

IBC News

Chairman, RERA-Bihar emphasized the urgent need for coordination among IBC and RERA Mechanisms

Shri Naveen Verma, Chairman, RERA (State of Bihar) has emphasized that the need for legal frameworks across IBC and RERA to work together amidst challenges faced by ecosystem to resolve stress in real-estate sector. Shri Verma was addressing the Virtual conference on 'Real Estate CIRPs – Challenges & Solutions' as the Guest of Honour organized by Indian Institute of Insolvency Professionals of ICAI (IIPI) in New Delhi on June 23, 2023. “The law has been settled to allow co-existence of IBC and RERA, both being specific laws. As IBC has been enacted late in time and shall prevail in case of any conflict between the two laws”, he said. Dr.Ashok Haldia, Chairman, IIPI's Board said, “In any real-estate stress, house owners suffer the most and they should be made aware of their rights under IBC and RERA”. The Inaugural Session was followed by a technical deliberation by expert panellists, CA K V Jain, Insolvency Professional and Adv. Pulkit Deora.

Source: IIPI, Press Releases, June 23, 2023

<https://www.iiipicai.in/wp-content/uploads/2023/06/IIPI-Newsletter-Volume-08-Number-26-June-26-2023.pdf>

Compounding of interest is the factor pulling down the recovery ratio rather than the recovery of principal: Report

Based on the analysis of some resolved cases and response of banking experts, The Economic Times has reported that the addition of penal interest and other charges in stressed accounts have brought down recovery ratios even though recovery of the principal amount has been high.

In the case of Bhushan Power and Steel, which was part of 12 Big Accounts sent by the RBI for CIRP under IBC, 2016, the interest was more than double of the principal amount that was due. It is estimated that out of the dues of ₹47,158 crore, less than half or about ₹20,000 crore were the principal dues. The total claims by financial creditors in any account also include penal interest and other dues which inflate the outstanding, said the report. Quoting a banking expert, it says, the recovery calculation is very different in the case of one-time settlement where the settlement is done on the basis of outstanding principal



dues and interest is not taken into account. Another expert opines, banks take into account all dues so with penal interest, bank guarantee dues are also added. In infrastructure cases it also includes interest during construction which are exempted from payment but taken as due in case of a default. In the recently concluded resolution of JBF Petrochemicals, the banks recovered about 50% of their principal amount but in comparison to the total dues they suffered a haircut of 64%.

Source: The Economic Times, June 20, 2023

<https://economictimes.indiatimes.com/markets/stocks/news/interest-compounding-pulling-down-recovery-in-ibc-cases/articleshow/101119215.cms?from=mdr>

CIRP initiated for Anil Ambani led Reliance Innoventures

NCLT has admitted CIRP application against Reliance Innoventures filed by JC Flowers, a financing company based in New York. In fact, JC Flowers ARC had bought Yes Bank's ₹48,000 crore bad loan portfolio in December 2022 and according to court documents, these loans also include about ₹100 crore loans given by the bank to Reliance Innoventures in 2015 and 2017. However, Reliance Innoventures argues that the value of shares held as collateral in four other group companies is sufficient to repay the loan, but the Court relied on existing default.

Source: Money 9.com, June 20, 2023

<https://www.money9.com/news/corporate/another-anil-ambani-co-goes-into-insolvency-111035.html>

Germany's major automotive supplier enters into Insolvency

German automotive supplier Allgaier, known for its clientele including Porsche, has reportedly filed for insolvency. The company, which was acquired by Chinese investor Westron Group in July 2022, specializes in supplying sheet metal parts to major car manufacturers and also operates in toolmaking and process engineering.

In July 2022, China's Westron Group acquired Allgaier, bringing with it fresh equity capital, after a restructuring starting in 2020 had put it back in the black operationally. However, by the end of 2022, it had missed sales expectations.

