

IBC News

Initiation of CIRP to recover debt would not absolve accused from criminal liability in cheque dishonour cases: Supreme Court

The Supreme Court of India has clarified that the proceedings under Section 138 of the Negotiable Instruments (NI) Act are not recovery or suit proceedings, but penal in character. The three judges' bench also rejected the argument that process under the IBC whether under Section 31 or Sections 38 to 41 which can extinguish the debt would *ipso facto* apply to the extinguishment of the criminal proceedings.

This means that the criminal liability and fines imposed on individuals who dishonour a negotiable instrument are intended not only to recover the debt owed but also to penalize the person for affecting trade by not honoring the instrument. The judgement came in the matter of *Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd. (2023)* wherein the Appellant (Promoter) argued that once the debt was extinguished under the IBC, the basis of Section 138 of the NI Act disappeared. The Apex Court denied intervening in the Delhi High Court's order that had refused to set aside a magistrate order rejecting the discharge application of the Appellant in a ₹30 crore default case. The Apex Court observed that the scope of proceedings under the NI Act and IBC are different and do not intercede with each other. It was further clarified that the clauses in the concerned resolution plan only extinguished the liability of the Corporate Debtor, and not the individual accused.

Source: *Bar & Bench, March 17, 2023*

<https://www.barandbench.com/news/litigation/cheque-bounce-cases-not-civil-proceedings-no-discharge-insolvency-supreme-court>

NCLT Approves GAIL's Resolution Plan for JBF Petrochemicals

NCLT, Mumbai has approved GAIL India's Resolution Plan worth ₹2,079 crore for JBF Petrochemicals, which owed ₹7,918 crore to a consortium of creditors led by IDBI Bank. The Resolution Plan offers a 43.23% recovery to secured lenders and a recovery of 5.7% and 6.9% for unsecured creditors and operational creditors, respectively. With this deal, GAIL became the second PSU after Indian Oil Corporation (IOC) to take over a bankrupt



private sector company through the IBC. JBF Petrochemicals' plant in Karnataka, which was commissioned in 2017, stopped operations after the company defaulted on its loans in the same year.

Source: *Business Standard, March 14, 2023*

https://www.business-standard.com/article/companies/nclt-approves-gail-s-rs-2-079-cr-resolution-plan-for-jbf-petrochemicals-123031401341_1.html

Welspun-led consortium gets NCLT nod to acquire Sintex BAPL through Resolution Plan

Welspun is acquiring Sintex-BAPL through a consortium of its subsidiary, Propel Plastic Products, and a related party Plastauto Pvt Ltd. Its resolution plan was approved by the committee of creditors in February with a 74.26% vote. The Company had an outstanding dues of about ₹3,266 crore. Sintex BAPL was declared insolvent and entered the insolvency resolution process under IBC in December 2020. Two bidders, JM Financial Asset Reconstruction Co. Ltd. and a consortium made up of Welspun's Propel Plastic Products Pvt. Ltd. and Plastauto Pvt Ltd had submitted resolution plans.

Source: *The Hindu Businessline, March 17, 2023*

<https://www.thehindubusinessline.com/companies/nclt-approves-welspun-corps-resolution-plan-for-sintex-bapl/article66631561.ece>

There is no legal disability for the Liquidator in exercising any of the methods of sale stipulated under Regulation 32: NCLT

NCLT, New Delhi Bench has held that the Regulation 32 of Liquidation Regulations itself provides requisite flexibility in choosing the methods of sale during the auctions after the first auction, and there is no requirement in law seeking permission of the AA. The Bench clarified that the Liquidator is under no obligation to seek permission of the AA for choosing the method of sale.

This judgement came in the matter of *Mr. Surinder Manchanda Vs. Nolsar International Limited*. In this case,

the corporate debtor could not be sold as a going concern in the first round of bidding. After conducting several rounds of bidding, the Liquidator found a willing buyer. Thereafter, he sought the indulgence of the AA because, according to him, Regulation 32A (4) of the IBBI (Liquidation Process) Regulations, 2016 puts a bar on sale of the corporate debtor as a going concern in subsequent auctions.

