

**Insolvency Professional Agency of Institute of Cost
Accountants of India**

Fortnightly Newsletter (5th)

01st – 15th June, 2017



INSOLVENCY PROFESSIONAL AGENCY OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

INSTITUTE OF COST ACCOUNTANTS OF INDIA

CMA BHAWAN, 3, INSTITUTIONAL AREA

4TH FLOOR, LODHI ROAD

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FOREWORD

Dear Professional Colleagues,

I feel happy that IPA of ICAI is issuing its fifth edition of the “Fortnightly Newsletter”. This edition of the Newsletter is divided into three modules, namely: (i) Knowledge Bites, containing summary of Offences and Penalty under the Code; (ii) An Overview of some recent cases admitted/rejected by various benches of NCLT; and (iii) Recent News Updates and Information- about the IBBI, MCA and IPA ICAI.

In an attempt to update our professionals and to keep them abreast of the latest developments taking place in this area and also to seek their contribution in the form of comments and suggestions, IPA ICAI has planned to conduct four round table discussion programmes in locations like Bengaluru, Chandigarh, Kolkata and Mumbai to discuss on Draft Companies (Valuers and Valuation) Rules, 2017. Professionals may kindly use this platform for discussion and thus contribute towards the maximum development of the profession.

Considering that a very short time is left for those professionals who had enrolled with the Agency under Regulation 7 read with Regulation 9 of IBBI (Insolvency Professional) Regulations, 2016 I would urge such professionals to qualify the examination before expiry of their registration with the Board.

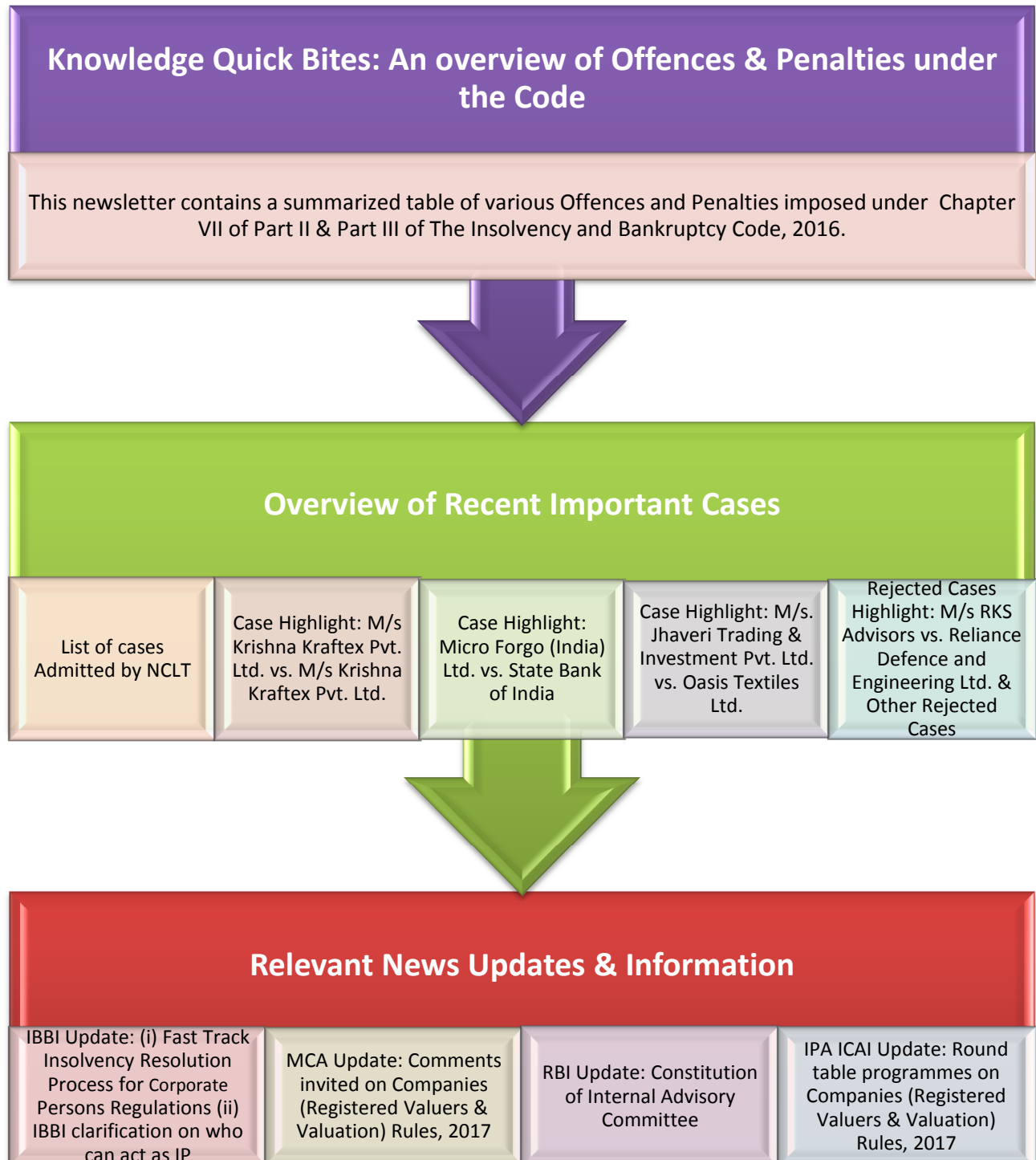
I believe that as with the previous editions, the members will appreciate and find useful the contents of this newsletter as well. The members may also give their suggestions on what other contents they would like the IPA to include in the Newsletter by writing at ipa@icmai.in.

