

KNOWLEDGE REPONERE

(A WEEKLY BULLETIN)
(20 -24 MARCH, 2017)

©  **INSOLVENCY PROFESSIONALS AGENCY**

All rights reserved. No part of this Publication may be translated or copied in any form or by any means without the prior written permission of The ICSI Insolvency Professionals Agency.

Disclaimer

Although due care and diligence has been taken in the production of this Knowledge Reponere (A Weekly Bulletin), the ICSI Insolvency Professionals Agency shall not be responsible for any loss or damage, resulting from any action taken on the basis of the contents of this Knowledge Reponere (A Weekly Bulletin). Anyone wishing to act on the basis of the material contained herein should do so after cross checking with the original source.

Published by:

 **INSOLVENCY PROFESSIONALS AGENCY**

1st Floor, ICSI House, 22, Institutional Area, Lodi Road

New Delhi-110003

Phones: 011-4534 1099

Email: info@icsiipa.com

KNOWLEDGE REPONERE
(A Weekly Bulletin: 20-24 March, 2017)

“The only way to do great work is to love what you do. – Steve Jobs”

Dear Professional Colleagues,

The Insolvency and Bankruptcy Code, 2016 (“Code”) is a statute which intends to create a conducive and progressive environment for dealing with insolvency and bankruptcy cases in India. In order to be a game changer for the nation, Code requires judicial system, bankers, professionals, investors and citizens to work in synchronization towards devising either a revival plan or a liquidation plan for the corporates, Limited Liability Partnerships (LLPs), proprietorship firms or individuals.

In this entire process the Insolvency Professionals (IPs) will play a pivotal role to accomplish the two fold objective of releasing the debts and preservation of the assets of the company while keeping an entity as a going concern. Liquidating a company or declaring an individual as an insolvent shall be seen as a last resort in the extreme situations.

In this knowledge bulletin, we provide updates with regard to the recent filed and admitted cases, cases rejected and reason thereof for rejection as well as the recent initiatives of ICSI IPA.

1) Case Updates

As on date out of the 97 cases were filed under the Code at various National Company Law Tribunal (NCLT) Benches, of which 19 cases have been admitted so far. In our previous weekly update we provided the details of the 15 cases which were admitted. The details of 4 cases admitted subsequently are tabulated below:

S. No.	Case Title	Relevant Section	NCLT Bench	Amount in default as mentioned in application (in Rupees)
1.	Indian Bank & Kadevi Industries Limited	Section 7 of the Code dealing with initiation of CIRP by financial	Hyderabad	171 Crores

		creditor.		
2.	Chhaparia Industries Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Mumbai	41.50 Crores
3.	Recorders and Medicare Systems Private Limited	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Chandigarh	100 Crores
4.	Shree Rajeshwar Weaving Mills Pvt. Ltd.	Section 10 of the Code dealing with initiation of CIRP by corporate debtor.	Mumbai	1.58 Crores

2) Petition filed for highest debt since the enactment of the Code

Nagpur-based Gupta Coal India has filed an insolvency petition under Section 10 of the Code which deals with the initiation of corporate insolvency resolution process by the corporate debtor. The whopping amount of **Rs 2,580 Crores** is in default as per the application against 8 banks namely, Allahabad Bank, ICICI Bank, Indian Overseas Bank, Union Bank of India, Vijaya Bank, IDBI Bank, Punjab National Bank and Bank of India. This is one of the biggest amounts in question in a petition filed so far since the enactment of the Code.

Gupta Coal India was founded in 1940 and has been a party to JV Agreement with Vidyut Nigam, AP Coal Washeries and Monnet Daniels Coal Washeries.

3) Enforcement Directorate penalty against Dinakaran

Enforcement Directorate (ED) issued insolvency notice to Dinakaran for recovering Rs 28 Crores on account of penalty levied on Dinakaran for violating the provisions of Act. In response to the same, Dinakaran filed a petition at the Madras High Court. The court stated that the penalty is not a "debt" within the meaning of the Code and hence Dinakaran cannot be regarded as a "debtor" within the meaning of the Code.

Subsequently, ED preferred an appeal against the Madras High Court order to Supreme Court and Supreme Court confirmed the penalty by ED. Presently the matter has been adjourned to the third week of June.