Source: *Livelaw.in, March 09, 2023*

<https://www.livelaw.in/news-updates/no-bar-on-sale-of-corporate-debtor-as-a-going-concern-after-first-auction-permission-of-aa-not-required-nclt-delhi-223361>

Suraksha Group's Resolution Plan got NCLT approval to takeover Jaypee Infratech Ltd.

The Resolution Plan of Suraksha Realty Ltd. and Lakshdeep Investments and Finance Pvt Ltd. has recently received the approval of NCLT, New Delhi. This order came as a big relief to about 20,000 homebuyers who had invested their hard-earned money to get a home in the National Capital Region (NCR).

As per the Resolution Plan, the Successful Resolution Applicant (SRA) is liable to infuse ₹125 crore as equity and ₹125 crore debt in Jaypee Infratech within 90 days of the approval date. Furthermore, the SRA will arrange loan/credit facility of ₹3,000 crore within 90 days of the approval date, to be utilized as and when required, on need basis for completion of the projects. Besides, Jaypee Infratech Ltd (JIL) will be delisted and public shareholders will be given an aggregate exit at a price of ₹0.14 crore. The institutional financial creditors (banks) will get “zero coupon Non-Convertible Debentures (CSDS)” amounting ₹1,280 crore and 2,550 acres land worth ₹6,457 crore (fair market value).

Suraksha Group was declared SRA with 98.66% of votes in the fourth round of the bidding process. In addition to about 12 banks, homebuyers had also exercised their voting rights through their representatives. The state owned NBCC, that stood second, got 0.12% less votes than Suraksha Group in the CoC meeting.

Source: *The Economic Times, March 09, 2023.*

<https://economictimes.indiatimes.com/industry/services/pr-ope-ty/-cstruction/jaypee-infra-insolvency-suraksha-group-to-infuse-rs-250-crore-arrange-rs-3000-crore-loan-to-complete-20000-flats/articleshow/98522473.cms>

RP detected ₹14,809 cr. PUFÉ transaction in Future Retail

Future Retail Ltd. (FRL), which is undergoing CIRP, has submitted that the RP of the Corporate Debtor has filed an application before NCLT Mumbai against director/erstwhile directors of the company under Section 66(2) and Section 67 read with Section 60 (5) of the IBC. In this application, the RP has sought direction from AA against the respondents to the said application to contribute the PUFÉ amount to FRL. The CIRP of FRL was initiated in June 2022 on an application by Bank of India alleging a default of ₹856 crores. So far, the RP has received claims of ~₹ 19,000 crore from financial creditors.

Source: *The Indian Express, March 12, 2023*

<https://www.newindianexpress.com/business/2023/mar/12/resolution-professional-alleges-detection-of-rs-14809-crore-false-transactions-offuture-retail-2555202.html>

It is equally important for the creditors to play a catalytic role in CIRP given the present regime of creditor-driven IBC: NCLAT

“Shifting the entire blame on the IRP on grounds of non-performance of duty and making him the scapegoat does not appear to be justified,” observed NCLAT, New Delhi. “The rigours of similar standards of discipline should also apply on the creditors,” said the Court and directed the Operational Creditor to reimburse a rational amount of fee to the IRP.

These observations were put on record by the NCLAT after it was discovered that CIRP process was hindered due to want of cooperation and participation from the creditors but only IRP was being blamed for all this. The Court further observed that M/s Shri Guru Containers, which as an Operational Creditor had filed CIRP application against the CD, did not seem interested in resolution process. The conduct of the Operational Creditor in the present case is deprecatory in that once the CIRP process had commenced, the Operational Creditor went into a sleeping mode. It was further noticed by the Court that Operational Creditor has failed to substantiate any lapses or deficiency in the performance of duties by the IRP including the non-constitution of CoC. The Court further noticed that as a substantial portion of the period was hit by the lockdown arising out of the Covid outbreak, the IRP should get a rational amount of fee. Finally, the Court fixed a rational

amount of fee and ordered the Operational Creditor to pay the same to IRP.

