

IBC News

Once a Resolution Plan is duly approved by NCLT, the claims as provided in the Plan shall stand frozen: Delhi HC

The Delhi High Court has set aside an assessment order under Section 143(3) of the Income Tax Act, 1961 and notices under Section 274 of the Act issued by the Deputy Commissioner of Income Tax, which was served to the Corporate Debtor after approval of the Resolution Plan by the NCLT. Relying on the judgement in the matter of *Ireo Fiveriver Pvt Ltd vs. Income Tax Department & Anr.* (2024 Delhi), the Bench of Delhi HC observed, “Once a Resolution Plan is duly approved by the Adjudicating Authority under Section 31 (1) of IBC, 2016, the claims as provided in the Resolution Plan shall stand frozen and it will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stake holders”.

Source: *Verdictum.in*, July 01, 2024.

<https://www.verdictum.in/court-updates/high-courts/delhi-high-court-2024dhc4771db-national-sewing-thread-co-ltd-v-deit-resolution-plan-approved-ibc-claims-stand-frozen-clean-slate-rule-1542350>

President appreciated the role of the IBC in Economy

Addressing the joint sitting of the Parliament on June 27, 2024, Smt. Droupadi Murmu, President of India, highlighted the achievements of the banking sector and said 10 years ago, to save India’s banking sector from collapsing, the government brought banking reforms and made laws like IBC.

“Today, these reforms have made India’s banking sector one of the strongest banking sectors in the world,” said the President. “Profits of public sector banks have crossed ₹1.4 lakh crore in 2023-24 which is 35% higher than last year. The strength of our banks enables them to expand their credit base and contribute to the economic development of nation,” she added.

She further said that India has become the fastest growing major economy in the world and has gone from the 11th spot in 2014 to the 5th in terms of the size of economy. “The government is giving equal priority to all three



arms - manufacturing, services and agriculture,” said the President.

Source: *The Statesman*, June 27, 2024.

<https://www.thestatesman.com/india/govt-brought-banking-reforms-ibc-10-years-ago-to-save-banking-sector-president-murmu-1503314272.html>

Sec. 95(1) of IBC allows creditors to initiate insolvency process against a PG through an RP: NCLAT

NCLAT Delhi bench has held Section 95(1) of IBC permits creditors to file an application through a Resolution Professional (RP) for initiating the insolvency process against a Personal Guarantor. Accordingly, such an application cannot be questioned to be defective on the grounds that the application was signed by the RP rather than an authorized officer. The Appellate Tribunal noted that the RP’s written consent in Form A, along with authorization from the Financial Creditor (FC) to sign the application on their behalf, was submitted to the NCLT, and included in the appeal records. Therefore, the FC’s application through the RP was valid.

Source: *LiveLaw.in*, June 20, 2024.

<https://www.livelaw.in/ibc-cases/nclat-delhi-section-95-ibc-creditors-insolvency-proceedings-personal-guarantors-resolution-professional-260888>

Merely because of initiation of Insolvency Process, the signatory of cheque cannot escape liability: HC

Upholding the conviction of an accused under Section 138 of Negotiable Instruments Act, 1881, the High Court of Madhya Pradesh has said that merely because of the initiation of proceedings under the Insolvency and Bankruptcy Code, 2016 (IBC) the signatory of the

cheque cannot escape from his liability in a cheque bounce case. The applicant, as a guarantor for Corporate Debtor, which defaulted on debt payments, filed an appeal and an application under Section 389 of Cr.P.C. The borrower had initiated an insolvency process u/s 94 of the IBC, before the NCLT. According to the Appellant, the conviction and compensation order passed during the moratorium was against Section 96 of the IBC. Relying on the Supreme Court judgement, in the case of *Ajay Kumar Radheyshyam Goenka vs. Tourism Finance Corporation of India Ltd.*, the HC upheld the conviction.

Source: *Verdictum.in*, June 20, 2024.

<https://www.verdictum.in/court-updates/high-courts/madhya-pradesh-high-court-anurodh-mittal-v-rehat-trading-company-section-138-negotiable-instruments-act-1881-insolvency-and-bankruptcy-code-2016-1540890>

Pursuant to the SC order, IBBI proposes changes in Regulations to hold guarantors accountable

Insolvency and Bankruptcy Board of India (IBBI has proposed amendments in the CIRP Regulations to incorporate the Supreme Court judgement in the case of *Lalit Kumar Jain vs. Union of India* wherein it was held that the approval of a resolution plan of a bankrupt firm does not automatically release its guarantors from their liability. The move, suggested in a discussion paper by the IBBI, will make it difficult for personal guarantors of defaulting firms to escape liabilities even after the resolution of the Corporate Debtor. The Supreme Court had passed the order to address a common question of law that had arisen from various petitions filed by promoters of defaulting companies, including Bhushan Power and Steel, and Reliance Communications.

