.com/legal/litigation/texas-based-senior-living-facility-enters-bankruptcy-sell-assets-2022-05-23/>



### Consider Legislative Change for Payment Mechanism to Operational Creditors: NCLAT to Govt. & IBBI

Expressing concerns towards nil and almost negligible payment to operational creditors under the resolution plan, the NCLAT has urged the Central Government and IBBI to consider legislative change.

“We are consistently receiving the Plans, where Operational Creditors either not paid any amount towards their claim or paid negligible amount, sometime even less than 1%. In the present case, the operational creditors have been given only miniscule of their admitted claim to the extent of only 0.19%,” observed the NCLAT in the matter of *Damodar Valley Corporation Vs. Dimension Steel and Alloys*. In this case, the appellant opposed the Resolution Plan on the ground that it was not in compliance with the provisions of Section 30(2) of the Code as a fair and equitable treatment was not accorded to the operational creditor. However, the responded argued that there was no violation of any provision of the Code as the distribution under the plan is the commercial wisdom of the CoC which cannot be interfered by NCLT.

**For More Details, Please Visit:**

<https://www.livelaw.in/ibc-cases/national-company-law-appellate-tribunal-nclat-insolvency-and-bankruptcy-board-of-india-ibbi-damodar-valley-nclt-cirp-resolution-plan-200229>

## Event Photograph



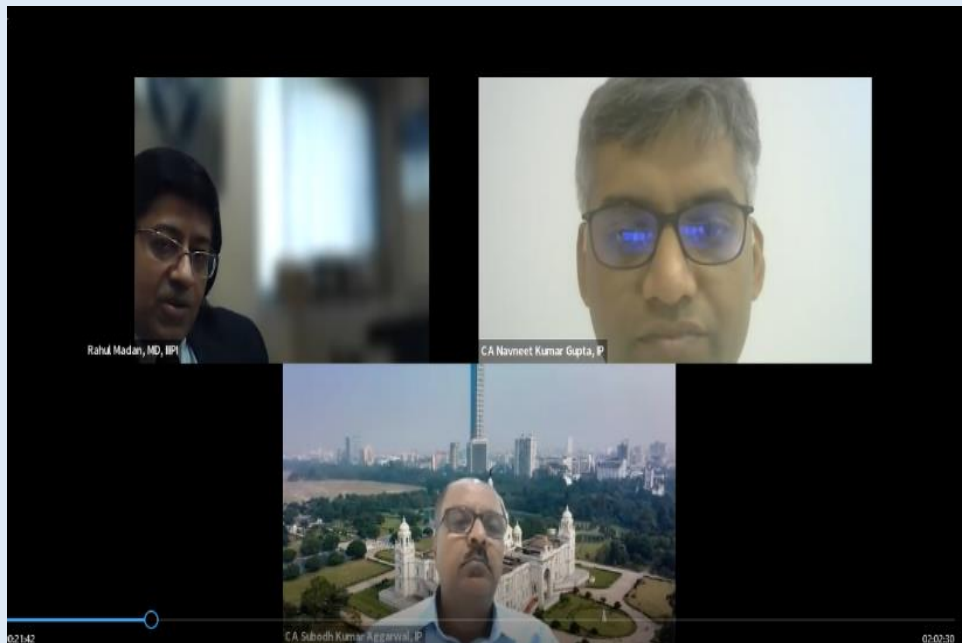
### Central Govt. Issued SOP to Customs and CGST departments to expedite filing of claims in IBC cases

The Standard Operating Procedure (SOP) has been issued by the Central Board of Indirect Taxes & Customs (CBIC) on May 23, to all Principal Chief Commissioners/ Chief Commissioners of Customs/ Customs (Preventive)/ Customs & CGST, and CGST. Besides, CBIC has nominated the Additional Director General, DGPM as the Nodal Officer for the receipt of information regarding initiation of the insolvency resolution processes and dissemination of the same to the field formations for necessary action at their end in terms of the provisions of the IBC.

“GST and Customs authorities have been classified as Operational Creditors and are required to submit their claims against corporate debtors when the CIRP is initiated and public announcement inviting claims is made by the Insolvency Professional,” said the letter issued to officials. The Nodal Officer will be in regular touch with IBBI on one side and with Principal Chief Commissioners/ Chief Commissioners on the other through email and Whats App etc. CBIC has also issued a “Format” to its Zonal Offices for submitting information on IBC cases.

***For More Details, Please Visit:***

<https://www.ibbi.gov.in/uploads/whatsnew/d43197e20e9644e00e26c5e036e0a269.pdf>



*Snapshot of the Webinar on “Ethics in Insolvency Profession” on May 27, 2022*