Source: *Company Appeal (AT) (Insolvency) No.106 of 2023*

<https://ibbi.gov.in/uploads/order/769a7073386674318687baf27d57b940.pdf>

NCLAT allowed CoC to go for second round of e-auction of Reliance Capital

Allowing the second round of auction, NCLAT held that decision of the CoC taken on January 6, 2023, to undertake an extended challenge mechanism is not violative of Regulation 39(1A) of CIRP. It held that the CoC is fully empowered as per the clauses of RFRP to further negotiate with one or more resolution applicants, even after completion of challenge mechanism dated Dec. 2022. NCLAT also asked the CoC to fix a date after two weeks for holding the revised challenge mechanism. Initially, Torrent stood as the highest bidder, but CoC called for second round of auction after a late bid by IIHL.

Source: *The Indian Express, March 03, 2023*

<https://indianexpress.com/article/cities/mumbai/nclat-clears-second-auction-for-rcap-8476411/>

Reduced Consumptions responsible for rise in Swedish Bankruptcy

Sweden has witnessed an increase in the number of bankruptcies by 11% in the month of February this year compared to 2022. According to the credit reference agency UC, retailers and the motor vehicle trade were the hardest hit by defaults last month. "It is still hard to be too optimistic, as more rate increases are expected and inflation isn't slowing at the pace that we would like to see," said UC economist Johanna Blome. The largest Swedish company that filed for bankruptcy in February was air carrier Air Leap, with annual sales of 278 million kronor (\$27 million).

Source: *BNN Bloomberg, March 01, 2023*

<https://www.bnnbloomberg.ca/swedish-bankruptcies-rise-as-lower-consumption-hits-retailers-1.1889601>

Sugarcane Farmers demand voice in CIRP of Bajaj Hindusthan Sugar

According to media reports, Agragami Kissan Samiti, a farmers' body in Uttar Pradesh has filed a petition before the Adjudicating Authority (NCLT) claiming farmers had supplied sugarcane to the company and have outstanding

dues which have not been paid. Under IBC, 2016, the farmers are treated as operational creditors, who have no voice in the CoC. Bajaj Hindusthan Sugar, helmed by Mr. Kushagra Bajaj, is the largest sugar manufacturer in India. The CIRP against company has been initiated by SBI over dues of about ₹5,000 crores.

Source: *The Economic Times, February 21, 2023*

<https://economictimes.indiatimes.com/news/economy/agriculture/farmers-move-nclt-over-bajaj-sugar-insolvency-process/articleshow/98104031.cms?from=mdr>

Commercial Wisdom of CoC and its ability to negotiate with the Resolution Applicant has resulted in Value Maximization

Through negotiations, the CoC has been successful in getting significantly higher value over and above the initial proposal made by the highest bidder in the Resolution Plan. According to a media report, there are several examples for the success of CoC's commercial wisdom and the ability to renegotiate to get a better deal for the stakeholders of a corporate debtor. In the case of DHFL, the highest bidder Piramal Group had made an offer of ₹15,000 crores. However, after negotiations, revision/ fresh plans the final deal was struck at ₹ 37,250 crores, which is ₹ 22,250 crores more than the initial offer. Similarly, the initial offer for SREI Group was ₹ 3,402 crores but the final deal was made at ₹ 14,867 crores.