Source: *Reuters.com, June 21, 2023*

<https://www.reuters.com/business/autos-transportation/german-automotive-supplier-allgaier-files-insolvency-2023-06-21/>

Contribution of IBC in National Economy has been phenomenal: LN Gupta, Member, NCLT, Delhi

Shri L. N. Gupta, Hon'ble Member (Technical), NCLT has emphasized that both, existing and emerging challenges are equally important for a robust IBC ecosystem in India. He was addressing at Conference on “Overcoming Emerging Challenges under IBC – Preparing IPA & IPs” (physical mode) organized by Indian Institute of Insolvency Professionals of ICAI (IIPI) in New Delhi on June 16, 2023. Ms. Anita Shah Akella, Joint Secretary, Ministry of Corporate Affairs (MCA), on this occasion while appreciating the role of IPs said that for an effective IBC, we need IPs of highest integrity and credibility.

Shri Ashwini Kumar Tewari, Managing Director SBI underlined the need for continuous dialogue between IPs and lenders. Shri Satish K. Marathe, Director, Central Board-RBI said that after initial difficulties the IBC has matured for fundamental change in scope, coverage and direction. On this occasion, a publication “Roles of Insolvency Professionals Across Insolvency Value Chain From Incipient State Till Post-Resolution Stage” was also released.

“The Board of IIPI of ICAI have set up a committee for developing a perspective on emerging scenarios for IBC and to proactively strengthen the Insolvency Professionals to cope with that,” said Dr. Ashok Haldia, Chairman of board of IIPI.

Source: *The Businessline, June 17, 2023*

<https://www.thehindubusinessline.com/economy/mca-calls-for-insolvency-professionals-with-high-integrity-and-credibility-to-strengthen-ibc/article66979348.ece>

Ace Infracity Developers gets NCLT nod to acquire 3C Homes

The Resolution Plan of Ace Infracity Developers offers '100 per cent of the principal of farmer's compensation

(₹71.66 crore), which is included in ₹173.46 crores agreed to pay to Yamuna Expressway Industrial Development Authority (YEIDA)'. Besides, under the resolution plan, allottees are getting possession of 512 residential plots of the project “Lotus City” valued at Rs 211 crore after being developed. CoC has already approved the Plan with 100% voting. The term of this Resolution Plan is 24 months within which the plots would be developed and delivered to the allottees.

Source: *Moneycontrol.com, June 15, 2023*

<https://www.moneycontrol.com/news/business/nclt-approves-ace-infracity-resolution-plan-for-3c-homes-10804801.html>

SpiceJet facing at least five cases of insolvency in the UK Courts

According to media reports, two aircraft-leasing companies have obtained summary judgment totaling over \$15 million against SpiceJet in the high court of London in May 2023. Besides, there are, at least, three more cases lodged in the commercial courts of London against SpiceJet which are currently in different stages. This also includes a claim filed by a Turkish company. Presently, Wilmington Trust SP Services (Dublin) is pursuing a case against SpiceJet on the basis of a summary judgement from a UK Court. The other companies are also expected to approach NCLT in India.

Source: *Moneycontrol.com, June 14, 2023*

<https://www.moneycontrol.com/news/companies-2/lithuania-nails-spicejet-after-inspection-fresh-insolvency-cases-in-english-courts-10789231.html>

Australian Company, which clinched the first US clearance for its at-home Covid-19 test kit, faces Liquidation Australian

Covid-19 test maker, Ellume Ltd., has entered liquidation after a sale to Hough Consolidated Pty Ltd. fell through. The deal, valued at \$38 million, unravelled due to repeated requests from Hough to extend agreement deadlines. Despite previous investments from Australia and the US, Ellume struggled for months and entered voluntary administration in August 2022. The company owed creditors approximately \$140 million at the time. Ellume gained prominence as the first provider to receive emergency-use authorization from the FDA for its at-home test kits in December 2020. It received significant funding

from the US government to scale production and distribute its tests.

