

## IBC News

### First Flight Couriers admitted in to CIRP

The petition for commencement of Corporate Insolvency Resolution Process (CIRP) of the First Flight Couriers, one of the major courier service companies in India was filed by an Operational Creditor Srinidhi Comprint Pvt. Ltd. which provided printing services to the company. According to the petition, there was a default of about ₹1.44 crore. During the hearing in the NCLT Mumbai, the counsel of the corporate debtor admitted the liability as well as default and submits that they are not in a position to repay its dues. She further stated that the employees of the company have also went on strike because of nonpayment of salaries etc. Admitting the petition, the Court also ordered the applicant to deposit a sum of Rs.5 lakh with the IRP to meet the expenses of the insolvency process. For More Details,

**Source:** <https://ibbi.gov.in/uploads/order/42744704f4aa0d05f568d7113b715a8e.pdf>

### Industry body urged FM to amend IBC in the interest of survival of MSMEs

In a letter to Union Finance Minister Ms. Nirmala Sitharaman, Mangaluru (Karnataka) based Kanara Chamber of Commerce and Industry (KCCI) has urged the Central Government to include MSMEs under Section 53 (1) (b) along with workmen's dues.

“When MSMEs do business with some Limited Liability Companies that are later referred to NCLT, they stand no chance of recovering their dues. This is because MSMEs do not have the resources or the expertise to analyse their customers' creditworthiness,” said M. Ganesh Kamath, President of KCCI. He contended that unless this is done the very survival of MSMEs is challenging.”. The Section 53 provides waterfall mechanism for distribution of proceeds obtained from resolution or liquidation of the corporate debtor. The Section 53 of the IBC, 2016 provides waterfall mechanism for distribution of proceeds of the CD.

**Source:** *The Hindu*, October 06, 2022

<https://www.thehindu.com/news/cities/Mangalore/kcci-urges-centre-to-amend-insolvency-and-bankruptcy-code-in-the-interest-of-msmes/article65971748.ece?homepage=true>



### About 50% posts of NCLT Members are vacant

Presently, the NCLT has a total of 28 benches across the country with a sanctioned strength of 63 members, which includes 31 members each from judiciary and technical sides headed by its President in New Delhi. Besides, the NCLTs are also facing shortage of infrastructure and supporting staff including court officers. Speaking to media, NCLT Bar Association Secretary Mr. Saurabh Kalia said that only half of the benches are working with full strength. “The other half works sometime in the morning and sometimes in the afternoon. Sometimes it also works in wee hours,” said Mr. Kalia.

**Source:** *The Pioneer*, October 10, 2022

<https://www.dailypioneer.com/2022/business/clouds-of-resolution-period-delay--nclt-manpower-crunch-over-ibc---sheen-.html>

### Australia starts a comprehensive review of its insolvency framework

The review is aimed at assessing effectiveness of Australia's corporate insolvency laws in protecting and maximizing value for the benefit of all interested parties and the economy. This review has been undertaken by the Federal Government's Parliamentary Joint Committee on Corporations and Financial Services on recommendations of various stakeholders including industries and is expected submit the report by November 30, 2022. The Committee will investigate seven broad areas of the insolvency laws including impact of Covid-19, operation of personal securities, potential areas of reform, supporting businesses in managing financial distress, role of IPs, role of government agencies, and any other related issues.

**Source:** *Lexology*, October 04, 2022

<https://www.lexology.com/library/detail.aspx?g=e9ae6328-3247-4184-a55d-ca49e60c504a>

### Finance Minister urges RPs and IBBI to step up to fresh challenges from global turmoil

Finance Minister Smt. Nirmala Sitharaman while addressing the sixth annual day of the Insolvency and Bankruptcy Board of India (IBBI) has called for greater efforts from Resolution Professionals (RPs) to avoid fingers being pointed at deals wherein banks should take a hefty haircut on loans sanctioned.