Source: *The Economic Times*, June 20, 2023.

https://m.economictimes.com/news/economy/policy/ibbi-seeks-to-tighten-the-noose-around-guarantors-of-bankrupt-firms/amp_articleshow/111120529.cms

IIPI develops Template for IPs to report Avoidance Transactions to NCLT

Indian Institute of Insolvency Professionals of ICAI (IIPI) has designed a "Template" that IPs can adopt to report 'Avoidance Transactions' to the NCLT. The "Template" is aimed to facilitate the filing of Avoidance Transaction petitions before NCLTs, to ensure uniformity and in expediting decision-making process in the court, which shall ultimately enhance recovery by creditors.

The said "Template" was developed by a Study Group constituted by IIPI under the Chairmanship of CA. Subodh Agarwal, Past-President of ICAI.

“The adoption of such templates by IPs would enhance the quality of findings, applications, and outcomes in the context of avoidance transactions. This would not only improve efficiencies in the ecosystem but also help in maximizing the value by clawing back the dues from avoidance transactions under IBC,” said Dr. Ashok Haldia, Chairman, IIPI-Board.

Source: *The Hindu Business Line*, June 14, 2024.

<https://www.thehindubusinessline.com/economy/iiipi-develops-template-for-ips-to-report-avoidance-transactions-to-nclt/article68290284.ece>

NCLT approved ₹525 crore Resolution Plan for Era Infra Engineering

As per the Resolution Plan, the Successful Resolution Applicant will pay ₹525 crore to creditors. M/s Era Infra Engineering Ltd. (Corporate Debtor) was part of the first list of 12 companies, issued by the RBI for the mandatory CIRP. The Adjudicating Authority ordered insolvency of the company vide order dated May 08, 2018, on an application filed by Union Bank of India under Section 7 of the IBC. Subsequently, claims amounting ₹22,200.98 Crores were admitted against the company while its fair value and liquidation value were respectively ₹405.35 Crores and ₹199.26 Crores.

Source: *The Economic Times*, June 12, 2024.

<https://economictimes.indiatimes.com/industry/indl-goods/svs/construction/bankruptcy-court-approves-resolution-plan-for-era-infra-engineering/articleshow/110945596.cms?from=mdr>

Initiation of arbitration does not bar CD from pursuing other remedies including those under IBC: Delhi HC

Delhi High Court has observed that merely initiation of the arbitration proceedings does not bar the Corporate Debtor from pursuing other remedies including those under the IBC. Accordingly, the Court appointed an Arbitrator to adjudicate the disputes between the parties. In this case, Pitambar Solvex Pvt. Ltd., an edible oil manufacturer, was sold to OAgri by its original shareholders. Later, OAgri alleged that the accounting figures were falsified, and the promised EBITDA was misleading. Consequently, a petition was filed for appointment of an arbitrator. The court observed that the

dispute had arisen followed by Legal Notice much prior to the filing of the petition under Section 7 the IBC.

Source: *Verdictum.in, June 12, 2024.*

<https://www.verdictum.in/court-updates/high-courts/delhi-high-court-pitambar-solvex-pvt-ltd-v-manju-sharma-2024dhc4450-section-116-of-the-arbitration-conciliation-act-1996-corporate-debtor-insolvency-and-bankruptcy-code-2016-1539818>

Clean Slate Principle will stand negated if the SRA is asked to pay the arrears of CD: Meghalaya High Court

The Meghalaya High Court has reiterated that the clean slate principle will stand negated if the Successful Resolution Applicant (SRA) is asked to pay the arrears of the Corporate Debtor for the grant of an electricity connection in his/her name. This judgement came on a petition preferred by M/s Reliance Infratel Ltd., the SRA, against the demand notice issued to it by the Meghalaya Power Distribution Corporation Ltd. (MPDCL).

“The argument put by the respondent No. 1, by placing reliance on the case of *State Tax Officer vs. Rainbow Papers Ltd.* that any Resolution Plan which overrides statutory dues, is invalid and not binding to the mind of the Court, will have no application in the instant case, as firstly, the respondent No. 2 never filed any claim in accordance with law, and further the said decision was rendered in regular appeals which were preferred under Section 62 of the I&B Code,” said the Court.

