



INSOLVENCY PROFESSIONAL AGENCY  
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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**"The best way out is always through"**

## ➤ **Section 66 Of IBC Does Not Provide For Any Look Back Period For Fraudulent Transactions: NCLAT Chennai**

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, comprising of Justice M Venugopal (Judicial Member) and Ms. Shreesha Merla (Technical Member), while adjudicating an appeal filed in Mr. Thomas George v K. Easwara Pillai & Ors., has held that the Section 66 of IBC does not provide for any look back period as far as fraudulent transactions are concerned.

M/s. Mathstraman Manufacturers and Traders Pvt. Ltd. ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") by the Adjudicating Authority on 20.11.2020. Mr. K. Easwara Pillai was appointed as the Interim Resolution Professional ("IRP") and later confirmed as the Resolution Professional.

During the CIRP, while inspecting the factory of the Corporate Debtor, the Resolution Professional found irregular business activities in the factory and at the Registered Office of the Corporate Debtor. It was alleged that the Corporate Debtor was dormant during 2015-2016 and the Books of Accounts and records were either destroyed or mutilated. The Corporate Debtor failed to file the Statutory Accounts before the RoC from 2015 onwards. All the movable and current assets were traded to M/s. Whispower Sales & Services Pvt. Ltd., having common director with the Corporate Debtor, and sold to settle the liabilities of the Corporate Debtor by cash mode, outside the Books of Accounts of the Corporate Debtor. There were no workers and employers working under the pay role of the Corporate Debtor.

The Resolution Professional filed an application under Section 66 of the Insolvency and Bankruptcy Code, 2016 ("IBC") against the Suspended Directors of the Corporate Debtor. The Resolution Professional prayed in the application (i) To direct the Suspended Directors to make good the losses caused to the creditors of the Corporate Debtor; (ii) To hold the Suspended Directors personally liable for such deliberate and wilful default; and (iii) To declare the transaction done by the Corporate Debtor as Fraudulent Transactions.

The Adjudicating Authority vide an order dated 09.07.2021 declared the transactions as fraudulent transactions and directed the Suspended Directors to make good the losses caused to the creditors of the Corporate Debtor. Further, the Suspended Directors were held personally liable for deliberate and wilful default and were directed to furnish all documents requested for by the Resolution Professional for smooth conduct of CIRP.

Mr. Thomas George ("Appellant"), being the Suspended Director of Corporate Debtor, filed an appeal before the NCLAT against the order dated 09.07.2021.

The Suspended Director argued that the Order dated 09.07.2021 was passed ex-parte. Further, the Section 66 of IBC is covered by the provisions of the Limitation Act, 1963 which constricts the period of look back to three years. M/s. Whispower Sales & Services Pvt. Ltd. had taken over all rights for a period of five years. Thus the application was barred by Limitation.

The Bench observed that the Suspended Director itself chose not to contest the matter and therefore, the Order was passed ex-parte. The Bench held that Section 66 of IBC does not provide for any look back period as far as fraudulent transactions are concerned. Further, the Suspended Director has not denied about taking over the factory, plant and machinery of the Corporate Debtor. Therefore, there is sufficient material to evidence that the Suspended Director has committed the fraudulent act knowingly and in a dishonest manner to hoodwink the Creditors.

"Unlike other types of transactions provided under the Code, there is no specified look back period for fraudulent trading under Section 66. Hence, the Resolution Professional is allowed to retrieve/repossess without any limitation of time and correct all the wrong doings for any relevant point of time. Section 66 of the Code envisages that the losses caused to the Creditors are recovered in the event of the Liquidation and that the Directors who caused such losses are made liable to make good such losses."

The Bench upheld the Order of the Adjudicating Authority and dismissed the appeal.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/section-66-of-ibc-does-not-provide-for-any-look-back-period-for-fraudulent-transactions-nclat-chennai-216516?code=ccpYufHJuklWSIEW8377d42JAoInbe>

## ➤ **25 Member Vacancies In NCLTs, 12.8K Cases Pending, Average Resolution Time Almost Tripled In 5 Yrs**

The Minister of State in the Ministry of Corporate Affairs, Rao Inderjit Singh, on Monday, while tabling written answers to two unstarred questions tendered in the Lok Sabha, informed that the Central Government was not considering to amend the Insolvency and Bankruptcy Code, 2016 in order to tackle the issue of pendency of cases.

The questions, unstarred ones, came from Congress MP Manish Tiwari and in another set, jointly by Congress MP Ramya Haridas and Bharatiya Janata Party MP Poonam Mahajan.

Haridas and Mahajan, expressed concerns in their questions by seeking information on the total number of cases pending before the National Company Law Tribunal (NCLT) under the provisions of the IBC during the last three years and what steps were taken by the Government to reduce the delays in disposal of cases. The MP's had also sought information on whether the Government had any proposal to amend the IBC, with an aim to reduce the procedural delays.

In similar vein, Tiwari sought details on the number of vacancies which currently exist in the NCLT as against the bench-wise sanctioned strength of its members, whether the Government was aware of such shortage of manpower and on the steps taken by it to ensure that vacancies are filled. The MP had also sought details of the average time taken for resolution under the IBC in last six years, and whether the average time taken for resolution was greater than the stipulated time frame of 330 days, with reasons if so was the case.

Tendering the official stand of the Government, the Minister informed that currently, there are 12,871 cases pending under IBC before the NCLT (as on 31.10.2022). As for the shortage of manpower, the answer stated that vacancies were being filled from time to time.

Notably, as per Centre's own answer, there are currently 39 officials (01 President and 37 Members) in NCLT, as against the sanctioned strength of 63 (01 President and 62 Members), which shows that there is a shortfall of 25 members in the NCLT.

Regarding the average time that it has been taking for cases to be resolved, an upward trend was noted, where on average, one case now takes around 679 days to be resolved (as against the statutory stipulated time limit of 330 days). Evidently, in the year 2017-18, average time it took for a case to be resolved was 230 days, and the average being 326 days for 2018-19.

The Ministry attributed delayed disposal to associated litigation since, with duration and passage of time, average number of interlocutory applications in the cases has increased, which also impacts the realizable value of assets.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/ibc-nclt-pendency-of-cases-lok-sabha-ministry-of-corporate-affairs-216476>

