



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IIPI Newsletter

NCLT has power to pierce the 'Corporate Veil' in order to ascertain the Real Successful Bidder

NCLT Delhi Bench has held that it is empowered to pierce the 'corporate veil' in order to ascertain the real successful bidder, and that the statutory privilege of the separate personality of the company must be used for the legitimate purpose only. It also warned that whenever fraudulent or dishonest use is made of the legal entity, the individual will not be allowed to hide behind the curtain of the corporate personality. The Bench set aside the e-auction and directed the Liquidator to re-auction the property after obtaining fresh valuation.

For More Details, Please

Visit: <https://www.livelaw.in/ibc-cases/nclt-delhi-section-9-of-the-insolvency-and-bankruptcy-act-corporate-veil-ibbi-liquidation-process-regulations-corporate-insolvency-resolution-process-cirp-argentium-international-pvt-ltd-section-29a-of-the-ibc-liquidator-198807>



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**For Internal Circulation Only*

**Knowledge SBU Initiative*

Financial Creditors May Directly Initiate Insolvency Proceedings against Personal Guarantors: SC

The Supreme Court has held that the financial creditors specially banks may now initiate insolvency proceedings directly against the personal guarantors of corporate debtors, irrespective of pending proceedings in the Court against the Corporate Debtor under the IBC, 2016. The Apex Court has, thus, dismissed appeal against the NCLAT order, in the *State Bank of India Vs. Mahendra Kumar Jajodia*.

The Court also reaffirmed the right of the lenders to decide the recourse against borrowers/obligors independently, without linking the exercise of rights in insolvency against the guarantor to initiate insolvency against the borrower. It further held that it did not see any convincing reason to entertain the appeals, and that the NCLAT's judgment does not warrant any interference. In January 2022, the NCLAT in the matter of *SBI Stressed Asset Management Branch Vs Mahendra Kumar Jajodia (Personal Guarantor to Corporate Debtor)* had ruled that there would be no prohibition against the insolvency and bankruptcy proceedings against a personal guarantor in the absence of proceedings against the Corporate Debtor. This judgement will be helpful for banks to initiate insolvency proceedings against promoters who have given guarantee to corporate loans. According to an estimate guarantee amounting to about 1.6 lakh crore have so far been given by promoters of top companies facing huge debts.

For More Details, Please Visit: <https://www.thehindubusinessline.com/money-and-banking/sc-allows-banks-to-directly-initiate-insolvency-proceedings-against-personal-guarantors/article65404775.ece>

News Roundup

Ministry of Ports, Shipping and Waterways Revises Guidelines for Resolution of PPP Projects

New set of guidelines have been released by the Ministry of Ports, Shipping and Waterways for the resolution of Public Private Partnership (PPP) projects, which had been abandoned midway by the concessionaire. As per the guidelines a port can make partial payment amounting to the value of useful work completed by concessionaire for projects under construction and takeover the project. The ports have also been empowered to bid for abandoned projects undergoing insolvency proceedings at the NCLT. The matter came in the limelight after several projects sanctioned under PPP mode were stranded in either pre-COD (Commercial Operation Date) or post-COD stage. Union Minister Shri Sarbananda Sonowal stated that these guidelines would restart the halted progress of the projects.

For More Details, Please Visit: https://www.business-standard.com/article/economy-policy/govt-revises-payment-insolvency-rules-for-stuck-ppp-port-projects-122051101406_1.html

NCLAT cancels sale of CD as Going Concern as buyer failed to pay sale consideration within 90 days

The NCLAT Bench observed that 90 days' period provided in the Liquidation Process Regulation is the maximum period for the Auction Purchaser to deposit the consideration amount, failing which the Regulation expressly mentions that the sale shall be cancelled. It was held that “when the Consequence of non-compliance of the provision is provided in the statute itself, the provision is necessary to be held to be mandatory”.

For More Details, Please Visit:

<https://www.livewlaw.in/ibc-cases/nclat-ibbi-liquidation-process-regulations-section-7-of-the-insolvency-and-bankruptcy-code-nclt-corporate-insolvency-resolution-process-cirp-corporate-debtor-199154>

USA based company which owns Nuclear Power Plant, files for Bankruptcy

Chapter 11 bankruptcy has been filed in the U.S. Bankruptcy Court for the Southern District of Texas, by The Woodlands, a unit of Talen Energy Supply which owns Susquehanna Nuclear Plant in the Salem Twp where about 900 people work. The company runs 18 power generation facilities, and the petition has been filed to reduce its \$4.5 billion debt load and bring in \$1.65 billion in new equity from certain bondholders. In a statement the company has clarified that the bankruptcy process would not affect the employees' jobs.

For More Details, Please Visit:

https://www.standardsspeaker.com/news/business/nuclear-plant-owner-talen-energy-supply-files-for-bankruptcy/article_4c254e22-e091-5c58-956d-a3660e691de3.html



CIRP Cannot Commence on dues of Salary Arrears and Remuneration Owing to their Time-Barred Status: NCLAT

The matter is related to Omega Laser Products B.V, a Dutch company, and a shareholder of its Indian arm. The appellant filed for a petition under Section 9 of the IBC, 2016, against the NCLT order wherein it stated that the CIRP cannot be initiated on the payment of salary arrears and remunerations as they are time-barred.

The appellate tribunal held that the former MD's plea shall be time-barred by limitation for commencing insolvency against the Indian arm as it had been filed beyond a period of three years. It also held that there was no acknowledgement of the debt by the Board of Corporate Debtor with respect to Section 18 of the Limitation Act, 1963, and that the majority of the claims were barred by time.

Relying on one of the judgments of the Supreme Court, the tribunal held that “It is not within their domain under IBC to ‘decide the issue of the fixation of the salary of the MD’ but to ascertain if there is any ‘dispute’ regarding the issue.”

For More Details, Please Visit:

https://www.business-standard.com/article/economy-policy/petition-for-insolvency-gets-time-barred-if-filed-after-3-years-nclat-122051200908_1.html

Event Photographs



Mr. D. R. Chaudhuri, MD, NeSL at webinar on “Office Infrastructure and Usage of Technology by IPs” organized by IIIPI on 13th May 2022.



CA. K. V. Jain, IP, at webinar on “Office Infrastructure and Usage of Technology by IPs” organized by IIIPI on 13th May 2022.

IIIPI is Organizing EDP (For IPs) on 18th-20th May 2022

IIIPI is going to organize the third batch of Executive Development Program (for IPs) on *Mastering “Avoidance/PUFE Forensics” under IBC* for a duration of 18 hours over 3 days from 18th to 20th May 2022. The participants will be provided CPE of 12 hours.

Further details related to registration and fees are available on IIIPI website.

For More Details, Please Visit:

<https://www.iiipicai.in/wp-content/uploads/2022/04/EDP-Flyer-for-3rd-batch-of-PUFE-....pdf>