



# ASC

## INSOLVENCY TIMES



## Editorial



### **IBBI has streamlined Liquidation process**

In a welcome move, the Insolvency and Bankruptcy Board of India (IBBI) has brought amendments to the liquidation norms contained in the Insolvency and Bankruptcy Code, 2016b (IBBI) and regulations thereunder. These changes include the continuation of CoC as SCC in the first 60 days of Liquidation process, conducting meetings of SCC in a structured and time bound manner, reference and verification of claim submitted in the CIRP in absence of a claim being submitted during the Liquidation process, ease of exploring the process of compromise and arrangement within thirty days from Liquidation commencement, event based timelines for auction and the treatment of the avoidance applications post closure of the process.

The move is much appreciated as it bridges the few gaps and voids which have long been displeasing not only to the Liquidators but also to the stakeholders involved in the process. The changes are expected to reduce delays, ensure better participation of stakeholders and might even facilitate a better realizable value from the Liquidation process

**Expect more vibrancy from Insolvency Resolution Process**

**Stay Alert!**

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## **NCLT Ahmedabad rejects Resolution Plan that selectively favoured certain creditors**

***The Adjudicating Authority held that the Plan ineffectively dealt with the interests of all stakeholders and was in breach of the waterfall mechanism***

The National Company Law Tribunal, Ahmedabad Bench (NCLT), while adjudicating a petition filed in the matter of M/s Sansar Texturisers Private Limited v. Polycoat India Private Limited, has declined to approve a Resolution Plan of the Successful Resolution Applicant that breached the waterfall mechanism of payments as given under Section 53 of the Insolvency and Bankruptcy Code, 2016 (IBC) and selectively favoured certain creditors without according any reasons for the same. The Adjudicating Authority held that the Plan ineffectively dealt with the interests of all stakeholders of the Corporate Debtor and was non-compliant of Section 30(2)(e) and Section 30(2)(f) of the Code.

Punjab National Bank being the Financial Creditor which approved the Resolution Plan, was being paid Rs. 7,52,00,000/- out of its total admitted claim of Rs. 111,29,36,166/-. Whereas, the Applicant being dissenting creditor, was offered only 1% of its debt, i.e. Rs. 18,012/- against a claim of Rs. 18,01,219/-.

The total amount earmarked in the Resolution Plan for stakeholders was Rs.7,85,00,000/-, out of which 95% amount was paid to Punjab National Bank alone, leaving balance of Rs. 33,00,000/- approximately for payment to other stakeholders. Moreover, Rs. 32,78,102/- was earmarked for to two Operational Creditors i.e. G.I.D.C and Surat Municipal Corporation, leaving meager amount of Rs. 18,012/- for payment to the Applicant who is an unsecured Financial Creditor.

*"On going through the proposai of payment of dues in the resaiution plan, we hold that Resolution Applicant has changed entire payment pattern ignoring the list of priority of payments as stated under Section 53 of IBC", the Appellate Adjudicating Authority held.*

## **Creditor entitled to claim from Successful Resolution Applicant if its suit is decreed: NCLAT Delhi**

***The Appellant was aggrieved by the Resolution Professional earmarking Rs. 1 to his claim declaring it as a contingent one***

The National Company Law Appellate Tribunal (NCLAT) while adjudicating an appeal filed in the matter of Goltens India Private Limited v. Sudip Bhattacharya, has upheld the order of the Adjudicating Authority to earmark Rs. 1 towards a contingent claim arising out of a recovery suit filed before the Hon'ble High Court. The Appellate Adjudicating Authority held that if the suit is decreed then the creditor shall be entitled to claim from the Successful Resolution Applicant.

The Appellant had filed a Commercial Suit before Bombay High Court against the Corporate Debtor, for recovery of outstanding amounts, which was pending adjudication. Subsequently, when corporate insolvency resolution process (CIRP) was initiated against the Corporate Debtor. Accordingly, the Appellant also filed its claim with the Resolution Professional.

The Resolution Professional accepted the Appellant's claim as 'contingent claim' and when the Resolution Plan was approved by the Committee of Creditors (CoC), a sum of Rs. 1 was earmarked to the claim of the Appellant as a contingent claim.