Source: *Verdictum.in, June 11, 2024.*

<https://www.verdictum.in/court-updates/high-courts/meghalaya-reliance-infratel-limited-v-state-2024-mlhc-504-ibc-resolution-applicant-1539628>

IBC resolved as many cases in 7 yrs as BIFR did in 30 yrs: Ms. Nirmala Sitharaman, Minister of Finance

Union Finance Minister Ms. Nirmala Sitharaman has said that the seven-year-old Insolvency & Bankruptcy Code (IBC) has helped to rescue 3,171 distressed companies and assisted in the closure of unviable ones -- a sharp contrast to less than 3,500 cases being resolved by the erstwhile Board of Industrial and Financial Reconstruction (BIFR) during its life of over 30 years, starting 1987.

In a social media post, she said the law enacted by the Prime Minister Shri Narendra Modi Government has

also helped improve corporate governance as there is a “credible threat” that a promoter or management can lose control over a company that defaults in repaying to creditors. “IBC has played a key role in helping banks recover from the NPA crisis created by @INCIndia and its allies during the UPA years through ‘phone banking’ and indiscriminate lending. IBC has built trust and transparency in the financial system,” Ms. Sitharaman tweeted, while vowing to strengthen the capacities of NCLT and NCLAT by expeditiously filling vacancies. Pointing to a shift towards more responsible credit behaviour, she said, up to March 2024, over 28,000 involving defaults of over ₹10 lakh crore were withdrawn before their admission as companies opted to clear the dues of creditors. She said that the law had brought a paradigm shift in the debtor-creditor relationship and provided a streamlined, one-stop solution for resolving insolvencies.

Source: *The Times of India, May 31, 2024.*

<https://timesofindia.indiatimes.com/business/india-business/insolvency-bankruptcy-code-ibc-vs-board-of-industrial-and-financial-reconstruction-bifr/articleshow/110574635.cms>

Creditors recovered about 49% of claims from companies which were resolved within 330 days deadline of the IBC

According to a media report, creditors have been able to recover nearly half their claims under the Insolvency and Bankruptcy Code (IBC) when the resolution has been completed within the 330-day deadline, but delays lowered the proportion of money they got back. Creditors recovered as much as 49% of claims when the IBC process was finished on time, but this dropped to 26% when it took 600 days or more, said the report. The report establishes the cost of delays, which is primarily caused by litigations in insolvency resolution, going beyond anecdotal evidence. The resolution plans of 947 corporate debtors have fetched creditors ₹3.36 lakh crore or 32.1% of claims. Though the IBC itself isn't a recovery tool but a law that facilitates the market-driven resolution of stressed firms. However, recoveries through this route have often been flagged to gauge its efficacy.

Source: *The Economic Times, May 30, 2024.*

<https://economictimes.indiatimes.com/news/economy/finance/timely-rescue-of-firms-pushes-ibc-recovery-to-49/articleshow/110543746.cms?from=mdr>

Creditors Realized about 2.16% of Admitted Claims in Personal Insolvency

According to a media report, till March 31, 2024, a total of 2,800 applications have been filed for initiating the personal insolvency resolution process (PIRP) for Personal Guarantors to Corporate Debtors (PG to CD) out of which 383 cases were admitted by NCLT. Out of the 383 admitted PIRPs, creditors have realized ₹102.78 crore, which is just 2.16 per cent of their admitted claims. Among these 383 admitted PIRPs, 124 have been closed. Among these closures, 12 were withdrawals, 86 were due to non-submission or rejection of the repayment plan, and 26 resulted in the approval of a repayment plan.

Source: *Business World*, May 27, 2024.

<https://businessworld.in/article/creditors-realised-merely-216-of-admitted-claims-in-personal-insolvency-ibbi-520927>

NCLAT asked Suraksha Group to pay an additional ₹1,334 crore for acquisition of Jaypee Infratech Ltd (JIL) through Resolution Plan

While upholding NCLT's approval for Resolution Plan of Suraksha Realty to acquire Jaypee Infratech Ltd (JIL), the Appellate Tribunal has asked it to pay an additional ₹ 1,334 crore as farmers' compensation. The decision is expected to bring relief for over 20,000 homebuyers stuck in various real estate projects in Noida and Greater Noida.