Wish you all the luck for future endeavors.

With warm regards,

(CMA Manas Kumar Thakur)

We welcome the readers to the fifth edition of the Fortnightly Newsletter of the Insolvency Professional Agency of the Institute of Cost Accountants of India. This edition of the Newsletter is arranged in the following format:



Knowledge Quick Bites

Chapter VII of Part II & Part III of Insolvency and Bankruptcy Code, 2016 deals with various offences and penalties that shall be imposed in case of default under the Code. A table containing summary of such offence and penalties is given below:

Offences & Penalties in Part II, Chapter VII of IBC							
S No	Sec	Part / Chapters	Particulars	Sub Particulars	Person Involved	Occurrence of Event	Penalty
1	65 (1)	Part-II / Chapters -VII	Fraudulent or malicious initiation of proceedings.	Where any person initiates the insolvency resolution process or liquidation proceedings fraudulently or with malicious intent for any purpose other than for the resolution of insolvency, or liquidation, as the case may be.	Operational Creditor, Financial Creditor, Corporate Debtor	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore.
2	65 (2)	Part-II / Chapters -VII	Fraudulent or malicious initiation of proceedings.	Where any person initiates voluntary liquidation proceedings with the intent to defraud any person.	Any person	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore.
	66 (1)	Part-II / Chapters -VII	Fraudulent trading or wrongful trading.	Where it is found that any business of the corporate debtor has been carried on with the intent to defraud creditors or for any fraudulent purpose during	Director/Partner of corporate debtor or any other person who is knowingly party to the carrying	—	To make such contribution to the assets of the corporate debtor as the adjudicating authority may deem fit.

				the CIRP/Liquidation process.	on of the business in such manner.		
3	68	Part-II / Chapters -VII	Punishment for concealment of property.	_____	Any officer of corporate debtor	Within 12 months immediately preceding the Insolvency Commencement Date	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or Imprisonment for a term which shall not be less than three years but which may extend to five years or both.
4	69	Part-II / Chapters -VII	Punishment for transaction for defrauding creditors	Where a corporate debtor or any officer of corporate debtor has concealed, removed any part of the property of the corporate debtor within two month before the date of any unsatisfied judgement, decree or order for payment of money obtained against corporate debtor.	Corporate debtor or any officer of corporate debtor	On or after the insolvency commencement date	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or Imprisonment for a term which shall not be less than one year but which may extend to five years or both.
5	70	Part-II / Chapters -VII	Punishment for misconduct in course of Corporate Insolvency		Any officer of corporate debtor	On or after the insolvency	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or Imprisonment for a

