

## IBC News

### IBBI Invites stakeholders' comments on proposed changes in CIRP aimed to reduce delays and improve resolution value

Besides proposing amendments to the Regulation 40 A of the CIRP Regulations which provides the timelines for various activities in a CIRP, the Discussion Paper published by the IBBI on June 27, 2022, also proposes to amend Section 53 of the IBC, provisions relating to the minimum entitlement to dissenting creditors and repeat the valuation exercise, among others.

The key proposals include (i) reduction of timelines for inviting Expression of Interest (EoI), (ii) Increase in the timelines for preparation of Information Memorandum (IM) (iii) Reduction of timelines for 'Avoidance-Transactions' related matters (iv) Casting duty on the Resolution Professional to make a strategy for the marketing of assets of Corporate Debtor (v) mandatorily geo-tagging of immovable assets of Corporate Debtor (vi) Providing an opportunity to Committee of Creditors (CoC) to interact with valuers (vii) Linking of the payment made to the dissenting Financial Creditor to the realizable amount at the time of Liquidation (viii) Providing timely information to creditors with respect to initiation of CIRP and last date for filing claims, etc. IBBI believes that proposed amendments would aid in faster completion of processes, remove ambiguities, aid, and facilitate IPs thereby increasing value and realization for stakeholders. The stakeholders can submit their comments electronically on IBBI website by July 17, 2022.

**Source:** [ibbi.gov.in](https://www.ibbi.gov.in), June 27, 2022

<https://www.ibbi.gov.in/uploads/whatsnew/9a71f15c9b21a7dd626a8ca47846a113.pdf>

### NCLT allows Insolvency Process against Personal Guarantor of Deccan Chronicle Holdings Ltd.

NCLT, Hyderabad bench vide its order on June 24, 2022, admitted an insolvency petition filed by L&T Finance Limited (Financial Creditor) against the Personal Guarantor, who is also the promoter of Deccan Chronicle Holdings Limited (DCHL). The court also rejected the



contention of the Personal Guarantor that the petition was barred by limitation. The company is facing CIRP due to a default of ₹ 62.96 crores on a loan amounting ₹ 25 crore availed in 2013.

**Source:** [livelaw.in](https://www.livelaw.in), July 04, 2022

<https://www.livelaw.in/news-updates/nclt-hyderabad-insolvency-of-bankruptcy-code-corporate-insolvency-resolution-process-cirp-personal-guarantor-deccan-chronicle-holdingslt-finance-ltd-202873>

### Spanish company Abenewco1, a unit of Abengoa heading towards bankruptcy

Spanish engineering and energy group Abengoa has begun insolvency proceedings for its main unit- Abenewco1, after its request for \$261.2 million State Aid was rejected by the Spanish Government. Reportedly, the rejection of the loan is because there was no guarantee of the viability of the company and the repayment of the loan. For expanding into clean energy from its traditional infrastructure projects, the company had taken massive loans earlier.

**Source:** [reuters.com](https://www.reuters.com), June 29, 2022

<https://www.reuters.com/business/energy/spain-rejects-state-aid-abengoa-unit-bringing-it-closer-bankruptcy-2022-06-28/>

### Singapore-based crypto hedge fund files for Cross Border Insolvency in the USA

Crypto hedge fund- Three Arrows Capital (3AC) has filed for Chapter 15 bankruptcy in the USA. Filing for bankruptcy under Chapter 15 will provide protection to the entity's US assets by stopping the creditors from seizing its assets while a liquidation is under progress in the British Virgin Islands. A British Virgin Islands court ordered the liquidation of Three Arrows Capital earlier this week. A slump in digital currency prices, which has seen billions of

dollars getting wiped-off the market in recent weeks, has hurt 3AC and exposed a liquidity crisis at the company.

**Source:** *reuters.com*, July 02, 2022

<https://www.reuters.com/markets/us/crypto-hedge-fund-three-arrows-fileschapter-15-bankruptcy-2022-07-01/>

## **IBBI moves to incorporate Parliamentary Panel's observations on "sale of selected business units or assets" of CD under CIRP**

The Insolvency and Bankruptcy Board of India (IBBI) has proposed an amendment to allow resolution of part assets / businesses of corporates facing insolvency proceedings. This is in line to the observations made by the Parliament's Standing Committee on Finance. The Committee had observed that the bidders may be interested in selected business units or assets, rather than the entire business. A combination of bidders taking different business units or assets may well be far superior to one bidder acquiring the entire business, observed the Committee.

As per the proposed amendment by the IBBI, the possibility of resolution of part assets / businesses of corporates could be explored by resolution applicants and creditors only when no resolution plan is received within the timeline specified for submission of such plan. The reform is reportedly in line with the similar practices in foreign jurisdictions. Presently, sale of part assets / businesses of corporates is allowed in case of liquidation but not in resolution.

**Source:** *thehindubusinessline.com*, June 28, 2022

<https://www.thehindubusinessline.com/economy/corporate-insolvency-overhaul-ibbi-plans-to-allow-part-sale-of-assets-or-business-under-resolution-process/article65575831.ece>

## **Insolvency Law Panel against any exemption to SEBI from Moratorium under IBC, 2016**

In its recent report submitted to the Ministry of Corporate Affairs, the Insolvency Law Committee (ILC) has recommended against giving any special dispensation to the Securities and Exchange Board of India (SEBI) from the moratorium under Section 14 under IBC, 2016. This recommendation has reportedly come on as a representation of the SEBI to the MCA seeking exemption from the provisions of moratorium during the Corporate Insolvency Resolution Process (CIRP).

