



**INDIAN INSTITUTE OF INSOLVENCY PROFESSIONALS OF ICAI**

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# IIPI Newsletter

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### IIPI jointly with British High Commission to host workshop on 'Cross Border Insolvency'

IIPI jointly with British High Commission is organizing a Workshop (online) on "Cross Border Insolvency" on October 21, 2022. Shri Sudhakar Shukla, WTM, IBBI will address the Inaugural Session starting 2.30 PM. Besides, Ms. Sue Ann Gan, Partner, Norton Rose Fulbright, Singapore; Mr. Mark Craggs, Partner, Norton Rose Fulbright, London; CA Nipun Singhvi, Partner, NSA Legal, India; and CA. Vijay V. Iyer, Partner, Deloitte India Insolvency Professionals LLP will also address the Workshop.

**For More Details, Please**

**Visit:** [https://www.iiipicai.in/wp-content/uploads/2022/10/Flyer\\_Cross-Border-Insolvency\\_21-October-2022\\_V2.pdf](https://www.iiipicai.in/wp-content/uploads/2022/10/Flyer_Cross-Border-Insolvency_21-October-2022_V2.pdf)



## News Update

*\*For Internal Circulation Only*

*\*Knowledge SBU Initiative*

### **RBI Allows Asset Reconstruction Companies to be Resolution Applicant in CIRPs under IBC, 2016**

On October 11, 2022, the Reserve Bank of India (RBI) issued a revised "Regulatory Framework for Asset Reconstruction Companies (ARCs)", which permits them to undertake activities as Resolution Applicant (RA) under the IBC. However, only those ARCs which have a minimum net owned fund of ₹1000 crore, and a board-approved policy will be able to take up the role of resolution applicant.

"In respect of a specific Corporate Insolvency Resolution Process (CIRP), the ARCs shall not retain any significant influence or control over the Corporate Debtor after five years from the date of approval of the Resolution Plan by the Adjudicating Authority under IBC. In case of non-compliance with this condition, the ARCs shall not be allowed to submit any fresh resolution plans under IBC either as a resolution applicant or a resolution co-applicant," said the Notification issued by the RBI. The revised regulatory framework also makes it mandatory for ARCs to make additional disclosures in their financial statements on assets acquired under IBC. This will be in addition to the existing disclosures they are required to furnish in their financial statements. Earlier, the ARCs were allowed only enter into the businesses mentioned under Section 10 (1) of the SARFAESI Act such as securitization and asset reconstruction etc. The revised guidelines have been issued under Section 10 (2) of the SARFAESI Act.

**For More Details, Please Visit:** <https://rbi.org.in/Scripts/NotificationUser.aspx?Id=12399&Mode=0>

## News Roundup

### **NCLT approved Viraki consortium's Resolution plan for Himadri Foods Ltd.**

The NCLT has approved Viraki consortium's resolution plan to turn around the bankrupt Himadri Foods Ltd. The resolution plan, which was duly approved by the lenders through a majority vote of 87.15% in March this year, is worth ₹35.61 crore. The aggregate of the average of Fair Value of all the assets is ₹32.44 crore and that of the liquidation value of all the assets is ₹24.72 crore. A committee consisting of a representative of the resolution applicant and lender, each, along with resolution professional (monitoring agent) for overseeing the implementation of the resolution plan has been constituted. The CIRP application was filed by an Operational Creditor of the Company on December 09, 2020.

**For More Details, Please Visit:** <https://www.livemint.com/companies/news/nclt-okays-viraki-consortium-plan-for-himadri-foods-under-ibc-11665569866021.html>

### **CIRP commences for Punjab based GVK Power**

NCLT Hyderabad has ordered commencement of CIRP of GVK Power (Goindwal Sahib) Ltd. which operates two thermal power plants in Punjab of 270 MW each in Punjab. This is the second company of the GVK group, after GVK Industries to be admitted for insolvency proceedings. According to the petition filed by Axis Bank, the company has dues of around ₹ 3,000 crore. GVK power has some legal disputes with Punjab State Government. In October 2021 the State Government had terminated a Power Purchase Agreement (PPA) with the company on the ground of higher tariff.

**For More Details, Please Visit:**

<https://economictimes.indiatimes.com/industry/energy/power/nclt-admits-gvk-power-goindwal-sahib-for-corporate-resolution-on-axis-banks-petition/articleshow/94769689.cms>

### **Creditors' Interest Duty Arises when Company Directors Know/ Ought to Know that a Company is Insolvent/ is Bordering on Insolvency/is Likely to Become Insolvent: UK Supreme Court**

The judgment modifies the previous Court of Appeal decision in *BTI 2014 LLC Vs. Sequana SA* (2019) EWCA Civ 112, which provided that the creditors' interest duty applies when the directors know or ought to know that a company is or is likely to become insolvent and/or if there is a real and not a remote risk of insolvency. The Court also made it clear that the creditors' interest duty is not a separate duty owed directly to creditors but that such duty forms part of company directors' general fiduciary duty to act in the interests of the company.

**For More Details, Please Visit:** <https://www.mondaq.com/uk/insolvencybankruptcy/1239456/uk-supreme-court-rules-on-creditors-interest-duty39>



### **CD's Account attachment by PF Department in before CIRP initiation can't continue during CIRP: NCLAT Chennai**

Adjudicating in the matter of *Mr. B. Parameshwara Udpa Vs. Assistant PF Commissioner & Anr*, the NCLAT Chennai Bench held that Section 14(1)(a) of the IBC imposes complete embargo on any proceeding against the Corporate Debtor (CD) by any Authority till CIRP completion.

“Moratorium covers attachment of Bank accounts by any Authority including ‘EPFO’ and it is required to be lifted to grant CD a fair chance of revival and to ensure that Resolution Plans are received,” said the NCLAT. In this case, the Assistant PF Commissioner had attached the Bank Account of the CD before commencement of CIRP. However, Resolution Professional had written him to release the Bank Account. The legal question before the NCLAT was whether an ‘Attachment Order’ on CD's bank account that was imposed before the initiation of CIRP, can continue during Moratorium?

**For More Details, Please Visit:**

<https://www.livelaw.in/news-updates/nclat-chennai-employees-provident-fund-organization-moratorium-corporate-insolvency-resolution-process-cirp-211342>