			Resolution Process.			commencement date	term which shall not be less than three years but which may extend to five years or both.
6	70(f)	Part-II / Chapters -VII	Punishment for misconduct in course of Corporate Insolvency Resolution Process	Where any officer of corporate debtor accounts for any part of the property of the corporate debtor by fictitious losses or expenses, or if he has so attempted at any meeting of the creditors of the corporate debtor.	Any officer of corporate debtor	Within twelve months immediately preceding the insolvency commencement date	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or Imprisonment for a term which shall not be less than three years but which may extend to five years or both.
7	70(2)	Part-II / Chapters -VII	Punishment for misconduct in course of Corporate Insolvency Resolution Process.	If an insolvency professional deliberately contravenes the provision of this part II.	Insolvency Professional	—	Fine which shall not be less than Rs. 1 Lakh but which may extend to Rs. 5 lakhs or Imprisonment for a term which may extend to six months or both.
8	71	Part-II / Chapters -VII	Punishment for falsification of books of corporate debtor.		Any Person	On or after the insolvency commencement date	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment for a term which shall not be less than three years but which may extend to five years or both.
9	72	Part-II / Chapters -VII	Punishment for wilful and material omissions from statements relating to affairs of the corporate		Any officer of corporate debtor	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or Imprisonment for a term which shall not be less than three years but which may

			debtor.				extend to five years or both.
10	73	Part-II / Chapters -VII	Punishment for false representations to creditors	Where any officer of corporate debtor makes a false representation or commits any fraud for the purpose of obtaining consent of creditors	Any officer of corporate debtor	Prior / on or after the insolvency commencement date	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment for a term which shall not be less than three years but which may extend to five years or both.
11	74	Part-II / Chapters -VII	Punishment for contravention of moratorium or resolution plan.	Where Corporate Debtor or any of its officers violates the provisions of section 14 or knowingly, or wilfully committed or authorized or permitted such contravention	Corporate Debtor or any officer of corporate debtor	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 3 lakhs or imprisonment for a term which shall not be less than three years but which may extend to five years or both.
12	74	Part-II / Chapters -VII	Punishment for contravention of moratorium or resolution plan	Where any Creditor violates the provisions of section 14 or knowingly, or wilfully committed or authorized or permitted such contravention by a creditor	Any creditor	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment for a term which shall not be less than one year but which may extend to five years or both.
13	74	Part-II / Chapters -VII	Punishment for contravention of moratorium or resolution plan	Where any such person knowingly and wilfully contravenes any of the terms of such resolution	Corporate debtor, any of its officers, creditors or any person on	—	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment which shall not be less than one year but which

				plan or abets such contravention.	whom the approved resolution plan is binding u/s 31		may extend to five years or both.
14	75	Part-II / Chapters -VII	Punishment for false information furnished in application	Where any person furnishes information in the application u/s 7 which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material.	Financial creditor	_____	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore.
15	76	Part-II / Chapters -VII	Punishment for non - disclosure of dispute or repayment of debt by operational creditor.	Where an operational creditor has wilfully or knowingly concealed an application u/s 9 the fact that the corporate debtor had notified him of dispute or the full and final payment of unpaid operational debt.	Operational Creditor	_____	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment for a term which shall not be less than one year but which may extend to five years or both.
16	77	Part-II / Chapters -VII	Punishment for providing false information in application made by corporate debtor.	Where a Corporate debtor provides information in the application made u/s 10 which is false in material particulars, knowing it to be false or omits any material fact, knowing it to be material	Corporate Debtor	_____	Fine which shall not be less than Rs. 1 lakh but which may extend to Rs. 1 crore or imprisonment for a term which shall not be less than three years but which may extend to five years or both.

