



# ASC

## INSOLVENCY TIMES



## Editorial



### MCA considering easing moratorium rules in IBC for certain sectors

The moratorium clause of the Insolvency and Bankruptcy Code (IBC) may be getting diluted for certain sectors, with the corporate affairs ministry considering exemption from this provision for aircraft leases. Moratorium for idle spectrum in the telecom sector can also be done away with by bringing a provision in the telecom bill, government sources said. The Indian telecom sector has consolidated to the point of having three private sector TSPs - Reliance Jio, Bharti Airtel and Vodafone Idea (Vi), and public sector BSNL.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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## Lenders vote in favour of Hinduja offer for bankrupt Reliance Capital

Lenders to debt-ridden Reliance Capital have voted in favour of a resolution plan submitted by Hinduja Group firm IndusInd International Holdings Ltd (IIHL) with an overwhelming majority of 99.6 per cent votes, which made the highest cash offer of Rs 9,661 crore and was the lone bidder in the second round of auction.

Considering the cash balance of Rs. 500 crore in the books of Reliance Capital, the lenders are expected to receive nearly Rs. 10,200 crore for distribution as against Rs. 16,000 crore principal secured debt which is about 65 per cent recovery for the lenders. The Resolution Professional of Reliance Capital plans to file the Hinduja group company's resolution plan with the Mumbai Bench of the National Company Law Tribunal (NCLT) at the earliest. The transaction, however, will depend on the Supreme Court's decision on a petition filed by Ahmedabad-based Torrent Group, which objected to the lenders conducting a second auction for Reliance Capital. In the first auction held in December 2022, Torrent was the highest bidder with an offer of Rs 8,640 crore.

Reliance Capital, once owned by Mr. Anil Ambani, was sent for debt resolution by its lenders in November 2021 after the firm defaulted on loans worth Rs 24,000 crore. Several companies had expressed interest initially, but most of them did not make any binding offers. Though the Hinduja offer is far below Reliance Capital's liquidation value of Rs. 13,000 crore, all lenders will get an equal amount from the offer. This decision is expected to mitigate any inter-creditor dispute among the lenders, thus ensuring a smoother resolution process.

Reliance Capital owns a stake of 51 per cent in Reliance Nippon Life Insurance and 100 per cent in Reliance Nippon General Insurance. It also owns a stake in stock-broking firm Reliance Securities, an asset reconstruction company, and a 20 per cent stake in the Indian Commodity Exchange. Among all such holdings, the two insurance companies were reported as profit making. The Hinduja group already has a presence in the financial services sector with stakes in IndusInd Bank and Hinduja Leyland Finance, a non-banking finance company owned by its vehicle manufacturing firm, Ashok Leyland. The group also has a housing finance business, which remains core to its strategy to increase its presence in financial services.



## **NCLT allows withdrawal of liquidation proceedings against Prag Distillery**

The National Company Law Tribunal (NCLT) has approved withdrawal of the liquidation proceedings against Prag Distillery, an arm of liquor maker Tilaknagar Industries, following a settlement by the company with its financial creditors Standard Chartered Bank and DCB Bank. Allowing a section 12A plea filed by the liquidator vide order dated 23rd June, 2023, the Mumbai bench of the NCLT said the proposal to withdraw the petition against Prag Distillery was approved by 100 per cent votes of the Committee of Creditors (CoC). The financial creditors have also issued a no-dues certificate after receiving USD 22,50,000 as a full and final settlement. With such development, the board of directors of Prag Distillery, situated in Andhra Pradesh, have been reinstated.

The Corporate Insolvency Resolution Process (CIRP) was initiated against Prag Distillery on June 27, 2017, and the CoC on March 23, 2018 unanimously decided to liquidate the company after it failed to find a buyer. Earlier, Tilaknagar Industries had entered into an agreement with Standard Chartered Bank, the financial creditor of Prag Distillery, to settle all outstanding dues of the entity. As per the agreement, an amount of USD 22,50,000 was paid to Standard Chartered Bank by Tilaknagar Industries on behalf of Prag Distillery. Tilaknagar Industries had also entered into a settlement agreement with the only other financial creditor of Prag Distillery, DCB Bank Ltd. In addition, the company paid an amount of approximately Rs 14 crore to settle, in full, all the operational creditors of Prag Distillery. For the fiscal year ended March 2023, Tilaknagar Industries, which owns various brands including Mansion House Brandy, Courier Napoleon Brandy, Mansion House Gold Whisky and Blue Lagoon Gin, reported a consolidated revenue from operations of Rs 2,469.27 crore.

