



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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## ➤ **Jaypee Infra insolvency: Consortium lenders, except ICICI Bank, assign their debt to NARCL**

Debt-ridden Jaypee Infratech, which is facing insolvency proceedings, on Tuesday said that all the consortium lenders -- excluding ICICI Bank -- have assigned their debt to National Asset Reconstruction Company Ltd (NARCL).

Jaypee Infratech Ltd (JIL) is currently undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code (IBC) following an order dated August 9, 2017, passed by the Allahabad-Bench of National Company Law Tribunal (NCLT).

The case has been reserved for orders on the approval of the resolution plan in respect of JIL before the NCLT, Principal Bench, Delhi. In a regulatory filing, JIL said the company has been financed by a consortium of lenders comprising IDBI Bank Ltd, India Infrastructure Finance Company Ltd, Union Bank of India, Life Insurance Corporation of India, State Bank of India, Canara Bank, Bank of Maharashtra, IFCI Ltd, J&K Bank Ltd and ICICI Bank -- which also form part of the Committee of Creditors (CoC).

"IDBI Bank Ltd acting as lenders' agent of the said Consortium, vide its letter dated January 21, 2023, has intimated JIL through its Interim Resolution Professional (IRP) that all the consortium lenders, excluding ICICI Bank, have assigned their debts to National Asset Reconstruction Company Ltd.

(NARCL)...vide assignment deed dated January 20, 2023," JIL said in the filing. JIL's lenders have submitted a claim of Rs 9,783 crore and CIRP was initiated over an application by an IDBI Bank-led consortium.

It was among the first list of 12 companies against whom, the Reserve Bank of India (RBI) had directed the banks to approach the NCLT to get insolvency proceedings initiated. In November last year, the NCLT reserved its order on Mumbai-based Suraksha group's bid to acquire the JIL and complete around 20,000 flats for aggrieved homebuyers.

Suraksha group had in June 2021 received the approval of financial creditors and homebuyers to take over the JIL, raising hopes for homebuyers of getting possession of their dream flats in stalled projects, mainly in Noida and Greater Noida.

In the first round of insolvency proceedings, the Rs 7,350-crore bid of Lakshadweep, part of the Suraksha group, was rejected by lenders. The CoC had rejected the bids of Suraksha and NBCC in the second round held in May-June 2019.

In November 2019, the Supreme Court directed that the revised bids be invited only from NBCC and Suraksha. Then, in December 2019, the CoC approved the resolution plan of NBCC with a 97.36 per cent vote in favour during the third round of the bidding process. In March 2020, NBCC got approval from the NCLT to acquire JIL.

However, the order was challenged before the NCLAT and later in the Supreme Court.

The apex court on March 24, 2021, ordered for a fresh round of bidding between the NBCC and the Suraksha group only.

**Source: The Economic Times**

**Read Full news at: [ICICI Bank: Jaypee Infra insolvency: Consortium lenders, except ICICI Bank, assign their debt to NARCL - The Economic Times \(indiatimes.com\)](https://economictimes.indiatimes.com/news/economy/industry/banking/ICICI-Bank-Jaypee-Infra-insolvency-Consortium-lenders-except-ICICI-Bank-assign-their-debt-to-NARCL/articleshow/84444447.cms)**

## ➤ **Bank Guarantees Are Outside The Scope Of The Moratorium Under Section 14 Of The IBC, NCLAT On Bank Guarantees And IBC**

The National Company Law Appellate Tribunal ('NCLAT') Bench comprising of the Justices Mr. Anant Bijay Singh, Member (Judicial) and Ms. Shreesha Merla, Member (Technical) upheld the decision of NCLT, Principal Bench, New Delhi rejecting the Application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 ('IBC') filed by Punj Lloyd Limited (Corporate Debtor) against Indian Oil Corporation Limited ('IOCL') inter alia praying for stay on the encashment of the Bank Guarantees on the ground of same being hit by moratorium under section 14 of the IBC. Though Corporate Debtor had not preferred any appeal, it was the IDBI Bank which had filed the appeal before the NCLAT challenging the order dated 31.05.2021.

The NCLAT held that "... we are of the considered view that an irrevocable and unconditional Bank Guarantee can be invoked even during moratorium period in view of the amended provision under Section 14(3)(b) of the Code. We are conscious of the fact that the Bank has not taken any steps with respect to the alleged fraud, if any, between IOCL and the Corporate Debtor.

The finding of the Arbitral Tribunal have also attained finality. For all the foregoing reasons, this Appeal is dismissed accordingly." IOCL had awarded a contract of EPCC-2 Package of 'Aishwariya Project' for its Haldia Refinery and in terms of the Contract, various Bank Guarantees were issued by Banks to IOCL. However, during continuance of the execution of the Contract, Corporate Debtor went into CIRP proceedings. Subsequently, contractual disputes arose between the parties.