List of cases admitted by various benches of NCLT

Sr. No.	Name of Corporate Debtor	Name of Bench	Creditor/ Debtor	Section	Insolvency Professional	Amount of Default (Crore)
1	M/s. Burn Standard Company Limited	Kolkata	Corporate Debtor	10	Mr. Partha Kamal Sen	-
2	M/s. Abhayam Trading Limited	Chennai	Operational Creditor	9	Mr. Rakesh Chaturvedi	-
3	Oasis Textiles Limited	Ahmedabad	Financial Creditor	7	Mr. Umesh Harjivandas Ved	1.25
4	M/s. Advantage Projects & Consultants Pvt. Ltd.	New Delhi	Corporate Debtor	10	Mr. Ashok Kumar Gupta	-
5	M/s. LML Limited	Allahabad	Corporate Debtor	10	Mr. Anil Goel	-
6	M/s. Educomp Solutions Limited	New Delhi	Corporate Debtor	10	Dr. Sanjiv Agarwal	-
7	M/s. Shipra Infraprojects Private Limited	New Delhi	Operational Creditor	9	Mr. Abhishek Anand	0.05
8	M/s. BKR Hotels and Resorts Private Limited	Chennai	Financial Creditor	7	Mr. R Venkatakrisna n	-
9	M/s. Quantum Limited	Mumbai	Financial Creditor	7	Mr. Anil Goel	0.93
10	M/s. Micro Forge (India) Ltd.	Ahmedabad	Corporate Debtor	10	Mr. Arun Kumar Malani	-
11	M/s. New-Tech Forge (India) Ltd.	Ahmedabad	Corporate Debtor	10	Mr. Arun Kumar Malani	-
12	M/s. West Bengal Essential Commodities Supply Corporation Ltd.	Kolkata	Financial Creditor	7	Mr. Anil Goel	-
13	M/s. New-Tech Fittings Pvt. Ltd.	Ahmedabad	Corporate Debtor	10	Mr. Devendra Padamchand Jain	-

14	M/s. JDS Apparels Private Limited	New Delhi	Operational Creditor	9	Mr. Jagdish Kumar Agarwal	
15	M/s. Bhatia Global Trading Limited	Ahmedabad	Financial Creditor	7	Mr. Nitin H. Parikh	82.04
16	M/s. Asian Natural Resources (India) Limited	Ahmedabad	Financial Creditor	7	Mr. Nitin H. Parikh	38.31
17	M/s. Palogix Infrastructure Private Limited	Kolkata	Financial Creditor	7	Ms. Mamta Binani	-
18	M/s. Shirdi Industries Limited	Mumbai	Corporate Debtor	10	Mr. Devendra Padamchand Jain	-
19	M/s. Best Deal TV Private Limited	Mumbai	Operational Creditor	9	Mr. Rajendra K. Bhuta	1.29
20	M/s. Stewarts and Lloyds of India Ltd.(SLIL)	Kolkata	Corporate Debtor	10	Mr. Sandeep Kumar Gupta	-

List of cases admitted by various benches of NCLT for Voluntary Liquidation

S. No.	Name of Corporate Debtor	Name of Bench	Creditor/ Debtor	Section	Insolvency Professional	Amount of Default (Crore)
1	Shree Autotech Forge Private Limited	Ahmedabad	Corporate Debtor	59	Mr. Umesh Harjivandas Ved	-
2	M/s. Kokuyo Furniture India Private Limited	New Delhi	Corporate Debtor	59	Mr. Tarun Jaggi	-
3	M/s. Thea Jewels Private Limited	Kolkata	Corporate Debtor	59	Mr. Vinod Kumar Kothari	-

An Overview of Recent Important Cases

Case Highlights: M/s Krishna Kraftex Pvt. Ltd. vs. M/s Krishna Kraftex Pvt. Ltd.

Case Title: M/s. Krishna Kraftex Pvt. Ltd. vs. M/s Krishna Kraftex Pvt. Ltd.
(Initiation of corporate insolvency resolution process by corporate debtor)

NCLT Bench: New Delhi

Relevant Section: Section 10

Petitioner: M/s. Krishna Kraftex Pvt. Ltd. (Corporate Debtor)

Respondent: M/s. Krishna Kraftex Pvt. Ltd. (Corporate Debtor)

Case Facts:

Corporate Debtor was engaged in the business of trading and dealing with all kinds of fabric and textiles. During the course of business, it availed loan from financial institutions to meet the exigencies of its business requirement, which later culminated into huge financial debt. The total debt amounts to Rs. 16,635,301/- including both financial debt and operational debt. The corporate debtor was unable to meet its financial obligation. In view of their inability to repay, a resolution was passed by the Board of Directors for Initiating of corporate insolvency resolution process under section 10 of the Code.