The Section 14 of the IBC, 2016, puts a blanket ban on all government authorities to initiate or pursue any action/enforcement during pendency of the CIRP. However, the government has been granted the power under Section 14 (3) (a) to provide certain exemptions. "The exemption under Section 14(3)(a) (exemption from moratorium) should be exercised only in exceptional circumstances, which may not hinder the smooth conduct of the CIRP and hence, should not be relaxed until found necessary from the implementation experience of the code," recommended the ILC. According to media reports, SEBI had sought the exemption on the ground that in several cases; the interests of public shareholders were being put at risk by these companies. There have been cases where companies continued to be listed on the stock exchanges during the CIRP and did not comply with the listing rules. Besides, the ILC has suggested that an effective insolvency law must protect the value of the insolvency estate against diminution by the actions of multiple stakeholders to insolvency proceedings.

**Source:** *economictimes.com*, June 23, 2022

<https://economictimes.indiatimes.com/news/economy/policy/sebi-cant-initiateproceedings-against-companies-under-ibc-says-panel/articleshow/92396507.cms>

## **A written contract cannot be treated as a pre-requisite to prove the existence of a financial debt: NCLT Mumbai**

In the matter of *Gateway Offshore Private Limited and Anr. Vs. Runwal Realtors Pvt. Ltd.*, the NCLT Mumbai denied admitting "written contract" of monetary transaction as evidence to prove existence of Financial Debt. The Appellant, Gateway Offshore Private Limited and Anr., had provided ₹4.44 crore with 9% rate of interest to the Corporate Debtor in the form of a financial facility. Rejecting the CIRP filed by the Appellant, the Court said, "it failed to bring on record any other evidence in the form of a loan agreement, promissory note, contract or any document to substantiate their claim that there was a financial debt and a default of the same,".

**Source:** *livelaw.in*, June 23, 2022

<https://www.livelaw.in/news-updates/nclt-mumbaiinsolvency-and-bankruptcy-codecorporateinsolvency-resolution-process-cirp-corporate-debtfinancial-debt-202166>

## Give mediation a fair chance: Dr. Ashok Haldia, Chairman, IIPI

In an Opinion piece published in the prestigious daily business' newspaper The Mint, Dr. Ashok Haldia has strongly supported introduction of a mediation framework to govern mediation at every stage of insolvency and bankruptcy process - before and after the commencement of CIRP, including verification of claims, assets, third parties, resolution plans, avoidance action and the like.

“Suitable steps should also be taken to lay down mediation-related provisions that cover the enforceability of mediated settlements and the roles, rights and responsibilities of insolvency professionals, other stakeholders, etc, as such an exercise would grant out-of-court mediation the requisite legal back to ensure discipline and proper enforcement,” contended Dr. Haldia. He also hailed the Mediation Bill of 2021 as “a step in the right direction”. “It requires disputants to try and settle civil or commercial disputes through mediation before approaching any court, within a mandated period,” he added. Referring the international experience on mediation in insolvency process, particularly that of the USA, Dr. Haldia opined that the mediation could be used under the IBC, too.

**Source:** *livemint.in, June 24, 2022*

<https://www.livemint.com/opinion/online-views/lets-promote-mediation-as-a-way-to-resolve-ibc-delays11656002273450.html>

## Limitation Period to be counted from date of acknowledgment in each balance sheet

Ordering commencement of CIRP against GIT Textiles Manufacturing Ltd., the NCLT Kolkata Bench has ruled that under Section 18 of the Limitation Act, 1963, there should be fresh computation of limitation period of three years from the date of acknowledgment in each balance sheet. “Since the last acknowledgments was made on March 31, 2019, the limitation period would last up till March 31, 2022,” said the Court rejecting the argument of the company management that limitation period had already lapsed.

**Source:** *livelaw.in, June 25, 2022*

<https://www.livelaw.in/newsupdates/national-company-lawtribunal-nclt-insolvency-andbankruptcy-code-corporate-debtorinterim-resolution-professional-gittextiles-202319>

## Cross-Border Insolvency Law to make India an attractive destination for Cross-Border Investment: Ravi Mital, Chairman, IBBI

Shri Ravi Mital, Chairman, Insolvency and Bankruptcy Board of India (IBBI) said “A model law on Cross Border Insolvency in India is almost ready. We also want to learn from and incorporate international experiences on some issues”. He was addressing the Inaugural Session of the International Webinar on "Cross-Border Insolvency and Global Lessons for India" as Chief Guest organized by Indian Institute of Insolvency Professionals of ICAI (IIPI) jointly with International Insolvency Institute (III), USA on June 17.

Shri Mital said, "We appreciate that the model law on Cross-Border Insolvency will have great benefits for our country and help in making India an attractive investment destination,". Shri Mital assured Indian banks that the model law will provide the required protection to their interests adding that the law would enable foreign representatives to have the same benefits in our country. CA (Dr.) Debashis Mitra, President, ICAI, Mr. Evan J. Zucker, Counsel & III's NextGen Chairperson, and Dr. Ashok Haldia, Chairman, IIPI also expressed their views in the Inaugural Session. The Inaugural session was followed up with a special address by Ms. Jaicy Paul, Chief General Manager (SARG), SBI, and a Panel Discussion in which several insolvency experts from USA, UK and India shared their perspectives.