IOCL invoked the Bank Guarantees for breach of the contract. Thereafter, Corporate Debtor had filed an application before NCLT, Principal Bench, New Delhi under Section 60(5) of the IBC seeking restrain on the encashment of the Bank Guarantees, arraying those Bank issuing the Bank Guarantees, i.e., IDBI Bank and Central Bank also as, a party. The application was numbered as I.A./2184/2020 in C.P.(IB) No. 731/PB/2018.

The NCLT, Principal Bench, New Delhi had held that “It is a well settled preposition that the bank guarantees constitute an independent contract between the Respondent Banks and the Applicant and therefore the Respondent Banks are under obligation to honour the request made by the IOCL, unless and until the transaction is hit by Section 14 of the Code, therefore CIRP cannot be a ground to deny encashment of the bank guarantees. It is evident on record that neither the Corporate Debtor indulged in fraud nor the IOCL had indulged in fraud giving scope to the bankers to raise objections against the bank guarantees because the Banks are under obligation to permit IOCL to encash the bank guarantees.”

It was argued by the IDBI Bank that the Bank Guarantees cannot be invoked during the continuation of the moratorium under section 14 of the IBC. Moreover, IOCL has wrongfully sought to encash the Advance Bank Guarantees, contrary to the terms of these Guarantees. The allegation of fraud was also inferred upon IOCL to content that the mobilisation advance has been recovered by IOCL and still it has sought to encash the Advance Bank Guarantees and any legal arrangement entered between IOCL and Corporate Debtor amounts to ‘fraud’ upon the bank. Per contra, Mr. Gaurav Mitra, Mr. Amit Meharia and Mr. Abinash Agarwal appearing on behalf of IOCL argued that the no fraud was ever played on banks and the Bank Guarantees being irrevocable and unconditional contract between IOCL and respective Bank cannot fall within the preview of moratorium under Section 14 of the IBC, which is per se applicable only with respect to Corporate Debtor.

Relying on the Judgments in Standard Chartered Bank-vs-Heavy Engineering Corporation Ltd. & Ors [2019 SCC Online SC 1638] and Gujarat Maritime Board -vs- Larsen & Turbo Infrastructure Development Projects Ltd. & Another [(2016) 10 SCC 46] it was submitted that upon demand, banks are bound to encash the irrevocable and unconditional Bank Guarantees. IOCL also submitted that in case of Bank of Baroda & Anr. -vs- Indian Oil Corporation & Others [MAT No. 916 of 2019; dated 10.02.2020] the High Court of Calcutta had even directed Reserve Bank of India to consider cancellation of the Banking License of Bank of Baroda on account of non-encashment of the Bank Guarantees, which was also upheld by the Supreme Court.

Lastly, it was submitted by IOCL that subject Bank Guarantees were already encashed in pursuance of the rejection of the application under Section 17 of the Arbitration and Conciliation Act, 1996 filed by the Corporate Debtor in the on-going arbitration proceedings between IOCL and Corporate Debtor. No submissions were made by Corporate Debtor. The NCLAT held that under the amended Section 14(3)(b) of the IBC, irrevocable and unconditional Bank Guarantees are beyond the moratorium and can be invoked even during the moratorium period, as such, the invocation and encashment of the Bank Guarantees by IOCL was valid and legal.

The NCLAT observed that the allegation of the fraud by the IDBI Bank is of no basis on the premise that no injustice or harm was caused to the bank by encashment of the irrevocable and unconditional Bank Guarantees. The NCLAT was also considerate of the fact that IDBI Bank despite alleging fraud had not taken any steps/ actions.

Relying on the judgment passed in U.P. Cooperative Federation Ltd -vs- Singh Consultants and Engineers Pvt. Ltd [(1988) 1 SCC 174], the NCLAT held that Banks are bound to encash the unconditional Bank Guarantees without any demur as and when the same is demanded by the beneficiary. NCLAT further relied upon the judgement of Supreme Court in 'Dynepro Pvt Ltd -vs- V. Nagarajan' to reiterate that NCLT has no jurisdiction to decide the question of disputes and claims/ counter claims.

Upon such observation, NCLAT dismissed the appeal filed by IDBI Bank and affirmed the view of the NCLT that Bank Guarantees are beyond the scope of moratorium as envisaged under Section 14 of the IBC.

**Source: Live Law**

**Read Full news at:** [Bank Guarantees, IBC, NCLAT, Bank Guarantees, IBC \(livelaw.in\)](https://www.livelaw.in/bank-guarantees-ibc-nclat-bank-guarantees-ibc)