Observation of the Bench:

1. They were recoverable by the corporate debtor for which no steps were taken to mobilize. Initiation of some recovery process could have made a substantial difference to the financial health of the Company.
2. Though the details of the financial and operational creditors were given, no claim was made against the corporate debtor by any of its creditors and therefore it cannot be said that the corporate debtor be declared to be in "Default".
3. The object of the code is to trigger a Resolution process so that the assets of the corporate debtor do not depreciate, dissipate or disintegrate into total disarray and disuse, reducing its net value to Nil. In the present case, the corporate debtor hardly has any assets to be resolved under the resolution process. A careful perusal of liabilities reveals an outstanding Bank Auto loan for purchases of vehicle which is its major asset. The same must be hypothecated to the Bank and for any lapse, the Bank would initiate its own recovery proceedings. An insolvency professional is not required to liquidate this asset for the Bank or to recover the moneys due to the corporate debtor from its own creditors.
4. The object of the Code is not to provide an escape route to a Company or its Directors who have incurred great debts and are unable to liquidate the liabilities. Should this have been the case, every corporate entity, who has no assets in hand and has incurred great liabilities be it acquisition of car or any other assets acquired for personal use of Directors, would resort to a

simple way of filing such an application to escape any recovery proceeding or even civil imprisonment on being declared insolvent.

NCLT Ruling:

Taking into consideration, the facts of the case, the Tribunal was of the opinion that the initiation of CIRP was not justified in this case. Hence the application was rejected.

Case Highlight: Micro Forgo (India) Ltd. vs. State Bank of India

Case Title: Micro Forgo (India) Ltd. vs. State Bank of India
(Initiation of corporate insolvency resolution process by Corporate Debtor)

NCLT Bench: Ahmedabad

Relevant Section: Section 10

Petitioner: Micro Forgo (India) Ltd. (Corporate Debtor)

Respondent: State Bank of India (Financial Creditor)

Case Facts:

- In this case, State Bank of India is a Financial Creditor. Petitioner stated that notice u/s 13 (2) of the SARFAESI Act was issued by the secured creditor. Also SBI, being secured creditor has taken and completed action under section 13 (4) of SARFAESI Act. It was also stated by the petitioner that SBI has also filed an application before the DRT, Ahmedabad which was pending.
- In view of the eighth schedule of the I & BC, 2016 there was an amendment to The Sick Industrial Companies (Special Provisions) Repeal Act, 2003. As per the said amendment, the proceedings before the BIFR shall stand abated. Any company, in respect of which reference is abated may make reference to National Company Law Tribunal under the I & BC, 2016 within 180 days from the commencement of the I & BC.
- In the present case, the proceedings before BIFR are abated on account of taking possession of the assets of the Company by the Bank under the SICA.
- SBI filed its objection whereby it opposed the appointment of IP as proposed by the Corporate Debtor on the ground that he represented the Corporate Debtor in the meeting of creditors held by the bank. The Petitioner then proposed name of another person as Interim Resolution Professional.

NCLT Ruling:

The materials on record clearly go to show that petitioner committed default in payment of debts to secured creditor, operational creditor and statutory bodies. Petitioner also created mortgage on moveable properties of the company. Hence, the petition filed by the Corporate Applicant is admitted u/s 10 (4) (a) of the Code.

Case Highlight: M/s. Jhaveri Trading & Investment Pvt. Ltd. vs. Oasis Textiles Ltd.

Case Title: M/s. Jhaveri Trading & Investment Pvt. Ltd. vs. Oasis Textiles Ltd.
(Initiation of Corporate Insolvency Resolution Process by Financial Creditor)

NCLT Bench: Ahmedabad

Relevant Section: Section 7

Petitioner: M/s. Jhaveri Trading & Investment Pvt. Ltd. (Financial Creditor)

Respondent: Oasis Textiles Ltd. (Corporate Debtor)

Case Facts:

- The Corporate Debtor borrowed an amount of Rs.1,23,50,000/- from the petitioner (Financial Creditor) by way of Inter Corporate deposit and entered into an agreement. As per the terms of loan agreement, the corporate debtor had to repay the loan amount along with interest @12 % per annum.
- Respondent executed demand promissory note dated 10.03.2017 according to which it shall repay the loan amount to the petitioner or its order on demand. Respondent also issued cheques towards repayment of principal and interest amount in favour of the petitioner. Though, it requested through a letter dated 07.04.17 not to transfer cheque dated 08.04.17 till further instructions.
- On 9th May, 2017 petitioner issued a notice to the respondent company demanding repayment of loan with interest within five days from the receipt of notice, but the respondent failed to repay the loan amount within stipulated time.

