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~80% of CIRPs with an underlying default of less than ₹1 crore were initiated by OCs

As per the latest IBBI data, ~80% of all insolvency resolution processes with an underlying default of less than ₹1 crore were initiated by Operational Creditors (OCs), while ~ 80% of those with a default of over ₹10 crore were initiated by lenders.

The data further revealed that small vendors and suppliers initiated 51% of all IBC cases, while Financial Creditors (FCs) makeup for the rest. This trend, according to media reports, is being explained by some experts as misuse of the IBC by suppliers of CDs for recovery of their pending dues.

For More Details, Please Visit:

<https://www.livemint.com/news/india/operational-creditors-lead-in-filing-bankruptcy-cases-11661531718852.html>

News Update

**For Internal Circulation Only*

**Knowledge SBU Initiative*

Section 10A provides protection to Corporate Debtor from Covid-19 induced effect not to Personal Guarantor: NCLAT

NCLAT, New Delhi has held that the Section 10A has only one interpretation which is the suspension of CIRP only for the Corporate Debtor (CD). If the Legislature intended to prohibit filing of application under Section 95 (1) by a creditor against the Personal Guarantor, the Chapter III, Part III of the IBC would have been amended accordingly, observed the Court.

This judgment came on an appeal filed by the Personal Guarantor in the case of *Amit Jain Vs. Siemens Financial Services Private Limited* wherein it was observed that Section 10A which provides protection to the CD from the COVID-19 induced effect by prohibiting initiation of CIRP against the CD for any default arising on or after March 25, 2020, would not provide a similar protection to the Personal Guarantors of the CD.

The main contention in this case was whether the benefit of Section 10A could also be claimed by a Personal Guarantor and an application under Section 95 be barred for a default which has arisen after March 25, 2020, till March 24, 2021. Here, the Personal Guarantor had contended that the initiation of CIRP against the Principal Borrower is a conditional precedent for proceedings against Personal Guarantor. Hence, when default of Principal borrower is covered by Section 10A, the same shall be applicable to Personal Guarantor as well. NCLAT dismissed the appeal.

For More Details, Please Visit: <https://www.livelaw.in/news-updates/nclat-new-delhi-insolvency-bankruptcy-code-personal-guarantors-resolution-professional-corporate-debtor-207619>

News Roundup

Liquidation proceedings will take precedence over recoveries of indirect taxes: Supreme Court

The Supreme Court, in the case of *Sundaresh Bhatt, Liquidator of ABG Shipyard Vs. Central Board of Indirect Taxes and Customs*, has held that Insolvency and Bankruptcy Code, 2016 will have an overriding effect on the Customs Act, 1962. “While Customs authorities have the powers to assess the quantum of dues, it does not have the powers to initiate recovery of dues under the Customs Act,” a three-judge Bench headed by the Chief Justice held. The Bench observed that the Customs dues had to be settled in accordance with the IBC and the liquidator was the owner of the goods after the initiation of IBC proceedings.

For More Details, Please Visit: https://www.business-standard.com/article/economy-policy/ibc-will-have-overriding-effect-over-indirect-tax-recoveries-rules-sc-122082601213_1.html

Lenders should provide interim finance to companies under insolvency: IBBI Chairperson

Shri. Ravi Mital, Chairperson of the Insolvency and Bankruptcy Board of India (IBBI) has asked lenders to provide interim finance to companies that are undergoing insolvency processes. “It is in the interest of the existing lenders to provide interim finance since improved valuation would result in better resolution plans and lenders would benefit since, they are placed high in the waterfall mechanism,” opined Mital in the latest quarterly Newsletter of IBBI. Interim finance is a part of CIRP cost which is given priority in payment over other debts- both in resolution plan and during liquidation.

For More Details, Please Visit: <https://economictimes.indiatimes.com/industry/banking/finance/ibbi-chairman-nudges-lenders-to-provide-interim-finance-to-a-company-facing-insolvency-proceedings/articleshow/93776749.cms>

USA’s Medical Imaging and X-ray company ‘Carestream’ files for bankruptcy protection

Medical Imaging Company – Carestream Health files for Chapter 11 Bankruptcy protection in the United States. According to media reports, the lenders “overwhelmingly” voted for a plan to advance a pre-existing agreement in April by means of a pre-packaged restructuring plan. It is expected that the plan would wipe out around \$470 million of debt, which would top the previous agreement by some \$250 million.

For More Details, Please Visit: <https://radiologybusiness.com/topics/healthcare-management/business-intelligence/carestream-seeking-chapter-11-protection>



Passing of Resolution Plan for CD does not ipso facto discharge its Personal Guarantor/s: Delhi HC

Delhi High Court has held that the discharge of a CD from the debt owed by it to its creditors, by way of CIRP, does not absolve the guarantor of its liability since it arises out of an independent contract.

Thus, the Financial Creditor (FC) certainly has the right to proceed against the collateral securities for recovery of its dues - which are independent of the Resolution Plan approved by the NCLT, said the Court in the matter of *Sanjay Sarin Vs. Canara Bank & Ors.* In this regard, the Court relied on Supreme Court judgement in the matter of *Lalit Kumar Jain Vs. Union of India*. It also held that the extent of liability of a PG would have to be determined in light of the agreement between the borrower, i.e., the CD, and the PG.

For More Details, Please Visit: <https://ibbi.gov.in/uploads/order/f4a5f77dbc261a64bd853d05f8410365.pdf>

Event Photograph



A snapshot of the session on “Guidance on Ethics and Quality Control in Insolvency Profession” conducted by IIPI on August 27, 2022.

LIE Classroom (Virtual) Program to start from 20th September

IIPI jointly with Committee on Insolvency and Bankruptcy Code (IBC) of ICAI has announced to conduct next batch of Limited Insolvency Examination Preparatory Classroom (Virtual) Program from 20th to 24th September 2022.

The program will be conducted via online mode and for a total duration of 40 hours. The fee for the course is ₹7,500/-. Besides the program, online study material is also available.

ICAI members who attend the program will be provided 15 CPE hours. Last day to register is one day prior to the respective batch.

For More Details, Please Visit:

<https://www.iiipicai.in/wp-content/uploads/2022/08/FLYER-PUEF-EDP-4th-batch-.pdf>