The Minister also sought steps from the IBBI for early identification of rising stress in some companies due to the global disruptions underway and asked for an assessment on why Pre-Packaged Insolvency Resolution Process (PPIRP) for MSMEs was yet to find traction. “I cannot afford to say sorry, 95% haircut for the bank is the best resolution I can give you,” said the Minister. She also called for more attention on systemically important companies which are very critical to the economy. Though some cases may be 'so pathetic' that only 'junk value' can be derived, this could not be a feature of the IBC or RPs' abilities, she opined. She also highlighted the need for early resolution and early highlighting of the distress. She urged the IBBI to keep their 'ears to the ground' as many companies were linked to their global peers or group companies and even small enterprises were dependent on foreign players for some technology or some equity.

The Minister concluded with the remark that the IBBI should be 'on its toes' so that they were conscious about the necessary interventions as the Indian Economy can't afford to ignore the liquidation suffer or early stress warnings which are coming up.

**Source:** *The Hindu*, October 01, 2022

<https://www.thehindu.com/business/impossible-to-accept-95-haircuts-for-banks-under-ibc-sitharaman/article65959934.ece>

### NCLT disposed of insolvency cases amounting ₹10.5 lakh crore

NCLT President Chief Justice (Retd) Ramalingam Sudhakar while delivering the sixth annual day lecture of IBBI stated that for the period between November 01, 2017 to August 01, 2022, NCLT has disposed 25,225 cases under Sections 7, 9 and 10 of IBC, involving ₹ 10,49,264 crores. Out of the total, 23,608 cases involving an amount of ₹7,21,282 crore have been settled before admission. Resolution plans have been approved in 565 cases,

involving an amount of ₹3,03,381 crore, he added.

**Source:** *The Economic Times*, October 01, 2022

[https://economictimes.indiatimes.com/news/economy/policy/nclt-disposed-of-insolvency-cases-involving-nearly-rs-10-5-lakh-crore-justice-ramalingam-sudhakar/articleshow/94588810.cms?utm\\_source=contentofinterest&utm\\_medium=ext&utm\\_campaign=cppst](https://economictimes.indiatimes.com/news/economy/policy/nclt-disposed-of-insolvency-cases-involving-nearly-rs-10-5-lakh-crore-justice-ramalingam-sudhakar/articleshow/94588810.cms?utm_source=contentofinterest&utm_medium=ext&utm_campaign=cppst)

### Ex-promoters can't hold stake in insolvent firm, says Supreme Court

While hearing the Bhushan Steel case, where the promoters were holding onto a 2.35 % stake even after Tata Steel acquired a 72.65 % stake in the company, the Supreme court ruled that ex-promoters cannot hold a stake in the insolvent firm. The two-judge bench observed that there is no ground for review order passed by the National Company Law Appellate Tribunal (NCLAT) which dismissed the appeal. The Court stated that calling the resolution plan shall not be workable at all. It further added that the appellants are the erstwhile promoters and therefore they cannot be continued to be in the company in any capacity may be as shareholders. The resolution plan is a key document that determines the future liability as well as rights of the outgoing promoters on their shareholding in the company.

**Source:** Business Standard, October 03, 2022

[https://www.business-standard.com/article/current-affairs/ex-promoters-can-t-hold-stake-in-insolvent-firm-says-supreme-court-122100300091\\_1.html](https://www.business-standard.com/article/current-affairs/ex-promoters-can-t-hold-stake-in-insolvent-firm-says-supreme-court-122100300091_1.html)

### SBI approaches NCLT to initiate CIRP of Jaiprakash Associates Ltd. (JAL)

In its CIRP petition, the State Bank of India (SBI) has claimed “persistent defaults” by JAL which remained “irregular, despite the restructuring” throughout in making the payments. As per the petition, the total default on the JAL is about ₹6,893.15 crore. Several Jaypee Group companies namely Jaypee Infratech and Andhra Cement are already facing insolvency proceedings. JAL was part of the RBI's list of 26 big loan defaulters to commercial banks for initiating bankruptcy proceedings in August 2017. Earlier, ICICI Bank had also filed the insolvency petition in September 2018 which is pending before the NCLT.

**Source:** *Zee News*, September 30, 2022

### Celsius CEO allegedly withdrew \$10 million just weeks before it froze customer funds & filed for bankruptcy protection

Celsius Network had filed for Chapter 11 Bankruptcy in USA in July on the grounds of extreme market conditions and about \$1.19 billion deficit. During the process, it has been revealed that Alex Mashinsky, the founder and former CEO of the company, allegedly withdrew \$10 million from the crypto lending platform just weeks before it froze withdrawals and transfers for its 1.7 million customers. After this expose, he has decided to step down.