"Successful Resolution Applicant (Suraksha Realty) is directed to make payment to the appellant of its secured operational debt of ₹1,689 crore in the ratio of 79 per cent, which has been paid to other secured creditors, which amount comes to ₹1,334.31 crore," said NCLAT. Regarding approval of the Resolution Plan in March 2023, the Appellate Tribunal said that the decision was to avoid any further delay in the implementation of the resolution plan and also to take care of the interests of all stakeholders, including home buyers and claim of Yamuna Express Development Authority (YEIDA) for additional compensation of the farmers. The CIRP against JIL was started in August 2017 over an application by the IDBI Bank-led consortium. The Resolution Plan of the Mumbai based Suraksha group was approved on March 07, 2023. However, many parties, including YEIDA, challenged this approval before the Appellate Tribunal.

JIL was among the first list of 12 companies against whom the RBI had directed the banks to approach the NCLT for initiation of insolvency proceedings.

Source: *Business Standard*, May 24, 2024.

https://www.business-standard.com/companies/news/nclat-upholds-nclt-order-on-jaypee-infra-asks-suraksha-to-pay-rs-1-300-cr-124052400858_1.html

Need legal and administrative reforms for more efficient resolution of real estate cases under IBC: IIIPI Study

There is a need for legal and administrative reforms to ensure more efficiency in resolving real estate cases under the insolvency law, according to a study conducted by Indian Institute of Insolvency Professionals of ICAI (IIIPI).

The IIIPI study group on 'Improving Real Estate Resolutions under IBC and Coordination with RERA' has flagged some critical gaps in legal as well as practical aspects under IBC and the Real Estate (Regulation and Development) Act (RERA). It has suggested that the focus should be on the completion of projects and allotment to home buyers, wherever possible, and added that procedural and co-ordination issues should not be allowed as a hindrance. Among various recommendations, the study has proposed amendments in IBC and regulations to relax the conditions for participation in the CIRP by a registered association of allottees.

Source: *The Economic Times*, May 20, 2024.

<https://realty.economictimes.indiatimes.com/news/industry/need-legal-reforms-for-more-efficient-resolution-of-real-estate-cases-under-ibc-study/110279068>

Dispute regarding contractual conditions relating to place of delivery and obligation of parties for transport of goods is a 'pre-existing dispute' under IBC: NCLAT

A three-member bench of NCLAT has held that the dispute between the parties regarding contractual conditions relating to place of delivery and obligation of parties for transport of goods is a "pre-existing dispute" under the Insolvency and Bankruptcy Code, 2016 (IBC). In this case, the Appellant (Sanam Fashion & Design Exchange Ltd.) paid ₹200,000 in advance to the Corporate Debtor for supply of 10 tons of non-woven fabric in March 2020. The fabric was never delivered, and the advance was not refunded despite requests. Subsequently, the

Appellant filed an application to initiate CIRP of the Corporate Debtor under Section 8 of the IBC. Placing reliance on the Supreme Court judgement in the matter of Consolidated Construction Consortium Ltd. Vs. Hitro Energy Solutions Pvt. Ltd., NCLAT dismissed the appeal.

Source: *LiveLaw.in*, May 19, 2024.

<https://www.livelaw.in/ibc-cases/nclat-delhi-dispute-contractual-conditions-delivery-obligation-transport-goods-qualifies-pre-existing-dispute-258331>

Haircuts by creditors in resolution plans have increased in FY 2023-24: Report

A report by the domestic rating agency ICRA has claimed that haircuts taken by creditors in resolution plans have increased to 73 per cent in FY24 from 64 per cent in FY23. It can be noted that the haircuts, or sacrifices, in comparison to the total dues, which are done by lenders when it comes to corporate insolvency resolutions have led to some concerns in the past about the value at which a new bidder is getting the assets. According to the report, there has been a ‘worsening’ of the haircuts which are taken by the creditors through the IBC process to a steep 73 per cent as against 64 per cent in FY23, which was already high.

Source: *Business Standard*, May 17, 2024.

https://www.business-standard.com/finance/news/creditors-haircuts-in-bankruptcy-cases-jump-to-73-in-fy24-report-124051701039_1.html

NCLT sets record of approving resolution plans in FY 2023-24: Shri Ravi Mittal, Chairman, IBBI

As per the recently released Newsletter of IBBI for January to March 2024, a record number of 269 resolution plans were approved by the National Company Law Tribunal (NCLT) under the Insolvency and Bankruptcy Code, 2016 (IBC) in FY 2023-24, which is 42 per cent higher from the previous FY 2022-23. FY23-24 has witnessed an unprecedented surge in the approval of resolution plans under the IBC, showcasing the effectiveness of the legal framework in facilitating the revival of insolvent businesses,” said Shri Ravi Mittal, Chairperson, IBBI. The IBBI data reveals that in the FY 2022-23, the NCLT had approved 189 resolution plans with a realization of 32 per cent against the admitted claims. However, Pre-Packaged Insolvency Resolution Process for MSMEs has resulted in 25 per cent realization against the admitted claims. Besides, IBBI has recorded improvement in the

ratio of resolution versus liquidation cases from 0.46 in FY 2022-23 to 0.61 in FY 2023-24.