## **NCLT Delhi Approves Ace Infracity's Resolution Plan For Three C Homes; Development Work Of 'Lotus City' To Conclude Within 24 Months**

The National Company Law Tribunal, New Delhi Bench, while adjudicating a petition filed in Mr. Arun Kumar Sinha v. M/s Three C Homes Pvt. Ltd., has approved the resolution plan of M/s. Ace Infracity Developers Pvt. Ltd. for Three C Homes Pvt. Ltd. The Resolution Plan is valued at Rs. 140 Crores (approx.). M/s. Three C Homes Private Limited ("Corporate Debtor") is engaged in business of real estate development and has developed a residential project namely 'Lotus City' near the Yamuna Expressway in NOIDA. For the purpose of developing the said Project, the Corporate Debtor had taken land on lease from the Yamuna Expressway Industrial Development Authority ("YEIDA"). The land so leased was acquired by YEIDA from the farmers.

Mr. Arun Kumar Sinha ("Financial Creditor") filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016, seeking initiation of Corporate Insolvency Resolution Process against the Corporate Debtor which was admitted into CIRP. M/s. Ace Infracity Developers Pvt. Ltd., the Successful Resolution Applicant, submitted a resolution plan for the Corporate Debtor, which was approved by the Committee of Creditors with 100 percent voting share.

The Fair value of the Corporate Debtor is Rs. 600 Crores (approx.) and Liquidation value of the Corporate Debtor is Rs. 480 Crores (approx.) whereas the Resolution Plan is valued at Rs. 140,39,27,000/-. With regard to Farmer's Compensation, the SRA is offering 100% of principal of farmer's compensation (Rs. 71.66 Crores) which is included in Rs. 173.46 crores agreed to pay to YEIDA. Further, the SRA has undertaken to complete the development work of the plots in the Lotus City Project and hand over the units to the allottees. The Resolution Plan is valid for a period of 24 months for closure and handover and the SRA will seek RERA re-registration of the Project for completion of work.

YEIDA had executed Lease Deed in favour of Corporate Debtor for approximately 100 acres of land. The Corporate Debtor had failed to meet its payment obligations with respect to Lease Rent, Land Premium, and additional compensation payable to farmers from whom the land in question was acquired. YEIDA objected to the plan submitted by the SRA, since the plan proposed a pay merely Rs. 67.12 Crores as against the total dues of Rs. 506 Crores in terms of the Lease Deed. Further, the Resolution Plan permits the Resolution Applicant to develop, exploit and profiteer from public asset without having to bear any burden, which is prejudicial to the public interest.

The Bench rejected the objections raised by YEIDA and held that despite no claims being filed, the resolution plan includes adequate provision with respect to objections raised by YEIDA. It was observed that the resolution plan being voted with 100 per cent voting share of CoC in its commercial wisdom does not warrant any interference.

## **IL&FS moves NCLAT over consent delays for transfer of assets to InvIT**

The IL&FS board has filed an application with the NCLAT against lenders, including IFCI, IIFCL, BoB, SBI, PNB, Indian Bank and the Government of Jharkhand for delays in transferring ₹5,500 crore worth of road assets to InvIT - as per resolution framework. The new board is facing inordinate delays and has sought NCLAT direction so that process can be expedited and desired resolution achieved. Under the resolution framework, the company management had approved the transfer of four road assets (BKEL, BAEL, JIICL, and JRPICL) to the InvIT of ₹5,500 crore, though lenders have been slow in approving the restructuring proposals for these assets. The IL&FS board has filed an application with the appellate tribunal (NCLAT) against several lenders, including IFCI, IIFCL, BoB, SBI, PNB, Indian Bank, and the Government of Jharkhand for "undue delays" in obtaining consent for the transfer of ₹5,500 crore worth of road assets to Infrastructure Investment Trust.

## **Moratorium Inapplicable To Contracts Entered Into By The CD Under Oilfields (Regulation And Development) Act**

The Ministry of Corporate Affairs, Government of India, has issued a notification dated 14.06.2023, notifying that Section 14(1) of the Insolvency and Bankruptcy Code, 2016 would be inapplicable to agreements/transactions/arrangements entered into by the Corporate Debtor under the Oilfields (Regulation and Development) Act, 1948. The Indian government has exempted bankrupt petroleum firms' mining leases, exploration licences and production and revenue-sharing contracts from a moratorium under the Insolvency and Bankruptcy Code.