**Source:** *iiipicai.in, June 17, 2022*

<https://www.iiipicai.in/wp-content/uploads/2022/06/IIPI-Press-Release.pdf>

## IBBI invites inputs/ suggestions from public for effective and expeditious resolution of Real Estate Projects

IBBI has invited specific suggestions for bringing improvements, if any, in the process of resolution of real estate projects vis-à-vis homebuyers for better and effective resolution of such real estate project from public. The inputs/ suggestions/views can be email to IBBI in approximately 200 words by July 05, 2022. The indicative list of issues provided by IBBI includes issues related to

participation in the process, claims, conduct of process, resolution, and liquidation.

**Source:** [ibbi.gov.in](https://www.ibbi.gov.in/uploads/whatsnew/a1e856bda89902ae079dc713cc82c5c0.pdf), June 15, 2022

<https://www.ibbi.gov.in/uploads/whatsnew/a1e856bda89902ae079dc713cc82c5c0.pdf>

### U.S. Commercial Electric Vehicle Maker, Electric Last Mile Solutions Inc (ELMS), Files for Chapter 7

Bankruptcy EV manufacturer, Electric Last Mile Solutions Inc (ELMS), has announced to file Chapter 7 bankruptcy. The decision came forth as the Troy, a Michigan-based company, disclosed a probe by the U.S. Securities and Exchange Commission, and withdrew its previously issued business outlook in March 2022. The EV maker previously laid off about 24% of its staff as it focused on its core business.

**Source:** [dnaindia.com](https://www.dnaindia.com/automobile/report-ev-manufacturer-electric-last-mile-solutions-files-for-bankruptcy-2960059), June 13, 2022

<https://www.dnaindia.com/automobile/report-ev-manufacturer-electric-last-mile-solutions-files-for-bankruptcy-2960059>

### SC directs NCLATs and NCLTs not to "sit on appeal" if minimum 90% of creditors agree on "Settlement Plan" of Corporate Debtor

The Supreme Court (SC) has ruled that if 90% or more of the creditors agree on a "Settlement Plan" filed by promoter/s of the Corporate Debtor on the ground that it would be in the interest of all the stakeholders to withdraw CIRP as per Section 12A of the IBC, 2016; NCLT or NCLAT "cannot sit in appeal over such commercial wisdom of Committee of Creditors (CoC)".

An application was filed by IDBI Bank Ltd. (Financial Creditor) under Section 7 of the IBC, 2016 for commencement of CIRP against M/s Siva Industries and Holdings Ltd, which was admitted by NCLT, Chennai on July 04, 2019. During CIRP, the financial creditors and promoters of the Corporate Debtor agreed on a "Settlement Plan" to settle the Corporate Debt. Accordingly, an application was filed by the Resolution Professional under Section 12A of the IBC, 2016 seeking withdrawal of the CIRP. However, the NCLT, Chennai rejected the application. The same was rejected by the NCLAT as well.

Relying on the SC judgement in the matter of *Ajay Kumar Jagatramka Vs. Jindal Steel and Power Limited* (2021), the Apex Court emphasized on minimum judicial interference by the NCLATs and NCLTs in the framework of IBC, 2016. "The interference would be warranted only when the Adjudicating Authority or the Appellate Authority finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provisions of the statute or the Rules," said the SC.

**Source:** [livelaw.in](https://www.livelaw.in/top-stories/supreme-court-ibc-section-12a-committee-of-creditors-settlement-plan-cirp-withdrawal-nclt-nclat-v-200825) June 3, 2022

<https://www.livelaw.in/top-stories/supreme-court-ibc-section-12a-committee-of-creditors-settlement-plan-cirp-withdrawal-nclt-nclat-v-200825>

### GST and IBC, 2016 will help India to achieve \$5 trillion: Chief Economic Advisor (CEA) to Government of India

India's CEA Shri V. Anantha Nageswaran has asserted that the Covid-19 pandemic and the contemporary geopolitical conflicts have shadowed recent structural reforms such as the Goods and the Service Tax (GST) and the IBC, it will benefit the economy in future. "They will begin to manifest their benefits and advantages in advancing India's potential growth in decades to come. That is why India is now forecasted by the IMF to cross US dollar 5 trillion by 26-27. And if the dollar GDP of the country doubles every seven years, we will be at \$20 trillion GDP by 2040 with a per capita income of close to \$15,000," he projected. "We need to understand that the medium-term fundamentals of the Indian economy remain solid," said Shri Nageswaran in an event hosted by Department of Economic Affairs (DEA) to mark the Azadi Ka Amrit Mahotsav celebrations of the Ministry of Finance and MCA.

**Source:** [thehindu.com](https://www.thehindu.com/business/Economy/gst-insolvency-and-bankruptcy-code-reforms-to-push-growth-after-clouds-recede-says-chief-economic-advisor/article65507693.ece), June 8, 2022

<https://www.thehindu.com/business/Economy/gst-insolvency-and-bankruptcy-code-reforms-to-push-growth-after-clouds-recede-says-chief-economic-advisor/article65507693.ece>

### NCLT rejected insolvency petition of Noida's Wave City Centre under Section 10, imposes ₹1 crore penalty

Wave Mega City Centre (WMCC) of Noida had approached NCLT under Section 10 of the IBC, 2016, to



initiate the CIRP of its own flagship project at 6.18 lakh square meters land spread between Sector 25 and 32 in Noida. “It was an attempt on the part of the CD to play fraud on thousands of homebuyers, the Noida Authority, and the government authorities,” said the Court and directed the Central Government to investigate into alleged siphoning of the money from the project. The homebuyers have collectively contributed ~₹1,400 crore into the ~ ₹ 3,800 crore. However, they were neither provided possession nor refund.