**Source:** *Financial Express, October 03, 2022*

<https://www.financialexpress.com/blockchain/celsius-founder-withdrew-10m-before-bankruptcy-filing-ft/2698892/>

### NCLT orders CIRP of Asian Hotels on petition of an asset reconstruction co.

Asian Hotels Ltd. (West) owns Mumbai's Hotel Hyatt Regence and JW Marriott Hotel, New Delhi Aerocity (through its subsidiary). This order came on a petition filed by JM Financial Asset Reconstruction Co. Ltd. on a default over ₹264 crores. Yes Bank Ltd. had provided credit facilities to Asian Hotels Ltd. As it failed to pay the dues, the Bank declared this account as NPA and filed an application under Section 7 of the IBC to initiate CIRP. Meanwhile, the Yes Bank Ltd. assigned the debt to JM Financial Asset Reconstruction Co. Ltd., which pursued the matter.

**Source:** *Live Law, September 25, 2022*

<https://www.livelaw.in/news-updates/nclt-delhi-asian-hotels-hyatt-regency-corporate-insolvency-resolution-process-cirp-210210>

### NCLT ordered CIRP of Ajnara Builders on petition of homebuyers

The petition for initiation of insolvency proceedings of the company was filed by 128 homebuyers on a reportedly delayed project in Noida. In their petition, the homebuyers have alleged that the respondent (developer) taking advance payments raised a total financial debt of ₹50 crore only from the applicants but failed to fulfil its commitments and defaulted in construction of the project. The NCLT has also directed Ajnara Ltd. to deposit ₹2 lakh to meet immediate expenses. As per the agreement, the buyers were promised possession within three years from

the date of agreement most of which were executed between 2012 to 2014. The project was being built at a land area of approximately 1,42,967 sq in Sector 118, Noida.

**Source:** *Zee News, September 21, 2022.*

<https://zeenews.india.com/real-estate/nclt-admits-homebuyers-insolvency-petition-against-ajnara-builder-to-appeal-in-nclat-2512562.html>

### Welspun Corp wins bid to acquire ABG shipyard through liquidation

The Liquidator of ABG shipyard has announced that Welspun Corp has won the bid to acquire ABG shipyard in ₹659 crore plus taxes. According to media reports, the partially built obsolete ships and scrap acquired under Welspun Corp is estimated to be over ~ 150,000 MT. Welspun Corp jointly with its subsidiary Nauyaan Shipyard would acquire the ABG asset at Dahej, in Gujarat. The asset is spread over 165 acres of leasehold land with 1,000 meter of water frontage. ABG Shipyard is among 'Twelve Large Accounts' the RBI had initially identified for insolvency proceedings under the IBC.

**Source:** *The Economic Times, September 23, 2022*

<https://economictimes.indiatimes.com/industry/transportation/shipping/-/transport/welspun-corp-wins-bid-for-abgs-shipyards/articleshow/94383619.cms>

### Russia-Ukraine War: Insolvency cases rise by 26% in Germany

As per the reports, the increased cost of fuel supply has forced several energy intensive companies, which were otherwise successful, to bankruptcy. A study by IWH Economic Institute said some 718 German entities became insolvent in August, a 26% jump over the previous year. It expects that figure to stay at around 25% in September and climb to 33% in October. The annual energy price increase in Germany in August on average was 139%, reported local media quoting latest weekly 'producer price data'. In a BDI survey of 593 businesses, more than a third said their existence was threatened by higher energy prices, up from 23% in February.

**Source:** *Euro News, September 21, 2022.*

**Lenders recovered more than 100% of principal amount from resolution of UP's power company**

Termed as India's largest stressed asset in the transmission sector, Southeast UP Power Transmission Company has been acquired by Power Finance Corporation (PFC), a public sector utility of the Central Government through a Resolution Plan. The project comprised of about 1,500 km of 765 KV and 400 KV transmission lines and five substations in Uttar Pradesh (UP). The transaction involves a one-time upfront settlement amount of ₹3,251 crore along with a pay-out plan.