The government has exempted corporate debtors' production and revenue-sharing contracts, exploration licences and mining leases under the Oilfields (Regulation and Development) Act from moratorium under the Insolvency and Bankruptcy Code (IBC). This effectively means that the government can cancel such contracts or permits with insolvent firms in the petroleum sector even when bankruptcy process has been initiated or going on. This is contrary to the rules that any licences or rights provided by other laws are not terminated during insolvency. The new notification is likely to have an impact on the insolvency processes of such companies but the notification's effect on existing cases remains unclear.





# RECENT JUDGMENTS

## **Narendra Rajani, erstwhile director v. Pegasus Assets Reconstruction Private Limited and Anr.**

***Pleadings that are not on record are not liable for consideration: NCLAT Delhi***

The NCLAT held that an order of the Adjudicating Authority which takes into account pleadings that are not on record are patently illegal and remanded the matter back to the Adjudicating Authority to decide again without reference to such pleadings.

## **Rajesh Kumar Tripathi v. Era Housing & Developers (P.) Limited**

***Homebuyer from a parent company cannot be considered as creditor of a subsidiary company: NCLAT Delhi***

The NCLAT, while noting that only an aggrieved person could file an appeal against the order of the Adjudicating Authority under Section 61 of the Code, held that a homebuyer from a parent company could not be considered as creditor of a subsidiary company and did not have the locus standi to file an application under Section 61 of the Code.

## **K.K. Ropeways Limited v. Billion Smiles Hospitality**

***Challenge to an ex-parte arbitral award under Section 34 of Arbitration and Conciliation Act, 1996 to be considered a 'pre-existing dispute': NCLAT Chennai***

The NCLAT held that a challenge to an ex-parte arbitral award under Section 34 of Arbitration and Conciliation Act, 1996 was a 'pre-existing dispute' and, thus, a valid ground for the rejection of a Section 9 application.

## **Shyam Rathod v. Gopalsamy Ganesh Babu**

***Filing of a claim under the wrong category was not sufficient reason for the condonation of delay: NCLAT Chennai***

The NCLAT held that a delay in filing a claim before the Resolution Professional could only be condoned if the delay was explained and the filing of a claim under the wrong category was not sufficient reason for the condonation of delay.



## **Hari Babu Thota (Comp. App. (AT) (CH) (Ins.) No. 110 of 2023)**

***MSME registration post initiation of CIRP not eligible for benefit u/s 240A of the Code: NCLAT Chennai***

The NCLAT observed that the erstwhile promoter of the corporate debtor would not be eligible to take the benefit under Section 240-A of the Code, where MSME registration is obtained post the initiation of the CIRP.

## **Puissant Towers India Private Limited v. Neueon Towers Limited and Ors.**

***No prior permission of RBI required for ARC to act as co-resolution applicant: NCLAT Chennai***

The NCLAT has noted that no prior permission of the Reserve Bank of India (RBI) is required for an Asset Reconstruction Company (ARC) to act as a co-resolution applicant, where such ARC was not proposing to acquire any equity shareholding.

## **Anheuser Busch Inbev India Limited v. Pradeep Kumar Sravanam**

***Claim can be kept in abeyance by RP till final adjudication of an Arbitral proceeding: NCLAT Chennai***

The NCLAT held that a claim could be kept in abeyance by the Resolution Professional where the arbitral proceeding and counter-claim for determining the liability and quantum of the claim is pending for adjudication.

## **IFCI Limited v. Sutanu Sinha**

***A compulsorily convertible debenture-holder cannot seek the status of a financial creditor post conversion period, as such CCDs would not qualify as debt after conversion: NCLAT Chennai***

The NCLAT held that, if as on the date of the admission of CIRP, the outstanding compulsorily convertible debentures ("CCDs") held by an investor had reached the compulsory conversion period, the CCD-holder cannot seek the status of a financial creditor on the basis of such CCDs, as post such conversion period, such CCDs would not have qualified as debt.

While the NCLAT could have based its decision on the basis of the aforesaid fact, it went on to further observe that fully convertible debentures would qualify as an equity instrument and not a debt. It placed reliance on the Master Direction on Foreign Investment in India, issued by the RBI, in support of the aforesaid proposition. In our view, such an observation may not be free from criticism as the reason for treating a compulsorily convertible instrument as an equity instrument, from the perspective of foreign investment, cannot be readily applied in the context of the Code. For instance, if the analogy is extended, a redeemable preference share, which is treated as debt under the FDI norms, could equally be considered to confer the redeemable preference shareholder the status of a creditor, which is definitely not what was intended.