The NCLAT subsided with the view taken by the Adjudicating Authority to rule that when the Resolution Professional has already declared that the Appellant's claim will be treated as a contingent one until any judgment is pronounced in the said suit, the Appellant shall be entitled to claim from the Successful Resolution Applicant if the suit is decreed in favour of the Appellant and against the Corporate Debtor.

## **IBBI to fix minimum fee slabs for Insolvency Professionals**

***The new rules have also paved the way to allow lenders to pay resolution professional based on how soon a resolution plan is finalised***

The Insolvency and Bankruptcy Board of India (IBBI) has prescribed minimum fee slabs for Resolution Professionals running the corporate insolvency resolution processes from October 1 onwards so that such professionals are adequately compensated. The change attempts to secure the financial independence of such professionals who have to take important decisions to address the interests of both lenders and borrowers during the insolvency process.

The move seeks to protect the financial independence of the Resolution Professionals who have to take sensitive decisions relating to claims of lender financial creditors and bids placed by potential resolution applicants and involve handling competing interests of stakeholders.

The new regulations also incentivize quick and effective insolvency resolution by allowing the creditors to pay a performance-linked incentive to the Resolution Professional which shall be dependent upon how quickly a Resolution Plan is finalised and implemented.

## State Bank moves NCLT for insolvency proceedings against Bajaj Hind

### *The Sugar Manufacturer defaulted on a Rs. 5,000 crore loan restructuring*

The State Bank of India has moved the National Company Law Tribunal (NCLT) seeking admissions of Bajaj Hindusthan into corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC). The Company is in non-compliance of a Rs. 5,000 crore loan restructuring agreement with the country's largest lender.

SBI has claimed that the Kushagra Bajaj-led company failed to bring in equity from associates that was promised as part of the restructuring package.

The State Bank has submitted before the NCLT that the sugar manufacturer defaulted on 1,052 crore portion of its debt. The default amount Rs. 140 crore includes coupon payments on optionally convertible debentures that had been subscribed to by the banks.

The company had been granted a restructuring package under the Reserve Bank of India's guidelines for resolution of stressed accounts that were introduced on June 7, 2019. As part of the restructuring package, the sugar maker had issued optionally convertible debentures worth ₹3,483 crore to banks and had promised to bring equity into the company.

## Homebuyers drive Deih Bulider Ajnara india into insolvency proceedings

### *NCLT names Resolution Professional after buyers of Ajnara's delayed Ambrosia project Noida decided to approach the Adjudicating Authority*

Developer Ajnara India Limited has been driven into Insolvency proceedings after the Delhi bench of the National Company Law Tribunal (NCLT) admitted a petition filed by the homebuyers of a delayed project in Noida. The NCLT order against the Delhi developer has named an Insolvency Professional named Amarpal to steer the Insolvency resolution process of the Corporate Debtor.

The order admitting the Insolvency petition in respect of Ajnara also states that the Application for initiation of corporate insolvency resolution process (CIRP) has been admitted under Section 7(5) of the Insolvency and Bankruptcy Code, 2016 (IBC)

The homebuyers sought to initiate CIRP against Ajnara for the default committed against the financial debt paid by the Applicants in lieu of the units purchased in the project. The builder had entered into arrangements with companies and individuals that owned and possessed land situated in Noida for construction of the group housing project.

## First order of extension of time granted in a Personal Guarantor matter

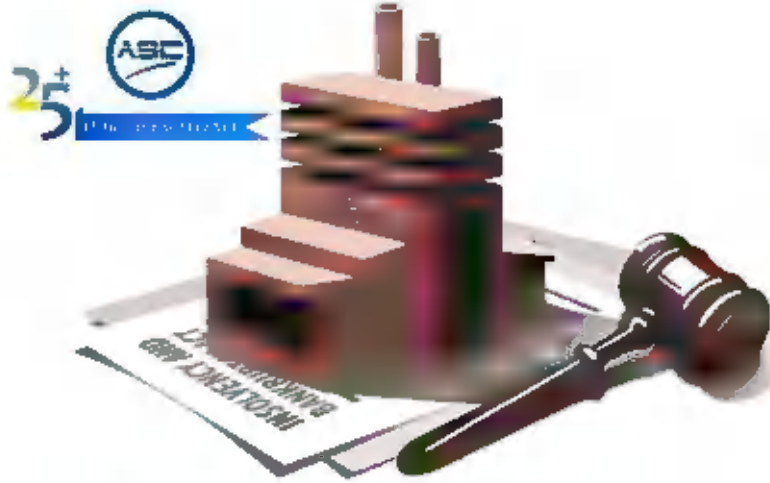
### ***The Adjudicating Authority granted extension while invoking Rule 11 read with Regulation 19 of Personal Guarantors Insolvency Regulations***

