



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

(Company formed by ICAI under Section 8 of the Companies Act 2013)

IIPI Newsletter

Arbitrator to decide on Rejected Claims made after ICD: Delhi HC

Delhi High has held that the arbitrator would decide on the claims made by the Resolution Professional in the insolvency proceedings if they arose after the Insol. Commencement Date (ICD). The Court also held that extinguishment of claims that arose after the ICD is a contentious issue which is to be decided by the arbitrator when the parties decide on an arbitration agreement. Furthermore, Section 11 is confined to the examination of the existence of the arbitration agreement and the Court is bound to appoint the arbitrator when there is an arbitration agreement.

For More Details, Please

Visit: <https://www.livelaw.in/news-updates/delhi-high-court-arbitration-and-conciliation-act-insolvency-and-bankruptcy-code-insolvency-commencement-date-icd-arbitrator-cirp-199489>



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**For Internal Circulation Only*

**Knowledge SBU Initiative*

NOIDA is an Operational Creditor but not a Financial Creditor, Said, Supreme Court

In a landmark verdict on May 17, 2022, the Supreme Court has held that the New Okhla Industrial Development Authority (NOIDA) is an Operational Creditor (OC) but not a Financial Creditor (FC) under the IBC 2016. The authority had filed a bunch of appeals in the Supreme Court against various judgements of NCLT and NCLAT wherein it was considered as OC. However, the SC dismissed the appeals of the Authority.

“We are of the view that, in the lease in question, there has been no disbursement of any debt (loan) or any sums by the appellant to the lessee. The appellant would, therefore, not be a Financial Creditor within the ambit of Section 5(8) of the IBC,” concluded the Supreme Court in its 186 pages’ judgement. “Lease deed recites that the leasehold property forms part of the land acquired under the Land Acquisition Act and developed by the lessor for the purposes of setting up of an ‘urban and industrial township,’” noted the court. The court relied on the definition of “Financial Creditor” in Section 5 (7), “Financial Debt” in Section 5 (8), and “Operational Creditor” in Section 5 (20) of the IBC.

“We would proceed on the basis that, while the appellant is not a financial creditor, it would constitute an operational creditor,” said the court, while dismissing the appeals of NOIDA.

For More Details, Please Visit: https://www.business-standard.com/article/current-affairs/noida-not-financial-creditor-but-operational-creditor-under-ibc-sc-122051701510_1.html

News Roundup

Bank cannot continue the proceedings under the SARFAESI Act once the CIRP was initiated, and the moratorium was ordered: Supreme Court

In the matter of *Indian Overseas Bank Vs. M/s RCM Infrastructure Ltd.*, legal question before the Supreme Court was whether a Bank can continue the proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) once the Corporate Insolvency Resolution Process (CIRP) is initiated and moratorium is ordered. The Court ruled that the provisions of section 14(1)(c) of the IBC, which have overriding effect over any other law, any action to foreclose, recover or enforce any security interest created by the CD in respect of its property including any action under the SARFAESI Act, is prohibited.

For More Details, Please Visit:

<https://ibbi.gov.in/uploads/legalframework/b46a5d25454c3f37977acf994f5152ed.pdf>

NCLT does not have jurisdiction to adjudicate upon an audit conducted under RBI guidelines

The promoter of SREI Infrastructure Finance Ltd. and SREI Equipment Finance Ltd., which are going through insolvency under IBC, had challenged the audit of these two companies by lenders. NCLT observed that the audit was commissioned by the lenders under the aegis of an RBI Circular. The court placed reliance on the judgment of Supreme Court in *Central Bank of India Vs. Ravindra & ors.*, (2002), wherein it was held that the RBI has the authority of issuing binding directions. Accordingly, the court held that NCLT has no jurisdiction to stop an audit commissioned under RBI circulars.

For More Details, Please Visit:

<https://www.livelaw.in/ibc-cases/nclt-kolkata-insolvency-and-bankruptcy-code-ibc-rbi-guidelines-srei-infrastructure-finance-ltd-sjfl-kpmg-audit-corporate-insolvency-resolution-process-cirp-199700>

Google's Russian unit to file for bankruptcy after local authorities seized its bank accounts, assets, and property

According to company's spokesperson the global technical giant has no funds to pay its employees, suppliers, and vendors. Apparently, the sleuths had seized 1 billion Roubles (\$15 million) from Google as it could not restore the access to its YouTube account. However, it is unclear whether the seizure of this fund has led Google to file for insolvency. Google's Russia unit has about 100 employees.