Source: *Bnnbloomberg.com, June 14, 2023*

<https://www.bnnbloomberg.ca/covid-test-maker-once-crucial-to-us-response-set-to-liquidate-after-failed-sale-1.1933180>

IBC 2.0 is expected to be rolled out soon: ICAI

“ICAI has been actively involved with the insolvency committee chaired by the MCA secretary and other stakeholders. IBC 2.0 will largely be based on the discussion paper issued by the government. It depends on the government, but I expect it to happen very soon,” said Aniket S Talati, president, ICAI. During a presentation on IBC on Sunday in a Residential meeting in Agra, ICAI said, “Ministry of corporate affairs is looking for IBC 2.0 and is working very hard on it. The Insolvency and Bankruptcy Board of India (IBBI) and ICAI are together working on it and supporting the ministry of corporate affairs on it. We are expecting that within some time we will see IBC 2.0 which will certainly mitigate the issues pertaining to the insolvency resolution process”. IBC 2.0 may include a fullfledged individual insolvency framework, pre-packaged insolvency for bigger corporates, group insolvency framework and use of tech in IBC, said ICAI.

Source: *Fortuneindia.com, June 10, 2023*

<https://www.fortuneindia.com/enterprise/bankruptcy-code-20-to-be-rolled-out-soon-icai/112923>

NCLT Approved highest ever 180 Resolution Plans amounting ₹51,424 Crore in FY2020-23

The number of Resolution Plans approved by NCLT benches across the country have increased from 147 in FY 2021-22 to 180 in FY 2022-23 while the realization by creditors has increased from ₹49,208.38 crore to ₹51,424.87 crore, respectively.

As per the data released by IBBI, the realization by creditors in FY 2022-23 has been second highest after FY2018-19. These resolutions have enabled creditors to recover 36% of their total admitted claims of ₹1,42,543 crore. The data further reveals that NCLT admitted 1,255 CIRP applications in FY2022-23, which is the highest since 2019. Since the commencement of the IBC 2016, a total of 678 Resolution Plans have been approved resulting in realization of ₹2.86 lakh crore for creditors. The fair value of the assets available to corporate debtors at the start of the CIRP was estimated at ₹2.65 lakh crore,

with creditors realizing 68.47% of the liquidation value and over 83% of the fair value.

However, concerns have been raised about delays in CIRP matters, as the NCLT currently operates with a total strength of 37 members out of the sanctioned strength of 63. To function, a single NCLT bench requires at least one judicial member and one technical member. Out of the 6,567 CIRPs initiated by NCLT benches, 4,515 have been closed while 2052 are pending before NCLT. The manufacturing and real estate sectors have witnessed the highest number of CIRP admissions, including construction and wholesale & retail trade sectors.

Source: *The Economic Times, June 04, 2023*

<https://realty.economictimes.indiatimes.com/news/regulatory/nclt-approves-180-resolution-plans-involving-realisation-amount-of-rs-51424-crore-in-fy23/100746186>

GAIL completes takeover of JBF Petrochemicals

In pursuance to the Resolution Plan, GAIL (India) Ltd. has invested ₹2,100 crore in JBF Petrochemicals Ltd. The Resolution Plan was approved by NCLT in March this year. In a stock exchange filing, GAIL (India) Ltd. said it has 'infused ₹2,101 crore (equity - ₹625 crore and debt - ₹1,476 crore)" as per its commitment in the Resolution Plan. Accordingly, JBF has become a wholly owned subsidiary of GAIL with effect from June 1, 2023. The CIRP application against JBF was filed by IDBI Bank which reportedly had ₹5,628 crore of dues to financial and operational creditors.