## **Amit Ahirrao v Anagha Anasingharaju & Anr.**

### **Liquidator To Fix The Reserve Price Based On Average Of Two Valuation Reports Received In The CIRP Process: NCLAT Delhi**

The National Company Law Appellate Tribunal, New Delhi Bench, comprising of Justice Ashok Bhushan (Chairperson) and Shri Barun Mitra (Technical Member), has held that the Liquidator while auctioning the assets has to fix the reserve price based on average of two valuation reports received in the CIRP process. While adjudicating the matter, the Hon'ble Bench has held as under:

*“We, however, are of the view that the Liquidator while proceeding to sell the assets in accordance with Liquidation Process Regulation, 2016 has to take the reserve value as per Schedule-I of the Liquidation Regulation. The reserve price has to be value of assets arrived at as per Regulation 35(1), as noted above. We, thus, are of the view that the Liquidator while proceeding to sell the assets has to take reserve price on the basis of average of two valuation reports received in the CIRP process.”*

## **Kairav Anil Trivedi v. Union of India and Ors.**

### **S.220 IBC | Prima Facie Disciplinary Committee Can Consist Only Of Whole Time Members: Bombay High Court Stays Insolvency Professional's Suspension**

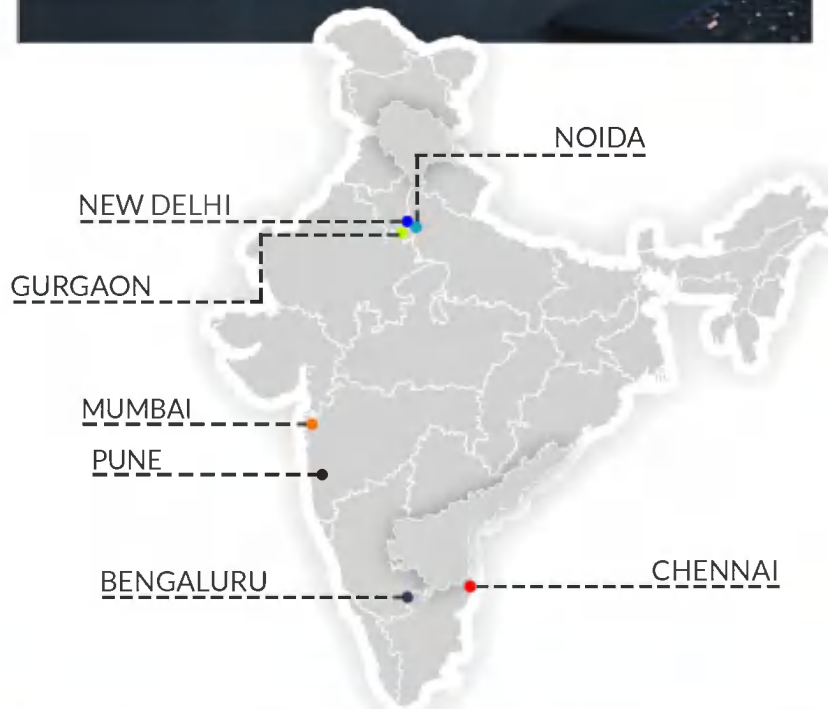
The Bombay High Court Bench comprising of Justice BP Colabawalla and Justice MM Sathaye has stayed the suspension of registration of Insolvency Professional, who is accused of misrepresentation and entering into unauthorised agreement in a Corporate Insolvency Resolution Process (CIRP).

The Bench observed that prima facie, the order against the Insolvency Professional was passed by the Chairperson of the Insolvency and Bankruptcy Board of India (IBBI) and not its Whole Time Member who is empowered to pass a disciplinary order.

*“...prima facie we are of the opinion that the Disciplinary Committee can consist only of Whole Time Member(s), who can then pass orders. In the present case, the impugned order dated 23.05.2023 is passed by Mr. Ravi Mital, who, at least on the Website of the IBBI, is shown as the Chairperson of the IBBI and not its Whole Time Member”.*

**For enquiries related to:**

- **Insolvency Process,**
- **Bankruptcy Process,**
- **Filing petition with NCLT/DRT,**
- **Appointment of Insolvency Professionals,**
- **Assets Management of the Company,**
- **Hearing of Cases or any other enquiries**



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