**Source:** *hindustantimes.com*, June 8, 2022

<https://www.hindustantimes.com/cities/noida-news/tribunal-junks-insolvency-plea-by-wave-groupimposes-1-crore-penalty-101654712242173.html>

### **Recovery Certificate Holder comes under category of Financial Creditor, ruled Supreme Court**

The Supreme Court has held that liability with respect to a claim arising out of a Recovery Certificate under the Recovery of Debts and Bankruptcy Act, 1993, would be a “Financial Debt” within Section 5(8) of the IBC, 2016. Furthermore, the holder of this Recovery Certificate would be a “Financial Creditor” under Section 5(7) of the IBC, 2016. The court also allowed the holder of such a Recovery Certificate to initiate Corporate Insolvency Resolution Process (CIRP) as a Financial Creditor (FC) within a period of three years from the date the recovery certificate is issued.

The concerned view was taken by a two-judge Bench of the Supreme Court in *Dena Bank Vs. C. Shivakumar Reddy and Anr*; which was further affirmed by a three-judge Bench. Assailing the order of the NCLAT, which had set aside the order of the NCLT Chennai, the Bench allowed the appeal filed by Kotak Mahindra Bank Ltd. admitting the application which was filed under Section 7 of the IBC and initiated CIRP. The application was filed within a period of three years from the date on which the Recovery Certificate was issued; therefore, it was considered within limitation. According to various provisions of the IBC, when a Corporate Debtor ends up committing a default, a Financial Creditor or an Operational Creditor or the Corporate Debtor itself may initiate CIRP. In the case of Dena Bank, it was affirmed by

the Court that all the relevant provisions of the IBC and earlier judgments were relied upon; and it was not consistent with the earlier judgments of the Apex Court. The submission as per Section 19(22A) of the Debt Recovery Act, also did not find favour with the Court.

**Source:** *livelaw.in*, May 31, 2022

<https://www.livelaw.in/top-stories/supreme-court-ibc-recoverycertificate-claim-financial-debt-cirp-200465>

### **SBI Sets Up Marketing Team to Showcase its Stressed Assets Undergoing Resolution**

Under its Stressed Assets Resolution Group (SARG) vertical, SBI has set up a marketing team to reach out to a broader investor base and to showcase its stressed assets undergoing resolution under the IBC, 2016. According to the Bank's annual report, SARG is also monitoring the transfer of eligible assets to NARCL (National Asset Reconstruction Company Ltd) to ensure smooth migration of identified assets. The report also stated that resolution under IBC is a market-oriented mechanism where a higher number of bidders for a stressed Corporate Debtor results in better valuation and maximisation of recovery for lenders.

**Source:** *thehindubusinessline.com*, June 01, 2022

<https://www.thehindubusinessline.com/money-and-banking/sbisets-up-marketing-team-to-showcase-stressed-assetstoinvestors/article65485097.ece>

### **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.

**Source:** *livelaw.in*, May 25, 2022

<https://www.livelaw.in/ibc-cases/nclat-insolvency-and-bankruptcy-codearticle-1-of-limitation-act-operational-creditor-200088>

## **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.

**Source:** *livelaw.in*, May 27, 2022

<https://www.livelaw.in/ibc-cases/nclt-insolvency-andbankruptcy-code-corporate-insolvency-resolution-process-cirp-corporate-debtor-200228>

## **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.

**Source:** *livelaw.in*, May 27, 2022

<https://www.livelaw.in/ibc-cases/nationalcompany-law-appellate-tribunal-nclat-insolvencyand-bankruptcy-board-of-india-ibbi-damodarvalley-nclt-cirp-resolution-plan-200229>

## **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.

**Source:** *ibbi.gov.in*, May 23, 2022

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

### **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.

**Source:** *businessstandard.com*, May 17, 2022

[https://www.business-standard.com/article/current-affairs/noida-not-financial-creditor-but-operational-creditor-under-ibc-sc-122051701510\\_1.html](https://www.business-standard.com/article/current-affairs/noida-not-financial-creditor-but-operational-creditor-under-ibc-sc-122051701510_1.html)

### **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.

**Source:** *livelaw.in*, May 18, 2022

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

### **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.

**Source:** *ibbi.gov.in*, May 23, 2022

<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.

**Source:** *livelaw.in*, May 20, 2022

<https://www.livelaw.in/ibc-cases/nclt-kolkata-insolvency-and-bankruptcy-code-ibc-rbiguidelines-srei-infrastructure-finance-ltd-sift-lpmg-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.

**Source:** *wionews.com*, May 20, 2022

<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. Pratim 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.

**Source:** *livelaw.in*, May 17, 2022

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

## 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.

**Source:** *thehindubusinessline*, May 11, 2022

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



## **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.

**Source:** *livelaw.in*, May 11, 2022

<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-argentineum-international-pvt-ltd-section-29a-of-the-ibc-liquidator-198807>

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

A 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.

**Source:** *business-standard.com*, May 12, 2022

[https://www.business-standard.com/article/economy-policy/govt-revises-payment-insolvency-rules-for-stuck-ppp-port-projects-122051101406\\_1.html](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".

**Source:** *livelaw.in*, May 14, 2022

<https://www.livelaw.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.

