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YOUR INSIGHT JOURNAL

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI) is a Section 8 company incorporated under the Companies Act 2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility 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 and grant membership to persons who fulfill all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhere to fair, just and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy code to Insolvency professionals by conducting Round tables, webinars and sending daily newsletter namely “IBC Au courant” which keeps the insolvency professionals updated with the news relating to Insolvency and Bankruptcy domain.

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From the MD & CEO's desk

CMA (DR.) S.K. GUPTA

In the World Bank's Ease of Doing Business index, the single-biggest factor behind the improvement of India's ranking has been enactment of Insolvency and Bankruptcy Code (IBC), 2016. From 130 in 2016 to 63 in 2019, what has transpired is the fact that India now makes it easier for companies to exit its market. The pre-IBC regimes were highly entangled and prompted multiple fora for judicial action leading to creation of 'zombie firms'. IBBI is engaged in the process of continuous review / modification of the regulatory framework to address the challenges and to plug the loopholes, if any, within the confines of the Code, and build the capacity of the IPs (Insolvency Professionals) and other constituents to take the insolvency reforms to the next level. There is challenge in the form of capacity building. All stakeholders including committee of creditors, resolution professionals, need to improve capacities and competencies.

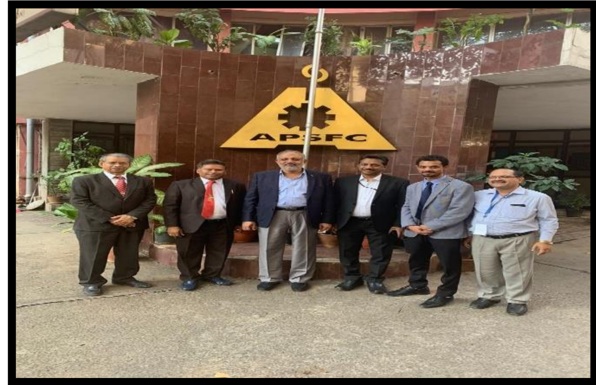
The Insolvency and Bankruptcy Board of India (IBBI) has amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 and the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016. Under the amendments introduced to the liquidation process regulations, persons who were ineligible are now barred from being part of any compromise or arrangement at the stage of liquidation. Furthermore, a secured creditor who chooses to sell secured assets independently also cannot sell the same to a person who is ineligible under the IBC. The Insolvency and Bankruptcy Board of India (IBBI) has notified changes to the voluntary liquidation process regulations. A liquidator will have to deposit unclaimed dividends and undistributed proceeds in a separate account before seeking dissolution of a corporate debtor under the voluntary liquidation process. The Insolvency and Bankruptcy Board of India (IBBI) has notified changes to the voluntary liquidation process regulations. Ministry of Corporate Affairs has formed a committee for recommending rules and regulatory framework for smooth implementation and proposed cross border insolvency provisions in the Insolvency and Bankruptcy Code, 2016.

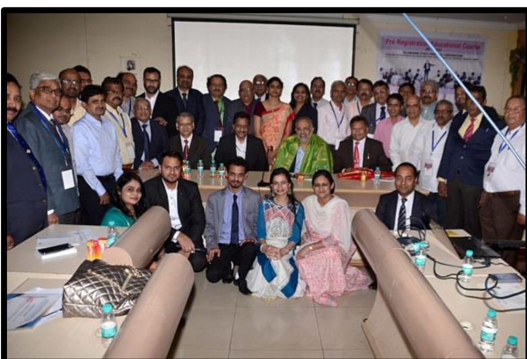
More than three years after implementation of the Insolvency and Bankruptcy Code (IBC), it has brought in significant behavioural changes among the stakeholders. There are early evidences of the Code delivering better outcomes than the erstwhile similar frameworks.