Source: *Moneylife.in, February 20, 2023*

<https://www.moneylife.in/article/cocs-ability-to-negotiate-commercial-wisdom-gets-higher-value-for-stakeholders/69893.html>

Bankruptcies across the European Union have soared to Record Levels

According to the latest report by Eurostat, bankruptcies in the Q3 of FY 23 rose 26.8% relative to Q3 of FY22. All economic sectors have registered a rise in bankruptcies: the largest increases were noted in the transportation and storage sector (72.2%), accommodation and food services (+39.4%), and education, health, and social activities (+29.5%). The data implies that bankruptcies within the EU region increased in all four quarters of 2022 and are now at their highest levels since Eurostat began collecting insolvency records in 2015.

Source: *The Brussels Times, February 19, 2023*

<https://www.brusselstimes.com/economics/374152/breaking-point-bankruptcies-in-eu-reach-historic-highs>

An application under Section 9 of IBC is not akin to a suit within the meaning of Section 69(2) of Indian Partnership Act: NCLAT

NCLAT Principal Bench has held that the bar provided under Section 69(2) of Indian Partnership Act, 1932, which prohibits a suit instituted by an unregistered partnership cannot be invoked against an application filed under Section 9 of IBC, 2016. This judgement has come in the matter of *Rourkela Steel Syndicate Vs. Metistech Fabricators Pvt. Ltd.* wherein the CIRP application of the Operational Creditor was rejected for violating provisions under Section 69 (2) of the Indian Partnership Act, 1932.

Placing reliance on judgement given by Supreme court in *B.K. Educational Services (P) Ltd Vs. Parag Gupta and Associates*, (2019 11 SCC 633), wherein it was held that Section 5 of Limitation Act, 1963 is fully applicable to applications under Section 7 & 9 of IBC. Appellate Tribunal said that since Section 5 of Limitation Act is not applicable to a suit; this indicates that applications under Section 7 & 9 are not a suit. The Appellate Tribunal also observed that the precedence relied by the AA regarding bar of Section 69 (2) is not attracted in the present case since the application under Section 9 cannot be treated as a suit.

Source: *Livelaw.in*, February 14, 2023

<https://www.livelaw.in/news-updates/section-9-ibc-application-not-a-suit-hence-bar-us-692-of-partnership-act-not-attracted-nclat-delhi-221535>

IBC prevails over all Acts Including Income Tax Act, rules Income Tax Appellate Tribunal (ITAT)

The Delhi bench of ITAT, in the case of *ACIT Vs. ABW Infrastructure* has held that IBC has an overriding effect on all other acts including Income tax act as per amended Section 178(6) of the Income tax Act effective from November 01, 2016. The Tribunal observed that in the view of the moratorium period declared by NCLT, all proceedings against Corporate Debtor in any court of law, or tribunal, etc. can't continue. The ITAT granted the assessee and Revenue the right to seek remedial measures in accordance with the law when the moratorium period expires.

Source: *Livelaw.in*, February 14, 2023

<https://www.livelaw.in/news-updates/ibc-overriding-effect-income-tax-act-itat-221940#:~:text=The%20Delhi%20Bench%20of%20the,effective%20from%20November%201%2C%202016>

Companies admitted under Liquidation had values less than 8% of their Outstanding Debt

The recent data released by the Insolvency and Bankruptcy Board of India (IBBI) has revealed that till December 2022, liquidation orders were issued against 1901 Corporate Debtors (CDs), out of which 76% were either BIFR (Board of Industrial and Financial Reconstruction) and/ or defunct. These cases had assets which had been valued at less than 8 per cent of the outstanding debt. The erosion of values was one of the main reasons behind haircuts. According to the data, after slowing in the pandemic period of FY21 and FY22, the number of CIRP cases increased by 25% year-over-years in Q3FY23. However, despite the increase, the number of cases admitted under CIRP continued to be lower compared to earlier quarters in FY19/20. The overall recovery rate in insolvency cases till Q3FY23 was 30.4 per cent implying a haircut of approximately 70 per cent. The distribution of cases across sectors continues to remain broadly similar, compared to earlier periods given the extended resolution timelines.