Further, IBBI has recorded a notable shift in debtor behaviour towards early settlement, with 308 stressed companies getting rescued through withdrawal, appeal, or settlement by the stakeholders. Till 31st March 2024, 28,818 applications for initiation of Corporate Insolvency Resolution Process (CIRP) with a default of ₹10.22 lakh crore were withdrawn before admission.

Source: *Business Standard*, May 16, 2024.

https://www.business-standard.com/economy/news/nclt-approves-record-resolutions-under-ibc-in-fy24-shows-ibbi-data-124051601194_1.html

DSCL exists CIRP under Section 12 A

NCLT has approved settlement of Dharani Sugars & Chemicals Ltd (DSCL) with its creditors under Section 12 A of the IBC and stopped insolvency proceedings against it. DSCL has reportedly paid 35% of the agreed amount to the consortium of lenders as part payment and submitted a proposal under Section 12A of the IBC. DSCL, which was the first sugar company in Tamil Nadu has three sugar plants in the state. It suffered losses during 2016-19 due to which the loan could not be paid. During the CIRP, the loan of banks was taken over by the NARCL. The settlement was approved by NARCL, IREDA and SDF with 92.6% votes.

Source: *NDTV Profit*, May 11, 2024.

<https://www.ndtvprofit.com/law-and-policy/dharani-sugars-chemicals-exits-insolvency-process-to-restart-operations-soon>

IIPI to include support services by IPEs under the Peer Review

Indian Institute of Insolvency Professionals of ICAI (IIPI) has decided that the peer review of Insolvency Professional Entities (IPEs) would henceforth be undertaken using a two-fold approach. While the first one would be on the work done by IPE as an IP (conducting assignments under the IBC), the additional one, decided now, would be on the adequacy or otherwise of the infrastructure/ capacity support provided by them to the IPs. This decision was taken in the recent Governing Board meeting of IIPI. It is expected to enable the IPEs to undertake CIRP efficiently.

“We have decided to promote peer review mechanism for IPEs as juristic IPs, including support services such as managing end-to-end processes comprising support in

Updates

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claim verification, managing operation of CD, evaluation of resolution plan, etc., provided by them to IPs,” said Dr. Ashok Haldia, Chairman, IIPI-Governing Board.

Source: *The Hindu Businessline*, May 05, 2024.

<https://www.thehindubusinessline.com/economy/iiipi-to-include-support-services-by-ipes-under-peer-review/article68142009.ece>

Resolutions increased by 43% in FY 24 and pendency declined: Shri Sudhaker Shukla, WTM-IBBI


The successful resolution of corporate debtors has increased to 270 in the FY 2023-24 from 180 in the previous years which is 43 per cent jump on a year-to-year basis. This information was provided by Shri Sudhaker Shukla, Whole Time Member (WTM) of Insolvency and

Bankruptcy Board of India (IBBI) in an event in Kolkata.

“It was the first time in a year when the number of outputs increased from the number of inputs, and thus the pendency of cases in the National Company Law Tribunal (NCLT) benches across the country is going down,” said Shri Shukla. He also informed that over a period of time, the law has evolved and in the year 2023-24, around 12 amendments were made in IBBI with 86 interventions in a single year. “We are responding to the market needs to bridge the gaps according to the requirements, where sectoral aspects were also touched, trying to follow the sandbox approach,” he added.

Source: *The Hindu Businessline*, May 04, 2024.

<https://www.thehindubusinessline.com/economy/india-witnesses-43-surge-in-successful-insolvency-resolutions-pendency-declines-in-fy24/article68140014.ece>



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

EXECUTIVE DEVELOPMENT PROGRAM

Managing Corporate Debtor as Going Concern under CIRP (For IPs)

“An IP as one of the key pillars under IBC exercise powers of Board of Directors of the CD under resolution and inter-alia, manages its operations as a going concern. The managerial skill therefore is a quintessential element for a successful professional and to ensure an effective resolution process.”

HIGHLIGHTS

- Practical Exposure via Case Studies
- Developing Soft Skills
- Inter-Disciplinary Approach
- Managerial Knowhow
- Regulatory Framework

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