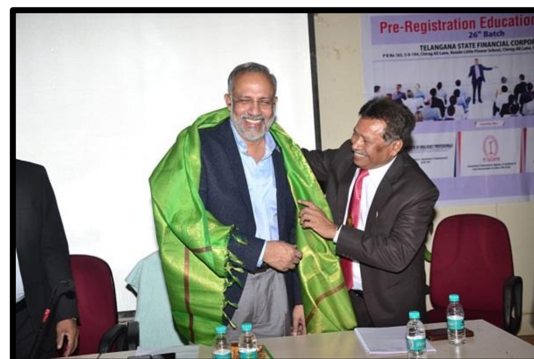
PROFESSIONAL DEVELOPMENT INITIATIVES

Insolvency Professional Agency of Institute
of Cost Accountants of India

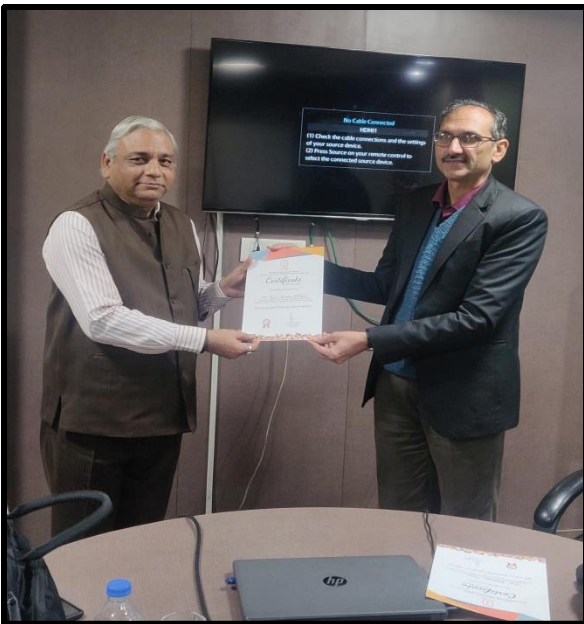
PRE-REGISTRATION EDUCATIONAL COURSE TRAINING IN HYDERABAD

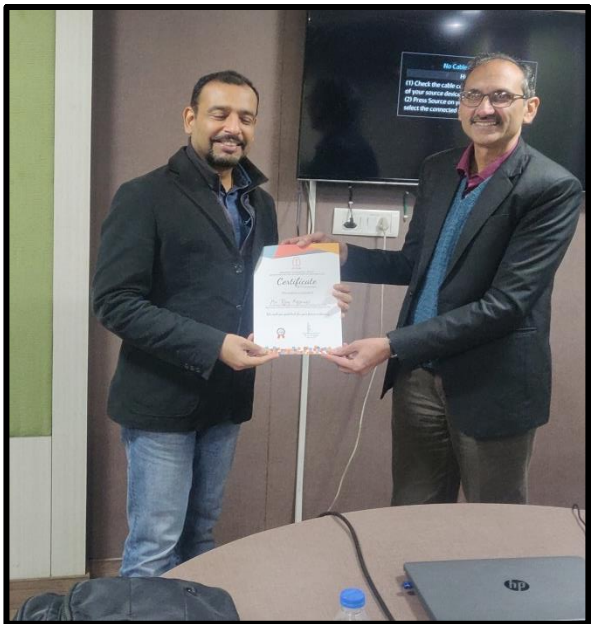






PREPATORY EDUCATION COURSE-DECEMBER





EVENTS ORGANIZED

January, 2020	
19th January 2020- 25th January 2020	26th Batch of Pre-Registration Educational Course - Hyderabad from 19th January, 2020 to 25th January, 2020.
20th January, 2020	Webinar on Reporting Requirements of IP under IBC, 2016.

AMENDMENTS IN IBC

https://ibbi.gov.in//uploads/legalframwork/2020-01-20-134419-un9k7-f6996ec4d38ae089cd00027bc4071649.pdf

https://ibbi.gov.in//uploads/legalframwork/8e241a378e16b2821da63658bad6f0a4.pdf

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IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

To subscribe our daily newsletter please visit www.ipaicmai.in

Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code

Insolvency Professional Agency of Institute of Cost Accountants of India

PERFORMANCE OF BHUSHAN STEEL LIMITED PRE, DURING AND POST CIRP A CASE STUDY

Dr. S. K. Gupta
MD & CEO (IPA-ICAI)

Company Profile

Bhushan Steel Ltd was incorporated in1983 with the name Jawahar Metal Industries Pvt Ltd. In 1987, Brij Bhushan Singal and his sons Sanjay Singal, Neeraj Singal and associate companies took over the management of the company by acquiring the entire stake. In the year 1989, the company became a deemed public limited company. In the year 1992, the company was renamed as Bhushan Steel and Strips Ltd after diversifying into wide-width cold-rolled (CR) steel strips. Also, they completed the cold rolling plant during the year. In the year 1993, the company came out with their first public issue to finance their forward integration project for the manufacture of 1,00,000 tpa of continuous annealed/ galvanised steel strips.

