ICSI Insolvency Professionals (ICSI IPA) in its constant endeavour to support and facilitate the Insolvency Professionals (IPs) in building a strong foundation for themselves under the new insolvency regime, convened an Interactive Session on the Insolvency and Bankruptcy Code, 2016 (Code) wherein the issues and challenges being faced by the IPs were addressed by Hon'ble Justice S. J. Mukhopadhaya, Chairperson, NCLAT, Mr. Suman Saxena, Whole Time Member, IBBI, Mr. Balvinder Singh, Technical Member, NCLAT and Mr. Amarjit Singh Chandhiok, Senior Advocate and President INSOL India.

I am happy to inform that as part of its knowledge and capacity building initiative for the entire professional fraternity, ICSI IPA released a publication titled “IBC: A CASE LAW COMPENDIUM (with case briefs)”. The Book enjoys the privilege of being first of its kind compiling all orders issued by various benches of NCLT upto 30th April, 2017, encompassing

a. Consolidated Table of Cases filed before NCLT/NCLAT
b. Bench wise orders of Insolvency cases admitted by NCLT and/or NCLAT along with case briefs.
c. Orders of Insolvency cases rejected by NCLT and/or NCLAT
d. Table of rejected cases along with reasons for such rejection

The Foreword to the publication has been written by Shri Arun Jaitley, Hon’ble Minister of Finance and Corporate Affairs and also by Dr. M. S. Sahoo, Chairperson, IBBI.

The book shall prove to be extremely helpful as it aims to give its readers hands-on experience on insolvency cases being taken up by the NCLT and NCLAT on an ongoing basis.
FOREWORD

The Indian economy witnessed an era of economic liberalization in 1990s. Reforms in 2000s created market space for growth of businesses. Nevertheless, business failures are sometimes inevitable and therefore, freedom of reconstruction and freedom of exit also should be made smoother. When the resolution of business is not feasible, the exit process should be made with least disruption and cost. The Insolvency and Bankruptcy Code (IBC) 2016 (‘the Code’) provides an exit route to address genuine business failures.

The institutional mechanism, adjudication process and time bound mechanism in the Code enables the process of business resolution or exit smoother. Today, the National Company Law Tribunal is adjudicating insolvency cases, bringing hundreds of judgements, resulting in admission or rejection of insolvency applications. The pronouncements provide learning to the practitioners on various aspects of the Code including the grounds of admission or rejection of cases along with interpretation of various sections and clauses of the Code.

Since the Code is a new piece of legislation, therefore, the IBC-Compendium of Cases (with Case Briefs) by ICSI Insolvency Professionals Agency (ICSI IPA) acts as a handy book for Insolvency practitioners, professionals, bankers, regulators and other stakeholders in understanding the adjudication matters and interpretation of the IBC.

I compliment the Institute of Company Secretaries of India (ICSI) IPA for bringing-out this publication at a most opportune time.

Arun Jaitley

Minister of Finance, Corporate Affairs and Defence

India
There are three main sources of law, namely, customary law, statutory law and case law. Case law provides certainty in the sense that a case with sufficiently similar material facts yields a similar outcome. It also provides consistency and fairness as similar cases are dealt in the same way. It assumes additional significance in the initial days of a statutory law such as the Insolvency and Bankruptcy Code, 2016 (Code), when different plausible views emerge on an issue and the right view needs to be established.

The provisions relating to corporate insolvency resolution process (CIRP) under the Code came into force on 1st December, 2016. The Adjudicating Authority (AA) and the Appellate Authority have since dealt quite a few applications for resolution and appeals respectively and have settled a number of issues. While this compendium carries a gist of settled issues and the rationale for the same, I am tempted to draw attention of the readers to two case laws which will have substantial bearing on the implementation of the Code.

The first emanates from the order of the AA in the matter of DF Duetsche Forfait AG and Anr. Vs. M/s. Uttam Galva Steel Ltd. This reiterates that the Code is the mandate of the nation and proceedings under the Code are not necessarily adversarial. The AA observed: “.. we cannot hang on to the conventional approach which has become inherent in us that a legal proceeding shall be adversarial only, we are governed by a democratic system, henceforth we have to go by the mandate given by legislature.” It further observed: “if we start looking at this as draconian law gobbling up the companies and branding orders under this law as harsh, then we remain where we are, perhaps will go down further, yes, one can understand to get converted to new law and to see fruits of it, it will take time, but just for the sake of this reason, we cannot wish away the mandate of this nation come through parliament”.

(v)
The second emanates from the order of the Appellate Authority in the matter of *JK Jute Mills Company Limited Vs. M/s. Surendra Trading Company*. This reiterates that time is the essence of the Code and all stakeholders, including the AA, are required to discharge their responsibilities within the prescribed time except in exceptional circumstances. The Code broadly prescribes four timelines in respect of CIRP: (a) 14 days for the AA to admit or reject an application for initiation of CIRP; (b) 7 days for an applicant to rectify defects in the application for CIRP; (c) 30 days for the Interim Resolution Professional to discharge his duties; and (d) 180 days for creditors to complete a CIRP. The Appellate Authority held that timelines at (a) and (c) are directory, while those at (b) and (d) are mandatory.