**Source:** *The Hindu Business line, September 18, 2022*

<https://www.thehindubusinessline.com/companies/pfc-successfully-resolves-cirp-of-indias-largest-stressed-transmission-asset/article65903445.ece>

**Supreme Court imposed ₹10 lakhs fine on two entities for seeking 'revision' of order under the grab of seeking 'modifications and clarification' on Resolution Plan**

This cost was imposed in the matter of *Ghanashyam Mishra and Sons Pvt Ltd Vs. Edelweiss Asset Reconstruction Company (EARC) Limited & Ors.*, after the Supreme Court observed that they were seeking revision of its order under the grab of 'modifications and clarifications' in the Resolution Plan. "We find that there is a growing tendency of indirectly seeking review of the orders of this Court by filing applications either seeking modification or clarification of the orders passed by this Court. In our view, such applications are a total abuse of process of law," said the Bench of the Supreme Court constituting Justice B. R. Gavai and P. S. Narasimha. The EARC had moved a Miscellaneous Application for clarification towards the aspect of security of pledge of shares with EARC having allegedly been 'arbitrarily and illegally wiped out' in the Resolution Plan.

**Source:** *Bar & Bench, September 19, 2022*

<https://www.barandbench.com/news/litigation/growing-tendency-indirectly-seek-review-under-garb-clarification-supreme-court-20-lakh-costs>

**Facing financial crisis due to seizer, Google's Russian subsidiary files for bankruptcy**

Google, the Russian subsidiary of USA's tech giant Google, plans to file for bankruptcy after authorities seized its bank account, making it impossible to pay staff and

vendors, but free services including search and YouTube will keep operating. It has been under pressure in Russia for months for failing to delete content Moscow deems illegal and for restricting access to some Russian media on YouTube, but the Kremlin has so far stopped short of blocking access to the company's services.

**Source:** *Reuters, September 19, 2022.*

<https://www.reuters.com/markets/europe/googles-russian-subsiary-files-bankruptcy-document-2022-05-18/>

**Supreme Court allowed implementation of Resolution Plans for Reliance Commercial Finance Ltd. (RCFL)**

Though the Supreme Court upheld that the norms of Securities and Exchange Board of India (SEBI) took precedence over the guidelines of the Reserve Bank of India (RBI), it gave a go-ahead to the Resolution Plan of the Corporate Debtor to avoid further delays "if voting is called afresh". The Reliance Commercial Finance Ltd. (RCFL) was controlled by industrialist Anil Ambani.

SEBI had filed an appeal seeking stay on voting by creditors because it wanted all bond holders to participate in such votes, contrary to the debenture trust deed (DTD) and RBI guidelines that expect only 75% of the bondholders to vote. The order came more than a year after lenders had approved it. "The different voting mechanism proposed under the SEBI circular will further delay the resolution process and potentially disrupt the efforts undertaken by the stakeholders, including the retail debenture holders. Such unscrambling of the resolution process will not only prove time-consuming but may also adversely affect the agreed realized gains to the retail debenture holders, who have already consented to the negotiated settlement before the High Court," said a three-judge bench of the Apex Court headed by justice DY Chandrachud.

**Source:** *India Daily Main, September 03, 2022.*

<https://indiadailymail.com/industry/anil-ambanis-rcfl-resolution-plan-to-go-ahead-after-sc-nod/>

**NCLAT set aside Yes Bank's CIRP petition against Mack Star as the term loan was found to be "Collusive in Nature"**

The tribunal in its order observed that the term-loan provided by Yes Bank to Mack Star was an 'eye-wash' and

'collusive in nature'. As per the records, more than 99 percent of the sanctioned amount of ₹147.6 crore by Yes Bank in Mack Star's name was returned to the bank on the same day or within a short period of time. "The chequered history of the loan transactions and collusive arrangements indulged by Yes Bank demonstrates that the Term Loans disbursed in the name of Mack Star is an 'eyewash' and Yes Bank has disbursed these loans with an ulterior motive," said the NCLAT.