In the year 2000, the company approved the amalgamation of Bhushan Ltd with the company. In the year 2001, the company implemented the expansion project of 2,50,000 TPA of Cold Rolling Cum Galvanising & Tube Complex in Khopoli, Maharashtra at cost of Rs 4860 million. In the year 2003, they entered into a strategic alliance with Sumitomo Metal Industries of Japan for the process know-how for manufacturing of automotive steel sheets. During the year 2004-05, the company commissioned the Cold Rolled (Narrow) and Pipe plant at Sahibabad. During the year 2005-2006, the company commissioned the Galume line, an aluminium and zinc coated patented product of the company for the first time in the country at Khapoli plant. The company changed its name from Bhushan Steel and Strips Ltd to Bhushan Steel Ltd with effect from April 12, 2007.

During the year 2007-08, the company successfully completed Phase I of the Orissa Project. The company started the production facilities of Sponge Iron (680000 tpa), Billets (300000 tpa) and Power Plant (110 MW) thus completing Phase-l of Orissa Project on schedule. The company acquired a major stake in Bowen Energy Ltd of Australia. Additionally, through their 100% subsidiary Bhushan Steel (Australia) Pty Ltd, the company entered into a JV to develop their coking coal / thermal coal projects in Australia. The company incorporated two wholly owned subsidiaries namely Bhushan Steel (Australia) Pty Ltd and Bhushan Steel Global FZE. During the year 2008-09, the company successfully commissioned the Cold Rolling Mill (narrow) 50000 tpa, Tube Mill (40000 tpa) and balancing equipment viz. Pass Mill, CR sillter, Cut to Length Line and annealing furnaces etc. at existing Khapoli Plant.

The group grew quickly by importing sophisticated Japanese machinery to make steel for India's nascent automobile industry. But "Bhushan Steel's control over availability, quality and cost of input steel was very limited," (Source : company's 2009-10 annual report). So in 2003, they decided to build an integrated steel plant in Odisha. This was a time of great optimism for the steel sector. Banks were eager to lend to a company with an impressive order book of clients like Maruti Suzuki, Mahindra and Mahindra, and Tata Motors. "Banks were getting into project finance for the first time," But steel is a cyclical business, and as Chinese demand tapered after

the 2008 Olympics, prices plummeted as fast as they had once peaked. For Bhushan Steel, it was a gust of headwind. "In a slowdown, steel demand in India doesn't drop. Prices do, with debt you grow big fast, but when bad times come, the debt suddenly becomes a massive burden.

By 2010, Bhushan Steel was already shouldering loans worth Rs.11,404 crore. Still, the company went on a borrowing spree to finance the next phase of construction. By 2012, the steel industry was slipping behind on interest payments as steel prices fell to $300/tonne that December from a 2008 peak of $1265/tonne. Banks were conflicted: pull the loans and book a loss, or keep lending and hope the sector revived. Bhushan's lenders pinned their hopes on the Odisha plant reaching full capacity. It never did.

By March 2014, it was clear the company was in trouble. Profit had shrunk to a mere Rs. 62 crore, while the company was spending more than Rs 1,600 crore a year in interest payments alone, according to Bhushan's 2014 annual report. When Bhushan Steel was on the brink of default in March 2014, SBI and a consortium of lenders sanctioned fresh loans. But as steel prices remained stubbornly low, and Bhushan's interest costs escalated, the company's total debt rose 30% in two quick years: from Rs.35,710 crore in 2014 to Rs.46,062 crore in March 2016.

Company's Product profile

The company has a portfolio of flat products. The company is producing cold rolled close annealed coils (CRCA), galvanized sheets, precision tubes, high tensile steel, hardened and tempered steel strip (H&T strips), wire-rods, color-coated sheets and galume. They also produce, sponge iron, pig iron, billets and slabs.