Observation of the Tribunal:

- A perusal of Inter Corporate Deposit Agreement dated 09.03.17, demand promissory note dated 10.03.17 and Inter Corporate Deposit Receipt clearly shows that the respondent is liable to pay a certain sum of money to the petitioner.

NCLT Ruling:

A copy of the statement of accounts of the petitioner maintained by the Central Bank of India show that amount was lent to the respondent and is not barred by the period of limitation. Therefore, it is clear that, there is a debt due to the petitioner from the respondent and the respondent has committed default in payment.

Rejected Cases

Case Highlight: M/s RKS Advisors vs. Reliance Defence and Engineering Ltd.

Case Title: M/s RKS Advisors vs. Reliance Defence and Engineering Ltd.
(Initiation of Corporate Insolvency Resolution Process by Operational Creditor)
NCLT Bench: Ahmedabad
Relevant Section: Section 9
Petitioner: M/s RKS Advisors (Operational Creditor)
Respondent: Reliance Defence and Engineering Ltd. (Corporate Debtor)

Case Facts:

- The Operational Creditor was engaged as advisor to the respondent company as per consultancy agreement dated 09.12.2011. The duration of the contract was for a period of 36 Months with effect from 9th December 2011 but the contract was further extended for a period of one year till 31st December 2015.
- On 22.05.2015 Mr. Rajendra Kumar Soni conveyed his desire to terminate the contract with the respondent company. This was on account of change in the management of the company. The resignation was accepted by respondent company on 15.06.15. Petitioner provided 3 months' notice by way of letter dated 22.06.15 to terminate the contract as per the terms and conditions contained under clause 9 of the contract, date of termination being 30.09.15. Petitioner also undertook to vacate company accommodation before 30.09.15 occupied by him. This period was later extended till 01.12.15 through an email by the petitioner.
- Petitioner claimed an amount of Rs. 25,40,400/- towards consultancy services provided for production and other related activities by raising 3 invoices for the month of April, May & June

2015. The petitioner also claimed an amount of Rs. 25,65,000/- including service tax of Rs. 3,15,000/- by way of notice period fee.

- Respondent Company by email dated 19.01.16 intimated the petitioner that an amount of Rs. 46,55,400/- was due to the petitioner. This email was sent from Yahoo email id.
- Petitioner served demand notice on 06.04.17 on the respondent company calling upon it to pay the outstanding amount.
- The respondent company responded to the demand notice by way of a letter dated 12.04.17 styling it as notice of dispute.

Objection by the Petitioner:

According to the Petitioner, there is an admitted liability on the part of the respondent to pay money to him and despite demand notice the respondent company has not paid the said amount. Thus according to the petitioner, the dispute raised by the respondent is only illusory dispute and it is not substantial dispute.

But according to the respondent company, the total amount due to the petitioner was Rs. 22,77,500/- and according to the respondent, the amount due from petitioner was Rs. 22,32,178/- being amount towards 51 days' notice period and rent. Therefore, according to the respondent company, the total amount payable to the petitioner comes to Rs. 45,323/- and the company has already paid that amount by way of cheque before issuance of demand notice.

Observation of the Tribunal:

Petitioner is basing his claim on the mail dated 19.01.16 issued by Mr. Rakesh from the respondent company to the petitioner through Yahoo.com. Plea of the respondent is that the said mail from Mr. Rakesh has no binding on the company since it was not issued from the company's mail. There was the change in the management of the respondent company which was taken over by Reliance Defence & Engineering Ltd. on 18.01.16. The email was issued on 19.01.16 to the petitioner stating that the amount of Rs. 46, 55, 400/- was payable to the petitioner by the respondent company.