**Source:** *standardspeaker.com*, May 11, 2022

[https://www.standardspeaker.com/news/business/nuclear-plant-owner-talen-energysupply-files-for-bankruptcy/article\\_4c254e22-e091-5c58-956d-a3660e691de3.html](https://www.standardspeaker.com/news/business/nuclear-plant-owner-talen-energysupply-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.

**Source:** *businessstandard.com*, May 13, 2022

[https://www.businessstandard.com/article/economy-policy/petition-for-insolvency-gets-time-barred-if-filed-after-3-years-nclat-122051200908\\_1.html](https://www.businessstandard.com/article/economy-policy/petition-for-insolvency-gets-time-barred-if-filed-after-3-years-nclat-122051200908_1.html)

### **Insolvency Professionals have so far flagged over ₹2.2 trillion of Avoidance Transactions by the suspended managements: IBBI**

As per the recent data released by the Insolvency and Bankruptcy Board of India (IBBI), 777 applications for Avoidance Transactions have been filed by the Insolvency Professionals (IPs) in their capacities as Resolution Professionals (RPs) and Liquidators under the Insolvency and Bankruptcy Code (IBC), 2016. The Code mandates the RPs and Liquidators to investigate the past transactions of the Corporate Debtors (CDs) and see if their pre-CIRP transactions were in order or not. If established as Avoidance Transaction, the NCLT may order to annul the transaction and refund of the money to the CD's account. In a particular case about 758 acres of land out of 858 acres valued at ₹5500 crore has been given back to a company which is undergoing resolution.

IBBI data further show 312 cases were admitted in tribunals for bankruptcy resolution in the March quarter of 2022, close to twice the number of cases admitted in the June quarter of 2021. In the June quarter, 165 cases were admitted, followed by 167 in September and 238 in December. A sector wise analysis shows that about two fifth of all the cases admitted to tribunals belong to the manufacturing sector, 20% belong to real estate, 11% to construction industry and 10% belong to retail trade, indicating that these are pain points in the economy. Under

the IBC regime, 480 distressed companies were rescued till March 2022 of which a third were in deep distress, IBBI said. The rescued companies had assets worth ₹1.31 trillion.

**Source:** *livemint.in*, May 04, 2022

<https://www.livemint.com/companies/news/bankruptcy-administrators-flag-rs2-2-trillion-worth-dubious-deals-ibbi-11651590390514.html>

### **No Conflict between the Two Special Acts owing to Attachment of Property: NCLT**

Concerning the attachment of property, the NCLT Chennai held that there stands no conflict between the Prohibition of Benami Property Transaction Act, 1988, and the Insolvency and Bankruptcy Code, 2016, as the two are special acts as well. The RP was handed over the immovable property along with the equipment and machinery as per the order admitting the Section 7 application by which CIRP was initiated. NCLT also observed that since liquidation has commenced, moratorium has ended. NCLT also observed that since liquidation commenced, moratorium has ended.

**Source:** *livelaw.in*, May 5, 2022

<https://www.livelaw.in/ibccases/insolvency-and-bankruptcy-codenclt-chennai-prohibition-of-benami-property-transaction-act-cirp-corporatedebtor-attachment-of-property-198384>

### **Karnataka High Court Dismissed a Writ Petition Challenging Constitutional Validity of Some Sections of IBC, 2016**

Karnataka High Court in a judgment on April 5, 2022, has dismissed a petition challenging the constitutional validity of Section 95, 99 and 100 of the IBC, 2016. The application was filed by the Financial Creditor, Piramal Capital & Housing Finance Limited, before the NCLT, Bangalore, through the Resolution Professional under Section 95 of the Code for initiation of insolvency process against the Personal Guarantor. The Court considered that the IBC provides a particular eligibility criterion which an RP must possess, and a Code of Conduct must be followed which governs their actions.

**Source:** *livelaw.com*, May 05, 2022

<https://www.livelaw.in/law-firms/deals/insolvencyand-bankruptcy-code-2016-karnataka-high-court-nclt-dua-associates-198333>

**Primary objective of the IBC process is resolution of a distressed firm, but the recovery percentage also needs to be kept in mind: SBI, MD**

SBI's Managing Director, Swaminathan J., has drawn attention of stakeholders on recovery percentage along with resolution, which is the primary objective of the IBC. The sight of recovery is not supposed to be lost as well, he stated, for if the narrative shifts towards haircuts, then it is possible that the lenders may not take any action, which would lead to a halt, leading stressed units towards liquidation. He also focused on the need to look for other players who would provide distressed asset or private debt funding to give interim finance to borrowers.

*Source: [economictimes.com](https://economictimes.indiatimes.com/industry/banking/finance/banking/resolutionprimary-objective-of-ibc-but-need-to-be-mindful-of-recovery-too-sbi-md-swaminathanj/articleshow/91233611.cms), May 01, 2022*

<https://economictimes.indiatimes.com/industry/banking/finance/banking/resolutionprimary-objective-of-ibc-but-need-to-be-mindful-of-recovery-too-sbi-md-swaminathanj/articleshow/91233611.cms>

**Cross Border Insolvency Resolution Framework will be a landmark step to redefine India's business and economic relations with the rest of the world: Shri Rao Inderjit Singh, Hon'ble Union Minister**

Shri Rao Inderjit Singh, the Hon'ble Minister of State for Statistics and Programme Implementation (Independent Charge), Planning (Independent Charge) and Corporate Affairs, has praised the significant contribution of the IBC in reducing the NPAs of the banking industry and promoting entrepreneurship in Indian economy.