The National Company Law Tribunal, Ahmedabad Bench (NCLT) has granted extension of time for completion of insolvency resolution process of a Personal Guarantor. The extension was granted by the Adjudicating Authority under Rule 11 of the National Company Law Tribunal Rules, 2016 (NCLT Rules) read with Regulation 19 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Regulations, 2019.

The move by the Adjudicating Authority has been the first instance where an extension has been granted in the insolvency resolution process of a Personal Guarantor. In the present case, the NCLT allowed the Interlocutory Application filed by the Resolution Professional for an extension of 60 days for submission of repayment plan of the dues to be repaid by the Personal Guarantor that would be submitted by the Personal Guarantor to the Committee of Creditors (CoC) and the CoC in turn would approve the same subject to its commercial wisdom.

The direction gives a positive indication upon the new dimensions and possibilities pertaining to the contemporary insolvency resolution process of individual persons. It further sheds light to possibilities of bankruptcy norms to be legislated and implemented in the country, seeing the developments of the aspects of personal insolvency in the face of resolution processes being conducted in Personal Guarantor matters.





# RECENT JUDGMENTS

## State Tax Officer v. Rainbow Papers Limited

***Resolution Plan which ignores statutory dues payable to the State liable to be rejected: Supreme Court***

The Supreme Court of India has recently held that the definition of a secured creditor in the Insolvency and Bankruptcy Code, 2016 (IBC) does not exclude any government or legal authority. Consequently, the Apex Court ruled that the Resolution Plan in question was liable to be rejected for ignoring payment of dues payable to the concerned State Department in the right manner as per the waterfall mechanism provided under Section 53 of the Code.

The Apex Bench observed that the Committee of Creditors (CoC) which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of statutory dues owed to any Government or Governmental authority or for that matter, any other dues.

Further the Bench went on to hold that the concerned State department was a secured creditor by virtue of the security interest created by operation of law. The Supreme Court laid emphasis on the statutory provision which gave the State first charge over its dues against the Corporate Debtor, by which reason the Court held that the Resolution Plan ought to have contemplated the dues payable to the State to be one payable to a secured creditor.

## Axis Bank Limited v. Shubhkamna Buildtech Private Limited & Anr.

***The IRP cannot be expected to process and verify the claims of a creditor without supporting documents: NCLAT***

The National Company Law Appellate Tribunal (NCLAT) has recently held that the Insolvency Resolution Professional (IRP) is a professional engaged and appointed by the Adjudicating Authority and bestowed with duties under the Insolvency and Bankruptcy Code, 2016 (IBC). Such IRP cannot be expected to process and verify the claims submitted by any creditor without supporting documents.

The Adjudicating Authority held that even when a claim is real and genuine in nature, still the IRP cannot be expected to admit the same without any documents provided in evidence to the said claim by the creditor. The requirement of submission of claim by the creditor does not only require the claim form to be submitted to the IRP, but also mandates submission of any/all documentary evidence in support of the same.

## Ocean Deity Investment Holdings Limited v. Suraksha Asset Reconstruction Limited

### ***The NCLAT sets aside Insolvency proceedings against Mock Star Marketing***

The National Company Law Appellate Tribunal (NCLAT) has set aside an order of the Adjudicating Authority which admitted a petition filed by Suraksha for initiation of corporate Insolvency resolution process (CIRP) in respect of Mack Star Marketing. The NCLAT observed that the term loan provided by Yes Bank to it was an 'eye-wash' and 'collusive in nature'.