NCLT Ruling:

Considering the facts and circumstances of the case, the tribunal was of the opinion that the defenses taken by the respondent company is bona fide one on substantial grounds. Hence the petition was rejected.

Other Rejected Cases

Sr. No.	Name of the Case	Case Status
1.	M/s. Ashlay Infrastructure Pvt. Ltd. vs. M/s. LDS Engineers Pvt. Ltd.	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the New Delhi Bench of National Company Law Tribunal.</p> <p>This matter was dismissed on the ground that the debt had become time barred and thus was not recoverable debt in the eyes of law.</p>
2.	Shiv Narain Sarin vs. Eminent Infra developers Pvt. Ltd.	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Principal Bench of National Company Law Tribunal.</p> <p>This matter was dismissed on the ground that petitioner cannot be regarded as an operational creditor under the provisions of Insolvency and Bankruptcy Code, 2016.</p>
3.	Sports and leisure apparel Ltd. vs. Bhasin Infotech and Infrastructure Ltd.	<p>The matter was filed under section 9 of The Insolvency & Bankruptcy Code, 2016 before the Principal Bench of National Company Law Tribunal.</p> <p>This matter was dismissed on the ground that petitioner cannot be regarded as an operational creditor under the provisions of Insolvency and Bankruptcy Code, 2016.</p>

Relevant News Updates & Information

1. IBBI Update:

(i) **Insolvency and Bankruptcy Board of India notifies Fast Track Insolvency Resolution Process for Corporate Persons Regulations.**

The Insolvency and Bankruptcy Board of India (IBBI) has notified the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 on 15th June, 2017. These regulations will provide the process from initiation of insolvency resolution of eligible corporate debtors till its conclusion with approval of the resolution plan by the Adjudicating Authority.

The Fast Track Insolvency Resolution Process is similar to the Corporate Insolvency Resolution Process except that this process shall be completed within a period of 90 days, as against 180 days in other cases. However, the Adjudicating Authority may, if satisfied, extend the period of 90 days by a further period up to 45 days for completion of the process.

The fast track process shall apply to the following categories of corporate debtors:

- a. a small company, as defined under clause (85) of section 2 of the Companies Act, 2013; or
- b. a Startup (other than the partnership firm), as defined in the notification dated 23rd May, 2017 of the Ministry of Commerce and Industry; or
- c. an unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore.

The regulations are available at www.ipaicmai.in, www.mca.gov.in and www.ibbi.gov.in

(ii) **Insolvency and Bankruptcy Board of India issues clarification as to who can render services as IP**

As per the clarification issued by IBBI on 15th June, 2017, no person can function as an Insolvency Professional without the Certificate of Registration.

The definition of the Insolvency Professional means a person who has been enrolled with an Insolvency Professional Agency (IPA) as its member and registered with the Insolvency and Bankruptcy Board of India (IBBI) as an insolvency professional (IP).

The IBBI has made the IBBI (Insolvency Professionals) Regulations, 2016 which provides for registration, regulation and oversight of IPs.

Under the Regulations, only three sets of persons are eligible for registration as IPs:

(a) chartered accountants, company secretaries, cost accountants, and advocates, who have been in practice for 15 years, were eligible to seek registration for limited period as IPs till 31st December, 2016 (under Regulation 9);

(b) chartered accountants, company secretaries, cost accountants and advocates with 10 years' of post-membership experience (practice or employment) and graduates with 15 years' of post-qualification managerial experience are eligible for registration as IPs only on passing the Limited Insolvency Examination (under Regulation 5); and

(c) any other person is eligible for registration as IP on passing the National Insolvency Examination.

The Regulations provides for the code of conduct for IPs whereby IPs are required adhere to timelines, maintain confidentiality, comply with the restrictions on employment and occupation and avoid conflict of interests.

Thus, the Code read with the Regulations allow only a person having the required qualification and experience to be enrolled as a member of an IPA and thereafter registered as an IP with the IBBI. Only such a person can act as IP and render services as an IP under the Code.

No person other than persons registered as IPs with the IBBI can act as IP. Insolvency Professional Entities are neither enrolled as member of an IPA nor registered as IP with the IBBI. They cannot act as IPs under the Code.