Source: *Moneylife.in*, February 20, 2023.

<https://www.moneylife.in/article/creditors-face-70-percentage-haircut-in-insolvency-cases-report/69901.html>

Company insolvencies in England and Wales hit 1,671 over the first month of 2023

Compared to the same month last year, more businesses declared bankruptcy in January, according to government statistics. The Insolvency Service reported that 1,671 businesses in England and Wales went bankrupt in the first month of 2023. It was 11% higher than pre-pandemic levels from 2020 and marked an increase of 7% from January 2022. According to experts, the rise indicated that increasing borrowing costs and ongoing high levels of inflation were having a negative impact on firms.

Source: *Independent.co.in*, dated February 14, 2023.

<https://www.independent.co.uk/business/company-insolvencies-jump-7-yearonyear-in-january-b2281910.html>

Workmen and Employees are entitled to payment of full amount of PF and Gratuity till the date of commencement of CIRP: NCLAT

The Appellate Tribunal (NCLAT) has held that non-payment of Provident Fund (PF) and Gratuity dues or allotment of partial amount for the same by any Successful

Resolution Applicant (SRA) will be considered as violation of the norms laid down under IBC, 2016 as well as the breach of provisions under Employees Provident Fund and Miscellaneous Provisions Act, 1952 (EPF Act) and the Payment of Gratuity Act, 1972 (PF Act).

This judgement came in the matter of Hindustan Newsprint Limited (HNL) wherein the workers and employees have argued that the approved Resolution Plan was in contravention of the IBC as it ignored the EPF and Gratuity Acts. However, the SRA contended that the IBC clearly stated that stakeholders could not raise subsequent claims if those were not a part of the originally approved Resolution Plan. However, the NCLAT relied upon a recent judgement of the Supreme Court in the matter of Jet Airways wherein the Apex Court had directed the Airline to pay the PF and Gratuity dues in full to its employees. NCLAT observed that the Adjudicating Authority (NCLT) has the power to intervene if the Resolution Plan breached any provisions of the IBC. The amount was to be paid by the SRA consequent to the approval of the Resolution Plan.

Source: *Legaleraonline.com, February 09, 2023*

<https://www.legaleraonline.com/news/nclat-non-payment-of-full-pf-and-gratuity-dues-to-employees-violative-of-ibc-852552>

Canada's major Real Estate Firm of Vancouver files for Insolvency

The Company which primarily pursues condominium projects informs the media that they will work on their financial reconstruction and advances its operations if the court permits their request of protection. Since being active with acquiring properties a decade ago, the developer has amassed a significant portfolio, with 16 active real estate projects — all located within Vancouver — are now in possible risk. Many of these projects are located within the Cambie Street Corridor, including near Oakridge.

Source: *Dailyhive.com, February 09*

<https://dailyhive.com/vancouver/coromandel-properties-insolvency-protection-vancouver>

Implementation of IBC marked the beginning of a new era that completely overhauled India's insolvency regime: Justice S. K. Kaul

The Supreme Court Judge, Justice Sanjay Kishan Kaul has said that in the early years of the IBC's implementation,

there were complex questions that required authoritative and conclusive answers. But this provided an opportunity not only to the judiciary, but all the professionals to contribute towards laying an infallible foundation. He was speaking at Insolvency Law Academy's inaugural conference on the topic “Emerging Global Insolvency Horizon: Indian Footprint and Front View” on February 05, 2023.

“In my opinion, the IBC has also had a big role to play in India's new Startup culture by creating a conducive environment for budding entrepreneurs,” said Justice Kaul. He called upon the panellists to find out solutions for bringing diversity into the process of insolvency, along with greater inclusivity. Besides, he highlighted the need to ensure an effective, quick, and least cumbersome process for homebuyers under the IBC regime. He further added that the IBC was enacted in 2016 primarily to serve two purposes - first, to ensure that debtors take sound and practical decisions and second, to give financially ailing corporate entities a chance to rehabilitate and continue their business. He also highlighted the role of Alternative Resolution in reducing the burden on NCLT and NCLATs, and also to provide speedy and cost-effective solution to creditors.