The Appellate Adjudicating Authority held that such collusive transactions do not fall within the ambit of the definition of Financial Debt as defined under Section 5(8) of the Insolvency and Bankruptcy Code, 2016 (IBC) and therefore Suraksha Asset Reconstruction cannot be termed as a Financial Creditor.

The NCLAT observed that out of Rs. 147.6 crore sanctioned by Yes Bank in Mack Star's name for the purpose of renovating a building constructed at a cost of Rs. 100 crores, more than 99 per cent of the amount was routed back to Yes Bank either on the same day or within a very short period.

After the decision of the NCLAT, in effect, orders passed by the NCLT appointing an IRP, declaring moratorium, freezing of account and all other orders passed pursuant to the impugned order were set aside. *"The Corporate Debtor is released from all the rigors of law and is allowed to function independently through its Board of Directors with immediate effect"*, the Bench held.

## M/s IDBI Bank Limited v. C. J. Davis

### ***Tribunal cannot interfere with decision of CoC to replace Resolution Professional: NCLAT Chennai***

The National Company Law Appellate Tribunal, Chennai Bench (NCLAT), while adjudicating on an appeal has set aside the Adjudicating Authority's order disallowing the Committee of Creditors (CoC) to replace the Resolution Professional under Section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Appellate Adjudicating Authority further held that the commercial wisdom of CoC is paramount and can only be interfered by the Tribunal if the same is arbitrary, illegal, irrational and dehors the Code and the rules made thereunder.

The NCLAT Bench observed that under Section 22(3) of the Code, the CoC in its first meeting by a majority vote not less than 66% of the voting share can either decide to continue the IRP as Resolution Professional or may replace the IRP by filing an Application before the Adjudicating Authority along with written consent from the proposed Resolution Professional in the specified form.

The Appellate Adjudicating Authority opined that the Appellant had complied with the provisions of law and the Adjudicating Authority ought to have considered the same without going into the other technicalities



## R.K. industries (Unit ii) LLP v. H.R. Commercialis Private Limited

***Even though the assets of the Corporate Debtor are ordinarily to be sold by Auction, the Liquidator may also directly go in for a private sale: Supreme Court***

The Hon'ble Supreme Court has recently held that when all stakeholder have unanimously made a decision in favour of private sale of the assets of the Corporate Debtor in liquidation, the Liquidator was right in holding a private sale of the assets while abandoning the ongoing bidding process. The Apex Court further held that the decision of the NCLT to have the sale of the composite assets negotiated with the parties who had participated in the earlier rounds of sale, cannot be described as a rushed decision for the NCLAT to have modified the said order and direct that the clock be set back to the initial stage of issuing notices to the prospective buyers.

The Apex Court was of the view the Adjudicating Authority cannot act as a Court of equity or exercise plenary powers to unilaterally reverse the decision of the Liquidator based on commercial wisdom and supported by the stakeholders.

Accordingly, the Apex Court upheld the Private Sale process of the composite assets of the Corporate Debtor by the Liquidator and directed the Liquidator to take the sale forward without losing any further time and be concluded at the earliest. The Court further directed the process of private negotiations to be taken to its logical end and brought to a closure by the Liquidator.

## Budbpur Buildcon Private Limited v. Abbay Narayan Manudbane

***'Interest' per se in any business contract cannot be termed to make the 'debt' as a 'Financial debt': NCLAT***

The Appellate Adjudicating Authority has held that for a debt to be a 'financial debt', there must be a disbursement of fund by the Creditor to the Debtor purely in the form of release of fund as a "borrowing" and must have a "time value of money".

The Appellate Bench further observed that there is a difference between the levy of liquidated damages or penal interest for default and the financial debt per se. Accordingly, NCLAT clarified that interest, per se, in any business contract cannot be termed to make the 'debt' a 'financial debt', if it is in the nature of liquidated damages or in the nature of penal interest, which is a result of compensation for breach of contract which is stipulated for penalty.

As a necessary remark, the Appellate Adjudicating Authority remarked that whether Appellant is a Financial Creditor or not is a question to be determined both on facts and on law.

**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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