"IBC has assumed larger significance post the COVID - 19 pandemic and has been instrumental in saving both lives and livelihoods," said Shri Singh in his inaugural address to the International Conference on April 30 jointly organized by IBBI and IIMA. "The proposed Cross Border Insolvency Resolution Framework will be a landmark step to redefine India's business and economic relations with the rest of the world," he added. Shri Singh also highlighted the successful journey of the IBC by establishing a framework and effective ecosystem for insolvency resolution in the economy. The minister lauded the scintillating contributions of Judiciary, Government agencies, Regulators, and stakeholders of the IBC ecosystem in swift and effective implementation of the Code.

On this occasion Shri Rajesh Verma, Secretary, Ministry of Corporate Affairs, M. Rajeshwar Rao, Deputy

Governor, RBI, Shri Ravi Mital, Chairperson, IBBI, Prof. Errol D' Souza, Director, IIMA were also present.

*Source: [indianexpress.com](https://indianexpress.com), May 02, 2022*

<https://indianexpress.com/article/cities/ahmedabad/international-conference-on-insolvency-bankruptcy-ministersays-ibc-provided-effective-ecosystem-for-insolvency-resolution-7896864/>

**Conduct a SWOT analysis to investigate IBC's strengths and weaknesses: Secretary MCA**

Shri Rajesh Verma, Secretary of the Ministry of Corporate Affairs (MCA) has said that there is presently no framework to track the outcome of insolvency and bankruptcy regime. "It is crucial to continue to study the impact of the insolvency framework created by IBC and conduct a SWOT analysis to investigate (its) strengths and weaknesses," said Shri Verma addressing an international conference organized by IBBI and IMA. "It is important that we have a rigorous and evidence-based research to public policy," he added. He also informed that the MCA, in a month or two, will examine on how to encourage resolution more than liquidation.

*Source: [economictimes.indiatimes.com](https://economictimes.indiatimes.com/news/economy/policy/need-framework-to-study-impact-ofinsolvency-law-corporate-affairs-secretary-rajesh-verma/articleshow/91202894.cms), April 30, 2022*

<https://economictimes.indiatimes.com/news/economy/policy/need-framework-to-study-impact-ofinsolvency-law-corporate-affairs-secretary-rajesh-verma/articleshow/91202894.cms>

**RP is not entitled for any professional fees during the period of stay on CIRP: NCLAT**

In this matter, CIRP of the CD was initiated on March 03, 2018. Subsequently, the CoC was constituted. However, the Supreme Court through an order on September 02, 2019, set aside the insolvency process. NCLT Mumbai approved the bill of the RP amounting ~ ₹30 lakhs which was challenged by the Indusland Bank in NCLAT. The bank contended that the RP was not entitled for fee during pendency of the case while the RP argued that he incurred expenditure during this period as well. The NCLAT observed that the RP was not entitled for any fee from the date the Supreme Court admitted the case to the date of final judgement setting aside the CIRP.

*Source: [livelaw.in](https://www.livelaw.in), April 29, 2022*

<https://www.livelaw.in/news-updates/section-61-of-the-insolvency-and-bankruptcy-codenclat-nclt-mumbai-resolution-professional-insolvency-proceedings-corporate-debtor-197813>

### German Tennis Champion Becker Jailed for over two years in UK Bankruptcy Case

Boris Becker, the 54-year-old six-times Grand Slam champion was found guilty of transferring money to his ex-wife Barbara and estranged wife Sharlely after his 2017 bankruptcy. He was jailed for two years and six months by a London court on April 29, for hiding hundreds of thousands of pounds of assets after he was declared bankrupt. He was previously convicted of tax evasion in Germany in 2002, for which he received a suspended prison sentence.

**Source:** *thewire.in, April 29, 2022*

<https://thewire.in/world/former-tennis-champion-becker-jailed-in-uk-bankruptcy-case>

### Provisions of IBC are essentially intended to bring the CD to its feet and are not of money recovery proceedings as such: Supreme Court

Rejecting the appeal of a Financial Creditor against the Corporate Debtor (CD), the Supreme Court has said that the intent of the appellant had only been to invoke the provisions of the IBC so as to enforce recovery against the CD. The court emphasized that time and again, it has been expressed and explained that the intent of the Code is essentially to bring CD on its feet and not recover the debt.

In this case, the account of the Girnar Fibres Ltd. (Girnar), the Corporate Debtor was declared NPA by the State Bank of India on February 28, 2002. Thereafter it was declared sick by BIFR under SICA Act 1986. Subsequently, debt of Girnar was assigned to Invest Asset Securitization and Reconstruction Pvt. Ltd. (Invest Asset) by SBI on September 22, 2011, and the reference filed by Girnar was dismissed by BIFR on May 04, 2016. Thereafter, Invest Asset filed the Section 7 application against Girnar on October 01, 2018, which was dismissed by NCLAT on the ground of limitation.

**Source:** *livelaw.in, April 28, 2022*

<https://www.livelaw.in/news-updates/supreme-courtinsolvency-and-bankruptcy-code-nclat-moneyrecovery-proceedings-invest-asset-securitisationand-reconstruction-pvt-ltd-state-bank-of-india-bifrgirnar-fibres-ltd-girnar-npa-197751>

### Sale of Bhushan Power & Steel Ltd. under the Reformed Bankruptcy Law Goes into Litigation

Differing views between two government departments i.e., Enforcement Directorate (ED) and Ministry of Corporate Affairs (MCA), have turned one of the biggest sales of steel company into a litigation of about \$6.3 billion, delaying the entire process. The court has given a week to the two departments to sort out the differences. ED had petitioned against the sale in the top court which got the plans of JSW Steel Ltd. held up which paid \$2.58 billion to settle about \$6.3 billion debt of the bankrupt firm. India's Solicitor General, Tushar Mehta, who represents the Union Government, has assured court to come with a clear stand on the issue.

