



INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI

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IIPI Newsletter

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Bill on Cross Border Insolvency listed for introduction in Parliament

The Insolvency and Bankruptcy Code (Amendment) Bill, 2022 is among over 24 bills the Central Government has listed for introduction in the Monsoon Session of the Parliament which is scheduled from July 18 to August 12, 2022.

The bill proposes changes in the IBC, 2016 by introducing provisions on Cross-Border Insolvency. Besides, certain other amendments to the CIRP and liquidation process are proposed under the Code in order to further its objectives of time-bound resolution of stressed assets and value maximization.

For More Details, Please Visit:

<https://www.cnbctv18.com/videos/healthcare/mind-matters-experts-discuss-depression-and-anxiety-in-women-14143192.htm>

News Update

**For Internal Circulation Only*

**Knowledge SBU Initiative*

NCLT has to consider the grounds made out by the CD against admission of CIRP, on its own merits: Supreme Court

The Supreme Court in the case of *Vidarbha Industries Power Limited (VIPL) Vs. Axis Bank Limited* has held that if a Corporate Debtor (CD) opposes the initiation of insolvency proceedings on the ground that it has a money award in its favour which exceeds the debt, then NCLT would have to exercise its discretion under Section 7 (5) (a) of the IBC, 2016 to keep the admission of the CIRP initiation in abeyance.

Setting aside the orders of the NCLT and NCLAT for initiation of the CIRP of VIPL, the Supreme Court held that even though Section 7 (5) (a) provides discretionary power to the NCLT, the same cannot be exercised arbitrarily or capriciously. "If the facts and circumstances warrant an exercise of discretion in a particular manner, discretion would have to be exercised in that manner," said the Court. VIPL, the CD, had opposed the admission of CIRP application filed by Axis Bank on grounds including that it had won a case in the Appellate Tribunal for Electricity (APTEL) challenging the disallowance of the actual fuel cost for the financial years 2014-2015 and 2015-2016. The amount of ₹1,730 crore was due to it from Maharashtra Electricity Regulatory Commission (MERC) in terms of the order. However, appeal of MERC in the same case is pending in the Supreme Court. The NCLT disregarded the contention of the defaulting firm and allowed the plea of Axis Bank to initiate the insolvency proceedings to recover its dues to the tune of approximately ₹553 crores.

For More Details, Please Visit: <https://www.livemint.com/news/india/nclt-cannot-exercise-power-to-initiate-insolvency-proceedings-arbitrarily-sc-11657642289821.html>

News Roundup

NCLT asks IT department to remit TDS back to the CD deducted during Moratorium

NCLT has directed the Income-Tax Department to return the Tax Deducted at Source (TDS) from Precision Fasteners, the Corporate Debtor (CD), during the moratorium order by the NCLT. The ruling is expected to set a precedent in several such cases where the revenue department is seeking to recover statutory dues from companies facing liquidation. The liquidator of the company had approached the Mumbai bench of the National Company Law Tribunal (NCLT) to recover about ₹1 crore deducted from the company as TDS even when there was a moratorium under Section 14 in place under the IBC, 2016.

For More Details, Please Visit: <https://economictimes.indiatimes.com/news/india/nclt-asks-i-t-dept-to-remitt-tds-back-to-the-bankrupt-precision-fasteners/articleshow/92812387.cms>

Rejection of Resolution Plan by CoC in contravention to Principles of Natural Justice is Void: NCLT

NCLT, Allahabad in the matter of *Exim Scripts Dealers Pvt. Ltd Vs. Rath Graphic Technologies Limited*, has held compliance to principles of Natural Justice is implied when any statute is silent as to its application. Any arbitrariness or bias would make such a void, especially when any grievance such as prejudice is caused to anyone. NCLT observed that CoC, IRP, RP, Liquidator, IBBI, IPAs, and IUs are instrumentalities of State and hence, bound by the 'Rule of Law' under the Constitution of India.

For More Details, Please <https://www.livelaw.in/news-updates/nclt-allahabad-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-successful-resolution-applicant-sra-203676>

USA based Crypto Firm files for bankruptcy

Cryptocurrency Platform Celsius Network has filed for Chapter 11 Bankruptcy Protection after showing a \$1.2 billion deficit on its balance sheet. Celsius has been blaming its current situation on "unanticipated" events such as COVID-19, the war in Ukraine, global "cryptopocalypse" and unfavorable media coverage. In order to stabilize its business, a financial recovery plan has been proposed keeping in view business stability and value maximization for all the stakeholders. The filing revealed that the company has \$4.3bn of assets, set against liabilities of \$5.5bn, of which \$4.7bn is owed to its users, who numbered 1.7 million as of this month.

For More Details, Please Visit: <https://www.theguardian.com/technology/2022/jul/15/celsius-network-crypto-firm-deficit-bankruptcy-funds>



Lease Rental is an Operational Debt: NCLAT

National Company Law Appellate Tribunal (NCLAT), New Delhi in the case of *Jaipur Trade Expocentre Private Limited vs. M/s Metro Jet Airways Training Private Limited*, has held that lease rental qualifies as an Operational Debt under IBC, 2016.

Operational Debt under Section 5(21) of the Code means a claim arising out of provision of goods and services. It is imperative to note that the term 'services' is not defined anywhere under the IBC. NCLAT observed that in the present case, the license agreement provided for payment of GST which implies that license is to be taxed for services. The bench stated that since the license agreement itself provided for payment of GST, a reference could be made to definition of term "service" under GST Act. It was further noted that if the agreement was not for services, then there would have been no requirement for the payment of GST. In furtherance of this, it was held that a lessor can be treated as an Operational Creditor and could trigger CIRP under Section 9 of the IBC 2016.

For More Details, Please Visit: <https://www.livelaw.in/news-updates/nclat-lease-rental-operational-debt-insolvency-and-bankruptcy-code-2016-203095>

Event Photograph



Shri Ritesh Kavdia, ED IBBI

Shri Ritesh Kavdia, Executive Director (ED), Insolvency and Bankruptcy Board of India, addressing Webinar on Common Issues on Monitoring/Disciplinary and Launch of Mentorship Portal of IIIPI on July 15, 2022.

Webinar on IM and Resolution Plan - Evolution & Learnings

IIIPI is organizing a Webinar on “IM and Resolution Plan-Evolution & Learnings” between 4 PM to 6 PM on July 22, 2022. The Webinar will be addressed by CA. Ashish Chhawchharia, IP, and Mr. Kuresh Khambati, IP. Participating IP members will be provided CPE: 1 hour. The fee for the program is ₹500.

For More Details, Please Visit:

<https://www.iiipicai.in/wp-content/uploads/2022/07/22nd-july.pdf>

IIIPI's 4th Batch of EDP for IPs

IIIPI is organizing the 4th Batch of Executive Development Program (EPD) from 03rd to 06th August 2022. The said program will be focused on mastering legal skills, pleadings, and court processes under the IBC, 2016. It will be a virtual course with a total duration of 24 hours spread over 4 days. The members will get CPE: 14 hours. Last date to register is August 2, 2022, till 04.30 p.m.

For More Details, Please Visit:

<https://www.iiipicai.in/wp-content/uploads/2022/07/EDP-4th-LEGAL-SKILLS.pdf>