Source: *The Economic Times, February 05, 2023*

<https://economictimes.indiatimes.com/tech/startups/insolvency-and-bankruptcy-code-had-big-role-in-indias-startup-culture-justice-sk-kaul/articleshow/97616525.cms>

Economic Survey predicts better recovery under IBC

“The rate of recovery from the resolution of stressed accounts through the (IBC) could improve as economic recovery becomes broader based,” said the Economic Survey. The survey has cited the RBI data which shows that the total amount recovered by banks under IBC at the end of the last fiscal year ending March 2022, stood at Rs.47,421 crore was the highest compared to other channels such as Lok Adalat's, SARFAESI Act and Debt Recovery Tribunals (DRTs). The survey has highlighted the behavioural change effectuated by the IBC among debtors.

Source: *The Economic Times, February 01, 2023*

<https://economictimes.indiatimes.com/news/economy/policy/ibc-recovery-to-improve-as-economic-recovery-picks-up-economic-survey/articleshow/97493839.cms?from=mdr>

Union Budget decriminalized Section 276A of the IT Act

The Union Budget 2023 has decriminalized section 276A of the Income Tax (IT) Act which enabled criminal prosecution of a liquidator for failing to give notice of his/her appointment within 30 days or set aside amount or part with assets without notifying an officer. Therefore, liquidators will not be required to comply with the IT Act. This move of the government is expected to reduce the burden of legal compliances on the liquidators and they can perform their functions without any baggage and biases.

Furthermore, the Finance Minister Smt. Nirmala Sitharaman has proposed that no fresh prosecution shall be launched against a liquidator who fails to give notice or set aside the amount as required under the IBC law sub-section (1) of section 178 after April 01, 2023. Besides, during the Budget speech, she announced reduction of 39,000 compliances and decriminalized over 3,400 other provisions.

Source: *Livemint.com, February 03, 2023*

<https://www.livemint.com/news/india/bankruptcy-resolutions-expected-to-soar-after-budget-spells-relief-for-rps-11675433341844.html>

No relief to Jalan Karlrock consortium from SC on payment of PF & Gratuity Dues to Jet Airways' employees

The Supreme Court has observed that anyone stepping in to bail out the airline would know there were overriding labour dues. "There has to be a finality. We will not interfere," said the Court. After this judgement, Jalan Karlrock Consortium, which is successful bidder for Jet Airways through Resolution Plan, will be required to pay Provident Fund (PF) and Gratuity dues to the former employees of the debt-laden airline. According to estimates the total payable amount is about Rs. 200 crores. The consortium had moved the Supreme Court earlier this month, challenging the NCLAT order of October 21, 2022, which had directed it to pay PF and Gratuity to grounded airline's employees till the date of CIRP commencement in June 2019.

Source: *Business Standard, January 30, 2023*

https://www.business-standard.com/article/companies/jet-airways-employees-dues-sc-refuses-to-entertain-jalan-kalrock-appeal-123013001171_1.html

Swedish bankruptcies soared to the highest level in at least a decade in January 2023

Bankruptcy filings in Sweden have increased by 47% from a year earlier in January, to 622, according to credit reference agency UC. The data highlights the effects of Sweden's worst housing-price slump in three decades, which has contributed to a surge in defaults in the construction sector, with 130 builders filing for bankruptcy last month. During fall, the bankruptcy filings were from retail, hotels, and restaurants but now largest increase is happening in sectors that are closely connected to industry and longer-term investments.