**Source:** *bloombergquint.com, April 19, 2022*

<https://www.bloombergquint.com/business/top-indian-judge-rues-bureaucracy-boggingdown-bankruptcy-deal>

### NCLT Initiates CIRP for National Steel and Agro Industries Ltd

The NCLT, Mumbai, has admitted a petition filed by the Bank of India under Section 7 of the IBC 2016 to initiate CIRP of National Steel & Agro Industries Ltd. Subsequently, the CIRP of the company has commenced as per the order dated April 11, 2022. The Corporate Debtor failed to repay an amount of approx. Rs 127/- crores which stood as total dues as on May 30, 2019. The loan account of the Corporate Debtor was declared as NonPerforming Asset (NPA) on September 30, 2018. As the petition was pending adjudication, the Bank of India entered into an Assignment Agreement with JM Financial Asset Reconstruction Company Ltd. (Financial Creditor) on September 29, 2021, to assign the financial debt.

Adjudicating Authority observed that the Financial Creditor had assured that the Credit facilities were sanctioned as well as disbursed to the Corporate Debtor who, otherwise, had defaulted in paying the debt. Thus, the two essential qualifications, that is, existence of debt and default for admission of a petition under Section 7 of the IBC, were fulfilled.

**Source:** *livelaw.in, April 17, 2022*

<https://www.livelaw.in/ibc-cases/nationalcompany-law-tribunal-national-steel-agroindustries-ltd-section-7-of-the-insolvency-andbankruptcy-code-196809>



## Ministry of MSMEs makes policy proposal to keep MSMEs above Unsecured Financial Creditors in IBC processes

Millions of India's small businesses may be ranked above unsecured financial creditors in the bankruptcy resolution process if a policy proposal by the Union ministry for Micro, Small and Medium Enterprises (MSME) is approved.

As per the new MSME policy draft, when company enters insolvency, priority will be given to the payment of dues over other unsecured payments after settlement of the employees' dues. The draft policy has been prepared to promote competitiveness, cluster development, dedicated credit, technology upgradation, infrastructure, procurement of products and financial assistance to MSMEs. Presently, little is left for the operational creditors including MSMEs if the corporate debtor undergoes huge haircut. The dues of the financial creditors are settled on priority as they are prioritized under the IBC processes. However, putting MSMEs above unsecured financial creditors and paying their dues after dues to secured financial creditors are settled, gives the small businesses the charge on settlement money. The new MSME policy may also include certain measures and regulations to amend the MSME Development Act. The change aims to bring major relief to MSMEs as the sector waits for dues totalling up to hundreds of crores of rupees in the companies undergoing bankruptcy resolution.

**Source:** *livemint.com, April 18, 2022*

<https://www.livemint.com/politics/policy/msmes-dues-may-get-priorityin-bankruptcy-resolution-cases-11650222790779.html>

## Bank of India Files Insolvency Plea for Future Retail

Bank of India has filed a CIRP petition under Section 7 of the IBC to initiate insolvency proceedings for Future Retail Ltd. (FRL) due to non-payment of dues amounting ₹ 5,322.32 crore. FRL is part of ₹ 24,713 crore deal announced by the Future Group in August 2020, under which it is to sell 19 companies operating in retail, wholesale, logistics, and warehouse segments to Reliance Retail Ventures Ltd. If Future Retail gets admitted by

NCLT, it will allow other potential buyers, such as Amazon, to bid for the company. The Future-Reliance deal is yet to be sorted due to legal challenges posed by Amazon.

**Source:** *economictimes.indiatimes.com, April 14, 2022*

<https://retail.economictimes.indiatimes.com/news/industry/bank-of-indiamoves-nclt-against-future-retail-filesinsolvency-plea/90848360>

## Quantum of Debt Not to be Considered at the Stage of Admission of a Petition under Section 7 of the IBC

NCLAT while adjudicating an appeal filed in the matter of Rajesh Kedia v Phoenix ARC Pvt. Ltd. has held that the mere requirement for admitting a petition under Section 7 of the IBC is that the minimum outstanding debt must be more than the threshold amount provided for under the IBC for the purpose. The primary issue that the Bench observed was if the Adjudicating Authority was justified in admitting the Section 7 Application of Appellant or not. The Bench opined that it is not within the domain of the Adjudicating Authority to decide the 'amount of debt' at the stage of admission of an application under Section 7 of IBC.

**Source:** *livelaw.in, April 16, 2022*

<https://www.livelaw.in/ibc-cases/nclat-justice-ashokbhushan-section-7-of-the-insolvency-and-bankruptcy-code-196779>

## Alleging ₹296 crore default, HDFC files petition to initiate CIRP of SITI Networks

HDFC has filed a petition under Section 7 of the IBC, for CIRP of SITI Networks Ltd, country's leading multi-system operator, for an alleged default of approximately ₹296 crore. The Mumbai bench of the NCLT over the petition issued the notice to the SITI Networks, the Essel group firm said in a regulatory filing. On March 30, 2022, SITI Networks informed that it had been made vigilant about the petition made by the HDFC. Formerly known as SITI Cable Network, the company provides cable services at around 600 locations reaching to over 11.3 million digital customers.