Source: *Business Standard, June 02, 2023*

https://www.business-standard.com/companies/news/gail-infuses-rs-2-100-crore-in-insolvent-chemical-firm-jbf-petrochemicals-123060200589_1.html

BBTCL Makes Provision of ₹1,866 Crore to ease 'Go Airlines' Financial Woes

Bombay Burmah Trading Corporation Limited (BBTCL), the holding company of the Wadia Group, has made a provision of ₹1,866 crore for its investments in Go Airlines and related financial obligations. The provision was made following Go Airlines Ltd's application for insolvency under the Insolvency and Bankruptcy Code. Go Airlines suspended operations on May 3 without announcing a resumption date. BBTCL, as an investment company, has made strategic investments across various

businesses and geographies to enhance shareholder value. BBTCL has actively invested in GoAir since 2005 but faced financial challenges due to grounding of aircraft and engine issues. The company has also decided to fully provide for its exposure in GoAir, except for a recent investment of ₹290 crore. BBTCL holds 32.61% of the equity share capital of Go Airlines but has no de facto control over the company. BBTCL has reported a consolidated net loss of ₹533 crore for FY 2022-23.

Source: *Livemint.com, May 29, 2023*

<https://www.livemint.com/companies/news/wadia-group-holding-co-makes-provisions-on-investment-in-go-air-11685346287659.html>

Australian Company Files for Bankruptcy Protection to Facilitate Restructuring

Cancer-care provider GenesisCare has filed for bankruptcy protection following financial challenges resulting from a large debt load and a \$1.5 billion acquisition of a healthcare service provider. The company plans to separate its U.S. business from operations in Australia, Spain, and the U.K. It has secured \$200 million in financing to continue operations and maintain patient care. GenesisCare, which started as a single clinic in 2005, has over 300 locations and 5,500 employees across four countries.

Source: *marketwatch.com, June 01, 2023*

<https://www.marketwatch.com/story/kkr-backed-healthcare-provider-genescare-files-for-bankruptcy-767ce70f>

Section 66 of the Insolvency and Bankruptcy Code cannot be invoked against third parties: SC

The Apex Court, however, clarified that civil remedies available under the law must be pursued for recovery of dues from such parties. The Court also dismissed a request of clarification sought by Gluckrich Capital's application seeking clarification of a judgment and order passed by the Supreme Court of India on February 24, 2023.

“We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor, which may be available in law,” said the Court. The Court also observed that even the Tripura High Court and various NCLTs have relied

upon the observations made by SC in a binding precedent, in Usha Ananthasubramanian Vs. Union of India.

Source: *Taxguru.com, May 19, 2023*

<https://taxguru.in/corporate-law/remedy-against-third-party-available-section-66-ibc-sc.html>

Real Estate sector constitutes more than a fifth of CIRP cases, but approved Resolution Plans total only 13%: Study

According to the study, out of 611 approved Resolution Plans only 78 are from the real estate sector. The Study conducted by Grant Thornton Bharat reveals that litigation from promoters, treatment of claims by local development authorities and large number of homebuyers are some of the reasons for delays in the CIRP of corporate debtors related to real estate sector.

However, in certain instances, reverse insolvency has been reportedly effective in offering relief to buyers. Under this model, NCLT and NCLAT courts permit or authorize the promoter to complete the remaining construction work. The report recognizes that the main promoter is the most competent party to complete the project. “Favorable government policies and support from the judiciary system and homebuyers enabled lots of developers to complete their projects in the last 7 to 8 years,” said the report. The report further mentions that Uttar Pradesh Real Estate Regulatory Authority (UPRERA), in several cases, used powers under Section 8 of RERA Act and authorized the main promoter to complete the remaining construction work of the project with consent of 51% allottees, supervision of a committee and monitoring of third-party construction consultant. The recent decision of NCLT to impose moratorium only on concerned projects without affecting the entire real estate group, has also been appreciated in the Report.