**Source:** Zee News, September 10, 2022.

<https://zeenews.india.com/companies/yes-bank-faces-big-action-over-unfair-loan-transactions-nclat-sets-aside-insolvency-proceedings-against-mack-star-2507863.html>

### **Limitation period should not be counted from the date of delivery of the Certified Copy but from the date of its preparation: NCLAT**

While dismissing an appeal for being time barred, NCLAT, Principal Bench, New Delhi, in the case of *Wadhwa Rubber Vs. Bandex Packaging Pvt Ltd* has observed that the limitation period is to be counted from the date of preparation of the certified copy and not from the date of when it was delivered to the applicant. The Bench opined that, "the certified copy being prepared on February 17, 2021. If the limitation is to be counted from February 17, 2021, the same had expired much earlier than the date of filing the appeal on August 04, 2021." Hence, the appeal was said to be barred by limitation.

**Source:** Live Law, September 05, 2022.

<https://www.livelaw.in/news-updates/nclat-delhi-section-9-of-the-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-limitation-208461>

### **NCLATs "hybrid" order ensured delivery of flats to homebuyers**

A group of homebuyers had filed insolvency petition against a housing project of RG Group in Greater Noida in September 2019. The case went to NCLAT, which in February 2020 ordered the project developer to work with the Resolution Professional (RP), instead of bringing in another company. The project developer took all the stakeholders into confidence and restarted the construction. On September 09, 2022, it delivered keys to 17 homebuyers for fit outs with the promise that 800 buyers will get their flats in the next three months. The

Company also promised to deliver all the remaining flats by March 2023. "The judiciary's support through this order gave a wonderful result. A hybrid kind of order not only rescued the project but also restored the faith of homebuyers and other stakeholders," said the Resolution Professional.

**Source:** DNA, September 09, 2022

<https://www.dnaindia.com/business/report-greater-noida-good-news-for-1700-homebuyers-as-new-order-paves-way-for-delivery-of-rg-luxury-homes-2983938>

### **Overall recovery rate till Q1 of FY 2022-23 was 30.6 per cent, better than the earlier rate of around 26 per cent: Analysis**

Realisable value of financial creditors (FCs) rose from ₹2,25,293.8 crore to ₹2,35,093.6 crore which is 32.9 per cent and 30.6 per cent respectively, according to an analysis by Care Ratings. The total admitted claims of financial creditors rose from ₹6,84,901.3 crore in March 2022 to ₹7,67,384.9 crore in June 2022, while the liquidation value of these cases remained more or less the same at ₹1,31,447.9 crore and ₹1,31,468.6 crore respectively. However, according to the report, the cumulative recovery rate has been on a downtrend, decreasing from 43 per cent in Q1FY20 and 32.9 per cent in Q4FY22 because larger resolutions have already been executed and a significant number of liquidated cases were either BIFR cases and/or defunct.

**Source:** Zee business, September 03, 2022.

<https://www.zeebiz.com/india/news-nclt-recoveries-improve-to-306-in-q1fy23-from-26-in-q1fy22-197151>

### **NCLT rejects Resolution Plan for violating Waterfall Mechanism and selectively favouring certain creditors**

The National Company Law Tribunal, Ahmedabad, in the case of *M/s. Sansar Texturisers Pvt. Ltd. v. M/s Polycoat India Pvt. Ltd.* has rejected the Resolution Plan of a Successful Resolution Applicant that breached the waterfall mechanism of payments and favoured only certain creditors without providing any reason for the same.

**Source:** Live Law, September 08, 2022.

<https://www.livelaw.in/amp/news-updates/nclt-ahmedabad-successful-resolution-applicant-resolution-plan-section-7-of-the-insolvency-and-bankruptcy-code-207837>

### 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.

**Source:** *Live Law, August 26, 2022.*

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

### About 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) make up 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.

**Source:** *Business Standard, September 07, 2022.*

<https://www.businesstoday.in/latest/corporate/story/47-closed-cases-under-ibc-in-liquidation-till-june-ibbi-306068-2021-09-07>

### 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.

**Source:** *Business Standard, August 27, 2022.*

[https://www.business-standard.com/article/economy-policy/ibc-will-have-overriding-effect-over-indirect-tax-recoveries-rules-sc-122082601213\\_1.html](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.

**Source:** *The Economic Times, August 26, 2022.*

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