For More Details, Please Visit: <https://www.wionews.com/world/googles-russian-unit-files-for-insolvency-no-funds-to-pay-salaries-to-employees-480509>



Joint auction under IBC and SARFAESI Act, is valid for value maximisation: NCLAT

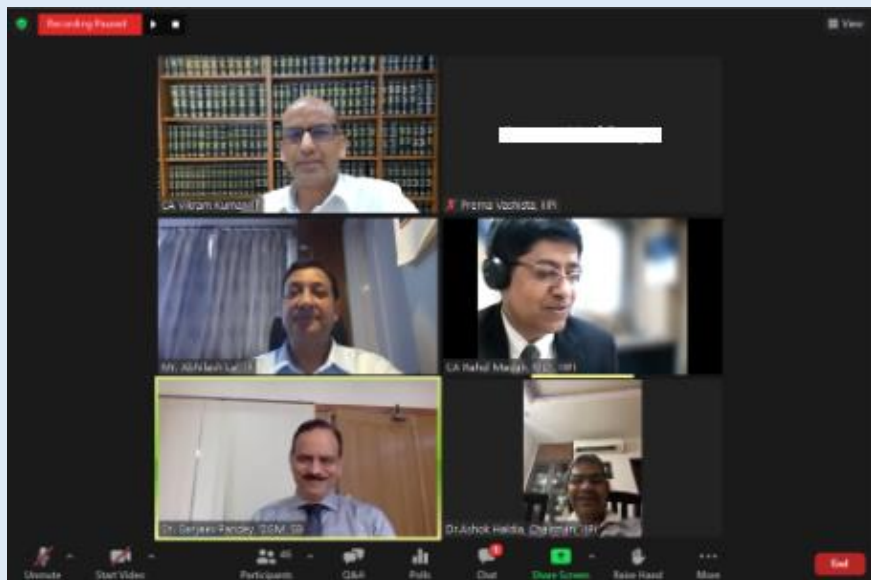
“When NCLT is satisfied that a joint sale shall bring maximization for the assets of the Corporate Debtor as well as guarantor, the suspended director cannot be prejudiced in any manner,” said NCLAT in the matter of *Ayan Mallick Vs. Pratime Bayal*. The tribunal upheld NCLT Kolkata’s order that a joint order under the provision of IBC 2016 and SARFAESI 2002 is permissible.

In this case, the suspended director of the Corporate Debtor had filed an appeal before the NCLAT under Section 61 of the IBC against an order passed by NCLT Kolkata on February 01, 2022, opposing the joint auction. The suspended director had demanded the court to quash the e-auction notice in this regard on the ground that the joint e auction notice was bad in law as the property of the guarantor is not under any insolvency or liquidation proceedings. It was also contended that the banks have already taken possession of the land under the SARFAESI Act and therefore, the Liquidator cannot publish a joint e auction notice.

For More Details, Please Visit:

<https://www.livelaw.in/ibc-cases/nclat-insolvency-and-bankruptcy-code-sarfaesi-nclt-suspended-director-corporate-debtor-joint-auction-199379>

Event Photographs



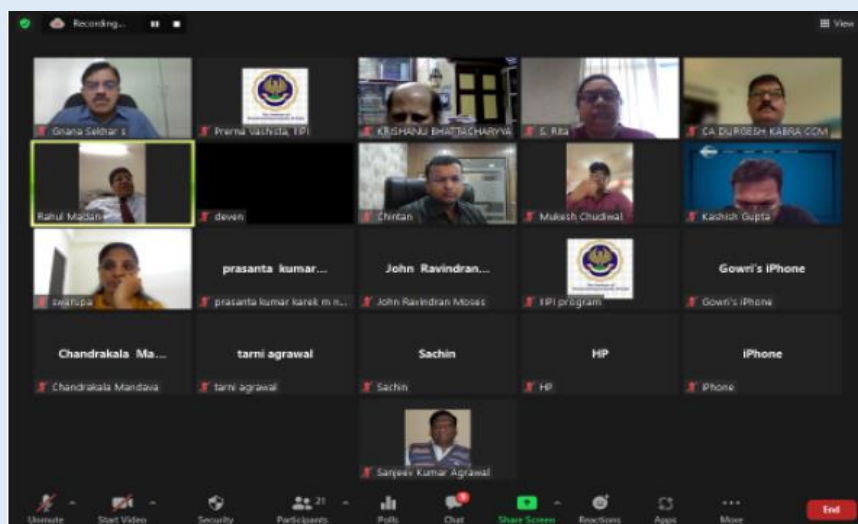
A snapshot of the webinar on “Investment Banking Skills for IPs” organized by IIPI on May 20, 2022.

IIPI to organize webinar on “Ethics in Insolvency Profession” on May 27, 2022

The webinar on “Ethics in Insolvency Profession” is scheduled to be organized from 4 PM to 6 PM on May 27, 2022. CA. Navneet Gupta, IP will make a presentation on “Background Guidance on Code of Ethics”. The participants will be awarded a CPE: 1 hour credit.

For More Details, Please Visit:

<https://www.iiipicai.in/wp-content/uploads/2022/05/flyer-27th.pdf>



A snapshot of the inaugural day of 05th Batch of LIE (Weekday) from 17th to 21st May 2022.