Source: *The Economic Times, May 29, 2023*

<https://shorturl.at/mLNQ8>

Not Mandatory to File Hard Copies in Addition To E-Filing: NCLAT

In an order dated May 15, 2023, National Company Law Appellate Tribunal (NCLAT) has said that “the filing of hard copies of Appeals/ Interlocutory Applications/ Reply / Rejoinder etc. shall not be mandatory with immediate effect”. Consequently, the existing Standard Operating

Procedures (SOPs), Orders, Circulars, and Notices issued by the NCLAT regarding the filing process have been modified accordingly. This new directive streamlines the filing procedure and encourages the use of electronic means for all relevant filings in the NCLAT. Effective from January 4, 2021, the NCLAT has implemented an e-filing system for Appeals, Interlocutory Applications, Reply, Rejoinder, and other related documents.

Source: *NCLAT, May 15, 2023*

https://nclat.nic.in/sites/default/files/2023-05/Dispensing%20Physical%20Filing_1.pdf

In the interest of home buyers, Supreme Court turned down creditors' plea to bring entire Supertech group under CIRP

The Supreme Court, while observing that it will cause "immense hardship" and "uncertainty" to the home buyers if all the projects of real estate giant Supertech are brought within the insolvency proceedings, allowed Corporate Insolvency Resolution Process (CIRP) of its only one project - Ecovillage 2 in Greater Noida West, in its interim order.

Providing relief to the thousands of home buyers who bought flats in other projects of the Supertech, the Supreme Court rejected the plea of financial creditors to constitute CoC for the entire group, as ordered by NCLAT. The bench observed that the other projects are being continued by the Interim Resolution Professional (IRP) and efforts are being made for infusion of funds with the active assistance of the ex-management but without creating any additional right in the ex-management.

The creditors--Union Bank of India and Indiabulls Asset and Reconstruction Company Ltd---contended that the Appellate Tribunal did not have powers under IBC to allow project-wise CIRP, and to accept a resolution plan presented by the promoter without giving opportunity to the CoC. The Apex Court held that Appellate Tribunal order would continue to operate subject to the final orders to be passed by the court and also directed that with regard to Eco Village -II project any process beyond voting on the resolution plan should not be undertaken without specific orders from it.

Source: *The Times of India, May 11, 2023*

<https://timesofindia.indiatimes.com/india/sc-turns-down-plea-to-bring-entire-supertech-group-under-insolvency-proceedings/articleshow/100168111.cms?from=mdr>

No modified resolution plan, carrying however minor modification/revision, can be placed directly before AA: SC

The Supreme Court has held that if the modified resolution plan, carrying however minor modification/revision, is not finally approved by CoC, then presentation of such modified plan before the Adjudicating Authority for approval is an incurable material irregularity. "There can be no assumption that the CoC would have approved the plan in all possibilities and it's uncertain that no other aspect would have arisen for consideration by the CoC," said the Court while adjudicating an appeal filed in M.K. Rajagopalan Vs Dr. Periasamy Palani Gounder & Anr. The Court also ruled out concept of post facto approval by the CoC.

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

<https://www.livelaw.in/supreme-court/supreme-court-resolution-plan-approval-ibc-coc-approval-process-228663>

Financial Challenges forces Romanian Companies to restructure their Business

A total of 1,644 companies in Romania went insolvent in the first quarter of 2023 (Q1), a number similar to the one in Q1 2022, when 1,610 insolvent companies were registered. Of the companies that went into insolvency, 23 are impactful companies, totaling over 1,950 employees, fixed assets worth over RON 589 million (EUR 120 mln) and a total turnover of RON 805 million (EUR 163 mln), according to an analysis by CITR, the insolvency and restructuring market leader in Romania. Globally, companies received various forms of support from governments, such as tax facilities, but these have mainly led to the accrual of additional debt, therefore, the companies' issues were not solved but merely postponed.