**Source:** *economictimes.indiatimes.com, April 16, 2022*

<https://telecom.economictimes.indiatimes.com/news/hdfc-moved-nclt-against-sitinetWORKS-claiming-default-of-rs-296-crore/90871711>

### As Sri Lanka Forex Crisis deepens, Colombo Stock Exchange closed for over a Week

With dwindling foreign reserves, \$25 billion in foreign debt, and on the brink of bankruptcy, the Colombo Stock Exchange will remain closed for a week starting from April 18, 2022, to provide investors with an opportunity to develop more clarity and understanding related to the contemporary conditions in Sri Lanka. This would help them to make informed investment decisions in future. The Securities and Exchange Commission of Sri Lanka (SEC) said in a press release that the stock market will remain shut for five business days temporarily.

**Source:** *indiatoday.in*, April 16, 2022

<https://www.indiatoday.in/world/story/colombo-stock-exchange-week-sri-lanka-forex-crisis1938301-2022-04-16>

### Hyderabad to get new NCLAT Bench for Telangana and Andhra Pradesh

The National Judicial Data Centre is set to come up to Hyderabad which will be the headquarters for all the judicial data in the country. Besides, the city will also get Appellate Tribunal for NCLTs in Telangana and Andhra Pradesh.

The Chief Justice of India, N V Ramana, provided his approval for setting up the National Judicial Data Centre in Hyderabad on Friday. He also expressed his desire to do something for young advocates in his tenure by setting up a training academy to support them in the initial days. He said, "If the state and other institutions extend their support, I would give the final shape to it during my tenure." The CJI also suggested to promote alternate dispute redressal methods such as arbitration, mediation, and conciliation for which he also called upon advocates, bar council and bar associations to help reduce the burden of cases on judiciary and called upon senior judges to keep in perspective the diversity of communities and religions while recommending names of judges for the HC.

**Source:** *timesofindia.com*, April 16, 2022

<https://timesofindia.indiatimes.com/city/hyderabad/hyderabad-to-be-headquarter-for-all-judicial-data-in-country-may-get-nclt-tribunal/articleshow/90870624.cms>

### Tata Steel Mining gets NCLT's go ahead to acquire Rohit Ferro-Tech through resolution plan

In a regulatory filing, Tata Steel has submitted that NCLT's Kolkata Bench has approved the resolution plan submitted by its wholly owned subsidiary Tata Steel Mining Limited, for the acquisition of debt-laden Rohit Ferro-Tech Limited. The judgement was pronounced by the NCLT, Kolkata orally on April 07, 2022. Last year on June 06, the resolution plan of Tata Steel Mining Ltd. for acquisition of Rohit Ferro-Tech Ltd. through insolvency process was approved by the CoC. Tata Steel is also in the process to acquire Odisha based Stork Ferro and Mineral Industries for Rs 155 crore in an all-cash deal.

**Source:** *economictimes.indiatimes.com*, April 07, 2022

<https://economictimes.indiatimes.com/industry/indl-goods/svs/metalsmining/nclt-approves-tata-steel-minings-resolution-plan-for-rohitferrotech/articleshow/90705202.cms>

### CoC not the Resolution Professional can decide Eligibility of a Resolution Applicant under Section 29A of the IBC: NCLAT

The NCLAT has held that a Resolution Professional (RP) is not supposed to take a decision regarding the ineligibility of the Resolution Applicant under Section 29A of the IBC. It directed the RP to place all the Resolution Plans before the CoC. Challenging the rejection of her plan by the RP on the ground of being illegible, the Resolution Applicant contended that the question as to whether the plan submitted is to be rejected or approved is a question which needs to be decided by the CoC. Citing the Supreme Court judgement in the matter of *ArcelorMittal India Private Limited Vs. Satish Kumar Gupta*, (2019), the NCLAT held that the resolution plan can be placed before the CoC.

**Source:** *livelaw.in*, April 06, 2022

<https://www.livelaw.in/ibc-cases/national-company-law-appellate-tribunal-nclat-section29a-of-the-insolvency-bankruptcy-code-resolution-professional-resolution-applicant-196003>

### Application under Section 95 (1) of IBC is not maintainable against legal heirs of the Personal Guarantor: NCLT Kolkata

In a landmark judgement, the NCLT Kolkata Bench has ruled that legal heirs of a Personal Guarantor (PG) to Corporate Debtor (CD) are not liable for the dues. The court dismissed the petition filed by the Financial Creditor against the PG under Section 95 (1) of the IBC.

In this case, the Financial Creditor had provided a credit of about ₹103.90 crore to the CD (Kilburn Chemicals Ltd.) to which Sandip Kumar Jalan was PG. As the due was not paid, the Financial Creditor filed application for initiation

of CIRP of the CD which was admitted by the NCLT. During pendency of the CIRP the PG passed away. The Financial Creditor issued a demand notice to the legal heir of PG. The court ruled that under Section 5 (22), PG refers to an individual who gives surety in a contract of grantee on behalf of the CD. Also, as per regulation 3 (1) (a) (e) of Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtor Regulation, 2019 does not include legal heirs.

**Source:** *livelaw.in*, April 10, 2022

<https://www.livelaw.in/ibc-cases/nclt-section-7-of-the-ibcinsolvency-resolution-process-196275>



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