Source: *Bloomberg.com, February 01, 2023*

<https://www.bloomberg.com/news/articles/2023-02-01/swedish-bankruptcies-at-highest-level-in-a-decade-in-january?leadSource=verify%20wall>

CBIRC suggests keeping FSPs like Banks outside the ambit of Group Insolvency Framework

The Cross Border Insolvency Rules/Regulations Committee (CBIRC) has suggested that a Corporate Group Insolvency Framework under the IBC, 2016 should apply to only bankrupt entities that are already undergoing resolution or liquidation process, and not to the solvent firms of the group. However, Financial Service Providers (FSPs) like banks would be outside the ambit of the Group Insolvency Framework. This is the second part of CBIRC's Report on enterprise group insolvency which is based on UNCITRAL Model Law.

"A Group Insolvency Framework should be laid down under the Code that is voluntary, flexible and enabling in nature," said the CBIRC headed by Mr. K. P. Krishnan. The Committee has also recommended that the Group Insolvency Framework be adopted in phases and that rules for initiating domestic group insolvency be enacted first. The Report was submitted to the Secretary, Ministry of Corporate Affairs (MCA), Government of India on December 10, 2021, but has now been made public.

Source: *Financial Express, January 20, 2023*

<https://www.financialexpress.com/industry/panel-suggests-limiting-group-insolvency-to-bankrupt-entities/2954287/>

NCLAT denied reviving Section 9 Application on alleged breach of Settlement Agreement

Operational Creditors (OC) had filed Section 9 Application to initiate CIRP of the CD way back in 2017.

However, the parties entered a settlement agreement. Accordingly, the petition was withdrawn, and the CD paid ₹1.74 Crore against principal amount and ₹16 lakhs as interest. However, both the parties entered a dispute on calculation on the interest. OC again preferred a Section 9 Application against the CD claiming a debt of ₹1.28 crore, which was rejected by NCLT. OC argued that liberty was granted in the settlement agreement that in event any breach is committed, the Application be revived. “We sincerely feel that the OC has been using the IBC proceeding for recovery of disputed amount and which is not object of IBC, 2016,” said NCLAT.

Source: Company Appeal (AT) (Insolvency) No. 36 of 2023, January 17, 2023

https://www.livelaw.in/pdf_upload/permal-nclat-454761.pdf

USA's Genesis Global Holdco LLC filed for Bankruptcy

The Company, plus subsidiaries Genesis Global Capital LLC and Genesis Asia Pacific Pte, filed for Chapter 11 protection on January 20 in the Southern District of New York, reported media. Genesis Global Capital listed the same range, \$1 billion to \$10 billion, for both assets and liabilities as well as over 100,000 creditors -- the top 50 unsecured claims amount to about \$3.4 billion. This is the latest Company to collapse in the aftermath of the FTX exchange's swift downfall and last year's rout in digital assets. The company intends to use \$150 million of cash on hand to fund itself in bankruptcy.

Source: Bloomberg.com, January 20, 2023

<https://www.bloomberg.com/news/articles/2023-01-20/cryptolender-genesis-files-for-bankruptcy-as-crisis-spreads?leadSource=verify%20wall>

“Sufficient Cause” is the Cause for which a Party could not be blamed: Supreme Court

In reference to Section 5 of the Limitation Act- 1963, the Apex Court has ruled that 'sufficient cause' in the only criterion for condoning delay in filing CIRP petition against Corporate Debtor and defined the meaning of the term 'sufficient cause'. This judgement came on January 04, 2023, in the matter of *Sabarmati Gas Ltd. Vs. Shah Alloys Ltd.* (CA 1669 of 2020). Sabarmati Gas Ltd. (Operational Creditor) has filed a CIRP petition against Shah Alloys Ltd. (Company) which was rejected by the NCLT on two grounds – the petition was barred by limitation and 'pre-existing dispute'. As NCLAT also

upheld the decision of NCLT, Sabarmati Gas Ltd. approached the Apex Court. The question before the Court was whether in computation of the period of limitation in regard to an application filed under Section 9 of the IBC during which the Operational Creditor's right to proceed against the CD remain suspended by virtue of Section 22 (1) of the SICA can be excluded, as per Section 22 (5) of SICA? Apex Court accepted the argument of Operational Creditor that it had sufficient cause for not filing CIRP petition. Therefore, the NCLT should have considered the claim of the Operational Creditor for condonation of the delay, said the Court. However, the Supreme Court dismissed the appeal on the ground of pre-existing dispute among parties.