Source: *Romania-insider.com, May 09, 2023*

<https://www.romania-insider.com/citr-romanian-companies-restructuring-financial-challenges>

NCLT orders CIRP of Future Lifestyle Fashions

The CIRP petition was filed by the Bank of India on an alleged default of ₹185 crore, including interest till August 2022, forming a part of its financial debt. "It is noted that the corporate debtor admits the said outstanding debt. Therefore, this bench is of the view that this petition satisfies all the necessary requirements for admission

under Section 7 of the Code. Accordingly, the petition is admitted,” said NCLT. As per the petition, the lender had granted credit facilities of ₹435 crore to the company in 2013 which were then renewed in January 2020. Besides, it had availed loans from other creditors as well.

Source: *Livemint.com, May 04, 2023*

<https://www.livemint.com/news/india/national-company-law-tribunal-admits-future-lifestyle-fashions-for-corporate-insolvency-resolution-process-under-india-s-insolvency-code-11683223265390.html>

Lenders who had signed ICA should have an opportunity to be heard by AA: NCLAT

Lenders, with the Bank of Baroda as the lead banker, who had signed the Inter-Creditor Agreement (ICA) with Reliance Home Finance Ltd. (RHFL) will now be heard by NCLT, Mumbai on 16th May in the debenture redemption case. Pointing to the provision of the Companies Act, 2013, the NCLAT noted that the tribunal is supposed to hear 'interested' parties, which will include the company itself or any other person interested in the matter. “Since the ICA lenders have played an important role in the financial rejuvenation of the company, they should be given an opportunity to be heard,” said NCLAT. The Resolution Plan of RHFL, which went into insolvency in 2020 has been approved the Supreme Court. However, some debenture holders have chosen to stand outside the insolvency process.

Source: *Bqprime.com, April 27, 2023*

<https://www.bqprime.com/law-and-policy/reliance-home-finance-insolvency-a-win-for-creditors-at-nclat>

USA's Home Goods Retailer Giant 'Bed Bath and Beyond Inc. (BBBY.O)' filed for Bankruptcy Protection

The Company filed for Chapter 11 bankruptcy protection after it failed to secure funds to stay afloat and has begun a liquidation sale. BBBY.O, which shot to popularity in the 1990s, has seen demand drop off in recent years as its merchandising strategy to sell more store-branded products flopped. Last year's moves to abandon that strategy, and to bring in more national brands that shoppers recognize, had not shown signs of working, with

the company reporting a loss of about \$393 million after sales plunged 33% for the quarter ending Nov. 26

Source: *Reuters.com, April 25, 2023*

<https://www.reuters.com/business/retail-consumer/bed-bath-beyond-files-bankruptcy-protection-after-long-struggle-2023-04-23/>

England and Wales reported highest Insolvency cases during March since past 3 years

The Insolvency Service Agency of England & Wales has reported 2,457 corporate insolvencies in March which were 1,784 in February 2023. According to the official data there has been 16% increase on a year ago. The increase is reportedly due to rising costs and a stagnant economy are main reasons behind this rise in insolvency cases. The Insolvency Service Agency has said creditors' voluntary liquidations were the biggest driver of corporate insolvency in March. “Businesses are struggling to secure financing and pay off their loans due to high interest rates and the wider impact inflation and consumer sentiment is having on sales and cash flows,” said David Kelly, head of insolvency at accountants PwC.

Source: *Reuters.com, April 18, 2023*

<https://www.reuters.com/world/uk/business-insolvency-england-wales-soars-march-2023-04-18/>

RPs under IBC considered as public servant under purview of Prevention of Corruption Act: High Court

The Jharkhand High Court has ruled that an interim resolution professional falls under the definition of a public servant given u/s 2(C)(v) and 2(c)(viii) of the Prevention of Corruption Act, 1988. The decision was made in response to a case in which an interim resolution professional demanded ₹ 2,00,000 per month as bribe to influence the corporate insolvency resolution process. The professional argued that he did not fall under the definition of a public servant, but the court disagreed, stating that anyone serving public functions can be considered a public servant.

Source: *Livelaw.in, April 07, 2023*

<https://shorturl.at/aguCP>