As stated in its preamble, the Code provides for re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets. It envisages specific roles for each participant - the stakeholders comprising debtors and creditors, and the ecosystem comprising AA, Insolvency and Bankruptcy Board of India, information utilities, and insolvency professionals - in different processes and specifies timelines for performance of each task in a process. The participants need to fulfill the mandate of the nation given under the Code and they need to do so in a time bound manner.

The USP of the Code is time bound completion of processes. A process such as CIRP can be completed only if each task in the process is completed in time. Completion of each task requires co-operation of stakeholders and participants. For example, it is difficult for the AA to admit or reject an application for CIRP within 14 days if the applicant and other stakeholders do not co-operate. Similarly, the creditors and other stakeholders can not complete CIRP within 180 days if the insolvency professional does not co-operate. Therefore, it is the collective responsibility of the stakeholders and the ecosystem to complete each task and each process under the Code within prescribed time. If they fail to preserve the USP of the Code, the Code and the process there under may have the same fate as many others which did not deliver in time. The ecosystem needs to ensure that the processes under the Code are competitive in terms of time, cost and efficiency in comparison to other options available to stakeholders.

In this background, I find ‘IBC: Case Law Compendium’ a handy reference for practitioners and stakeholders alike, in addition to academics and researchers and I compliment the ICSI Insolvency Professional Agency for this timely initiative.

**DR. M. S. SAHOO**
The Insolvency and Bankruptcy Code is built with strong institutional adjudication mechanism, time bound resolution process, quick and scientific credit information base, resulting in accelerated phase of filing of cases for Corporate Insolvency Resolution Process with National Company Law Tribunal over the period of five months of implementation of Law. Further the Central Government has authorized the Reserve Bank of India to direct banking companies to initiate action under the Code with respect to their stressed assets. This will result in substantial increase in number of cases being filed before different benches of NCLT in the near future. Effective implementation of the Code will lead to effective time bound business resolution or easy exit.

The Tribunal has witnessed different types of cases being filed resulting in admission or rejection of cases. While admitting/rejecting the cases, the Tribunal have analysed and interpreted the provisions of law such as existence of dispute with respect to default, time limit for admission of order, nature of financial creditor, operational creditor, financial debt, operational debt, etc.

"IBC-Case Law Compendium (with Case Briefs)" is a compendium of orders pronounced by different benches of the National Company Law Tribunal and by the National Company Law Appellate Tribunal till April 30, 2017 with a brief analysis of the cases. The book is the first such publication and would be a handy reference to students, all insolvency and other professionals, corporates, debtors, creditors, regulators, Tribunals, Courts, and other stakeholders in understanding and analysing the new law.

I commend the dedicated efforts of the team ICSI Insolvency Professionals Agency led by Ms Lakshmi Arun, Head (Education & Training) (Designate) and involvement of Mr. Amarjeet Singh, Senior Consultant in bringing out this publication under the supervision and guidance of Ms Alka Kapoor, Chief Executive Officer (Designate), ICSI Insolvency Professionals Agency.
I thank Mr. N K Jain, Former Secretary & CEO and past Council Member, ICSI and Mr. Sanjay Grover, Practising Company Secretary, Past Council Member and Registered Insolvency Professional for thoroughly reviewing the case briefs and for their value added inputs.

I am sure that this book will be useful in easy reference of cases and in understanding the cases through case briefs.

CS (DR.) SHYAM AGRAWAL
PRESIDENT, ICSI

12th May, 2016
ABOUT THE BOOK

The Insolvency and Bankruptcy Code, 2016 ("Code") provides for a specialised forum to oversee insolvency and liquidation proceedings for corporates, firms and individuals. As the Code takes shape, there are various issues with regard to implementation of the Code which have cropped up before the National Company Law Tribunal ("NCLT") and the National Company Law Appellate Tribunal ("NCLAT").

This publication makes a sincere attempt at educating its readers in understanding the Code through the development of case laws. During its short span, both, the NCLT and NCLAT, have been confronted with complex issues like the existence of ‘dispute’ – whether requires a pre-existing suit/arbitral proceedings or mere denial is sufficient; whether the period of limitation under the Limitation Act is applicable for filing an application under the Code; whether the time limit for admitting/rejecting an application prescribed under the Code is mandatory or discretionary and if mandatory, when does the period of fourteen days start. All these and many other intricate issues can only be decided by an authoritative pronouncement by court of law.

This publication of ICSI Insolvency Professionals Agency titled “IBC – A Case Law Compendium” covers orders of NCLT and NCLAT admitting the cases (bench-wise) along with case briefs, orders of NCLT and NCLAT rejecting the cases with reasons thereof, table of consolidated cases filed etc. This is in continuation of our efforts to provide the insolvency professionals and our members with the latest developments and case law to enable them to be current and up dated on the subject. We will appreciate the valuable suggestions of the readers of this publication for improving the contents, quality and readability of the future additions of the publication.

CS ALKA KAPOOR  
Chief Executive Officer  
(Designate)  
ICSI Insolvency Professionals Agency

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