Source: Livelaw.in, January 05, 2023

<https://www.livelaw.in/top-stories/supreme-court-section-5-limitation-sufficient-cause-sabarmati-gas-limited-vs-shah-alloys-limited-2023-livelaw-sc-9-218128>

Covid pandemic and economic slowdown pushed USA's Bed Bath & Beyond Inc. towards Bankruptcy

Bed Bath & Beyond said last week it was exploring options, including bankruptcy, after years of weakening sales. It took on \$375 million in financing in August but failed this month to convince bondholders to swap out their investments for new debt. Last year, the company said it would close 150 stores and lay off 20% of its corporate and supply chain workforce among other cost-saving measures. The company said it had started cost cuts of about \$80 million to \$100 million across the business.

Source: Reuters.com, January 11, 2023

<https://www.reuters.com/business/retail-consumer/bed-bath-beyond-reports-quarterly-loss-bankruptcy-threat-looms-2023-01-10/>

Corporate Debtors Undergoing IBC proceedings are Liable to Pay Only Reduced GST

The Central Board of Indirect Taxes and Customs (CBIC) has said that if any government dues including Central GST demand has been reduced following IBC proceedings, then the Commissioner concerned will issue an intimation to the taxpayer and also the authority with whom the recovery is pending, intimating the reduction in demand. This clarification has come as a great relief to corporate debtors as they can't be forced to cough more than the 'reduced amount'. The Circular was issued after the 48th meeting of the GST Council, held on December

20, 2022, recommended that a Circular should be issued for clarifying the treatment of statutory dues under GST law for taxpayers for whom the proceedings have been finalized under the IBC. According to the Circular, under the CGST Act, the commissioners are empowered to reduce the number of dues to be recovered in case of an appeal or “other proceedings”. As “other proceedings” is not defined in the Act, the CBIC said, “Adjudicating authorities and appellate authorities under the IBC, 2016 are quasi-judicial authorities constituted to deal with civil

disputes pertaining to IBC... As the proceedings conducted under IBC also adjudicate the government dues pending under the CGST Act or under existing laws against the corporate debtor, the same appear to be covered under the term 'other proceedings' in Sec. 84 of CGST Act.”

Source: *The Times of India*, December 29, 2022

<https://timesofindia.indiatimes.com/business/india-business/cbic-to-taxmen-reduce-gst-demand-for-insolvency-cases/articleshow/96582415.cms>

Indian Institute of Insolvency Professionals of ICAI
(Company formed by ICAI as per Section 8 of the Companies Act 2013)

MASTERING LEGAL SKILLS, PLEADINGS AND COURT PROCESSES UNDER IBC

IBC has been an evolving jurisprudence. In furtherance of value maximization and timeliness as its avowed objectives, IPs face many complexities, hence the need to hone their legal skills and knowhow.

Mode: Virtual Platform
Fees: Rs. 7500/- + Taxes

Highlights:

- Knowhow of Legal Drafting & Pleadings
- Filing Petitions & Applications under IBC
- Deciphering Landmark Judgements
- Appearing Before the Adjudicating Authorities
- Moot Courts Before Hon'ble NCLT/NCLATs

CPE 14 Hours
Limited Seats

Click to Register:
<https://app.iiipicai.in/registrations/>

Visit us: www.iiipicai.in
Contact us: ipprogram@icai.in
Ph: +91- 8178995141