(iii) MCA Update:

The Ministry of Corporate Affairs (MCA) has issued a notice inviting comments on the draft Companies (Registered Valuers and Valuation) Rules, 2017, vide its press release dated 26th May, 2017.

The draft Companies (Registered Valuers and Valuation) Rules, 2017 may be referred at the link:

http://www.mca.gov.in/Ministry/pdf/Companies_Registered_Valuers_Rules_2017.pdf

To facilitate members, the IPA ICAI will send the consolidated comments/suggestions of members/stakeholders to the MCA.

Members are therefore requested to send their comments/suggestions on each provision of the draft rules by email at: pd@icmai.in with a copy to ipa@icmai.in latest by **25th June 2017** so

that the IPA may further submit the consolidated comments of the members to MCA by **27th June 2017** in the following format:

Serial Number	Rule Number	Suggestion/ Comments	Justification

(iv) RBI Update:

RBI has constituted an Internal Advisory Committee comprising of majority of its independent Board members to advise it in regard to the cases that may be considered for reference for resolution under the Insolvency and Bankruptcy Code, 2016 (IBC). The committee would focus on the large stressed accounts which are classified partly and wholly as non-performing from amongst the top 500 exposures in the banking system.

The IAC has recommended for IBC all such accounts with fund and non-fund based outstanding amount greater than Rs. 5000 crore, with 60% or more classified as non-performing by banks as of March 31, 2016. However, in case of the other non-performing accounts which do not qualify under the above criteria, the banks should finalize a resolution plan within six months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC.

The RBI, based on the recommendations of the IAC, will accordingly be issuing directions to banks to file for insolvency proceedings under the IBC in respect of the identified accounts. Such cases will be accorded priority by the National Company Law Tribunal (NCLT).

(v) IPA ICAI Update:

IPA ICAI to organize Round Table Programmes

IPA ICAI shall be organizing four round table discussion programmes for discussion on Companies (Registered Valuers & Valuation) Rules, 2017 issued by MCA for public comments. The programmes will be organized at Bengaluru, Chandigarh, Kolkata and Mumbai.

The details of the programme will be intimated to the members through email and also through website update.



Insolvency Professional Agency of
Institute of Cost Accountants of India

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI)

(Section 8 Company of the Institute of Cost Accountants of India)

About IPA of ICAI: *The Insolvency Professional Agency of Institute of Cost Accountants of India (IPA of ICAI), a section 8 company incorporated under the Companies Act 2013 has been promoted by the Institute of Cost Accountants of India to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder.*

Enroll and Register as an Insolvency Professional

Enrollment is Open: For Professionals & Advocates and Graduates having Management Experience

IPA of ICAI enrolls the professionals as 'Insolvency Professionals' under Regulation 7 read with Regulations 4 & 5 of Insolvency and Bankruptcy Board of India (Insolvency Professionals) Regulations, 2016, if

1. He/she has passed the '*Limited Insolvency Examination*', conducted by the Insolvency & Bankruptcy Board of India (IBBI) and
2. Has/she has ten years of experience as -
 - (a) a cost accountant enrolled as a member of the Institute of Cost Accountants of India,
 - (b) a chartered accountant enrolled as a member of the Institute of Chartered Accountants of India,
 - (c) a company secretary enrolled as a member of the Institute of Company Secretaries of India, or
 - (d) an advocate enrolled with a Bar Council

OR

3. He/ she has fifteen years of experience in management, after receiving a Bachelor's degree from a University

Professional may function as:

- ❖ Interim Insolvency Professional in Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Resolution Professionals for Corporate, Individual and Partnership Insolvency Process; Fast Track Corporate Insolvency Process; and Fresh Start Process;
- ❖ Liquidator in Liquidation Process for Corporate Persons;
- ❖ Liquidator in Voluntary Liquidation for Corporate Persons;
- ❖ Bankruptcy Professional for Bankruptcy of Individual and Partnership Firm.

Why to enroll as Insolvency Professional

- ✚ It's a niche area of practice with opportunities galore
- ✚ With the first mover's advantage, there is an opportunity to create a brand name
- ✚ Adequate handholding from IBBI and the IPA of ICAI

CMA J. K. Budhiraja

CEO, Insolvency Professional Agency of Institute of Cost Accountants of India

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