4) Rejected Cases

Out of the cases filed with different NCLT Benches, various cases have been rejected and dismissed by the Tribunal. A brief summary of the rejected and dismissed cases is compiled below:

S. No	Case Title	Reason
1.	Philips India Limited V/s Goodwill Hospital and Research Centre Limited & Karina Healthcare Private Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, Principal Bench, New Delhi under Section 9 of the Code. Under the said case, Philips India Limited (Operational Creditor) was engaged in equipments maintaining contract with Goodwill Hospital and Research Centre Limited and Karina Healthcare Private Limited (Operational Debtor).• As per the terms of the contract, Applicant was required to provide various timely equipment maintenance services to the Respondent at its hospital which it failed to provide and accordingly Respondent deducted the payment of the Applicant on account of non performance of the services and also intimate about such deduction to the Applicant.• Applicant served a demand notice for the outstanding amount of Rs. 11 Lakhs (approximately) to the Respondent.• As per the NCLT order the outstanding amount is not a debt and the remedy demanded by the Applicant lies outside the purview of the Code and hence the petition was rejected.
2.	Balaji Properties v/s. BRYS International Pvt. Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, Principal Bench, New Delhi under Section 7 of the Code.• The petition was dismissed on the grounds of non appearance of petitioner party on the date of hearing and non filing of an affidavit with the NCLT within the stipulated period with respect to the adherence of the provisions of the Code.
3.	State Bank of India v/s. Shree Ganesh Forgings Limited	<ul style="list-style-type: none">• The matter was filed before the NCLT, Mumbai Bench under Section 7 of the Code.• The petition was dismissed as it was withdrawn by the petitioner on the ground that he will file fresh

		petition on the same fact and cause of action.
4.	KKV Naga Prasad & Lanco Infratech Limited	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Hyderabad Bench, under Section 9 of the Code. Under the said case; Mr. KKV Naga Prasad (Operational Creditor) was the employee of Lanco Infratech Limited (Operational Debtor) for 11 years. • The Applicant was claiming Rs. 1 Crores (approximately) from the company as an entitlement at the time of being relieved from the services of the Company and accordingly he served demand notice to the company under Section 7 of the Code. • The petition was dismissed by the Tribunal on the grounds that the demand notice under Section 7 of the Code should be given by a financial creditor and in this case the petitioner, who was the employee of the company, is not a financial creditor. • Moreover at the time of filing of this application, petitioner himself owed Rs. 3,81,943 to the Company.
5.	M/s. One Coat Plaster And M/s. Shivam Construction Company V/s. M/s. Ambienne Pvt. Ltd	<ul style="list-style-type: none"> • The matter was filed before the NCLT, Principal Bench, New Delhi under Section 9 of the Code. Under the said case, M/s. One Coat Plaster And M/s. Shivam Construction Company (Operational Creditor) was engaged in providing plastering services to M/s. Ambienne Pvt. Ltd. (Operational Debtor). • The petitioner provided the below standard and poor services to the Respondent and accordingly Respondent deducted the payment of the Applicant on account of non performance of the actual services. • Applicant served a demand notice for the outstanding amount of Rs. 32 Lakhs (approximately) to the Respondent. • As per the NCLT order the outstanding amount is not a debt and the remedy demanded by the Applicant lies outside the purview of the Code and

		hence the petition was rejected.
--	--	----------------------------------

5) **MCQ Series**

The syllabus for Limited Insolvency Examination covers Insolvency and Bankruptcy Code, 2016, Rules and Regulations made thereunder, Bankruptcy Legislative Reforms Committee Report, relevant provisions of Companies Act 2013, Securitisation Act, Indian Contract Act, Sale of Goods Act etc. The syllabus and registration details for Limited Insolvency examination are available at www.ibbi.gov.in.

In order to help eligible members to prepare for the Limited Insolvency Examination, ICSI IPA has introduced an e-MCQ Series covering the various aspects of syllabus in the form of indicative objective type questions.

As on date we have released the following two MCQ Series:

- a. **Series 1** covering corporate insolvency resolution process, adjudication mechanism for corporate persons and offences and penalties thereunder.
- b. **Series 2** covering Liquidation of Corporate Persons and regulations made thereunder

We are in the process of releasing further series of MCQs concerning other parts of the syllabus for the Limited Insolvency Examination. We anticipate that these indicative MCQs along with our two publications will assist the professionals across the India in preparation for the examination. Readers may mail their queries or suggestions at anchal.jindal@icsi.edu.

We wish to enroll and register more number of professionals as Insolvency Professionals in the economy building process of the nation.

Wish you good luck in all your endeavors!!

CS ALKA KAPOOR
Chief Executive Officer
(Designate)
Tel: 011-45341099