CIRP process of erstwhile Bhushan Steel Ltd

- CIRP process was initiated on July 26, 2017, under the provisions of the Insolvency and Bankruptcy Code. Pursuant to the initiation of the CIRP, TSL submitted its resolution plan for the resolution of Bhushan Steel and was selected as the highest compliant resolution applicant by the committee of creditors constituted under the IBC. On 15th May 2018, NCLT approved TSL's resolution plan.
- Tata Steel has acquired Bhushan Steel (BSL) through its wholly-owned subsidiary Bamnipal Steel Ltd (BNL) wherein Tata Steel has taken a controlling stake of 72.65% in BSL and paid the admitted corporate insolvency costs and employee dues, as required under IBC.
- Tata Steel Ltd (TSL) is part of Tata Group and a public limited company engaged in the business of manufacturing steel and offers a broad range of steel products including a portfolio of high value-added downstream products such as hot rolled, cold rolled and coated steel, rebars, wire rods, tubes and wires. The equity shares are listed on BSE and on NSE.
- Bamnipal Steel Limited (BNL) is a public limited company incorporated on January 19, 2018 formed as an SPV (Special Purpose Vehicle), wholly owned subsidiary of TSL, in order to facilitate the acquisition of Tata Steel BSL Limited (TBSL) by way of the corporate insolvency resolution process prescribed under the Insolvency and Bankruptcy Code, 2016.
- Tata Steel BSL Limited (TBSL) formerly known as Bhushan Steel Limited is India's third largest secondary steel producing company with an existing steel capacity of 5.6 million tonne per annum is engaged in the business of manufacturing steel and offers products such as hot rolled, cold rolled and coated steel, cold rolled full hard, galvanized

coils and sheets, high tensile steel strips, colour coated tiles, precision tubes, large diameter pipes, etc. TBSL is subsidiary of BNL and equity shares of the company are listed on BSE and on NSE.

- TSL has an operating revenue of ₹73,016 crore which is 3.5 times more than the TBSL and further PAT stood at ₹10,533 crore which is almost 10 times that of TBSL. Interest cost is very less in TSL as compare to TBSL which cleaned its balance sheet through IBC route.
- In fact, this is the leveraged buyout and financed largely through tax breaks and raising debt on the target company assets and minimal (around ₹300 crore) through equity contribution and internal accruals. This merger is consolidation of same line business and value addition to stakeholders from this merger is to be seen in near future.
- This acquisition added capacity of 5.6 MTPA to the current TSL steel production capacity which will enable the company to reach its target of 33 MTPA by 2025. Consolidation will also give TSL access to high-quality assets of TBSL such as widest cold rolling mill in India and complementary product portfolio with value-added products and presence in western India. Merger will help in better management and effective utilisation of resources, reorganising TBSL sales and marketing with distribution channel of TSL.
- Pursuant to the Resolution Plan, BNL subscribed to 72.65% of the equity share capital of TBSL for an aggregate amount of Rs.158.89 crore and provided additional funds aggregating to Rs.35,073.69 crore to TBSL by way of debt/convertible debt. The remaining 27.35% of TBSL's share capital will be held by TBSL's existing shareholders and the financial creditors who received shares in exchange for the debt owed to them.
- The acquisition is financed by combination of external bridge loan of Rs.16,500 crore availed by BNL and balance through investment by Tata Steel in BNL. The bridge loan availed by BNL is expected to be replaced by debt raised at BSL over time.
- The funds received by TBSL as debt and equity have been used to settle the sustainable debts owed to the existing financial creditors of TBSL, CIRP costs and employee dues, by payment of Rs.35,232.58 crore.
- The remaining unsustainable debts of Rs.25,285.46 crore were novated by the financial creditors to BNPL for a consideration of Rs.100 crore. BNPL, in its capacity as the promoters of TBSL, has waived off the unsustainable debts less cost of novation and the same has been recognised as equity contribution during the year ended March 31, 2019.
- 10% Redeemable Cumulative Preference shares of Rs.100 each amounting to Rs. 2,425.57 crore were redeemed for a total sum of Rs.4,700. Gain arising out of redemption was recorded as exceptional item in the financial results for the year ended March 31, 2019.
- Operational creditors are to be paid Rs. 1,200 crores will be paid over a period of 12 months.

Performance Analysis

Performance Indicators	**Before CIRP as on 31.03.2017**	**During CIRP as on 31.03.2018**	**Post CIRP as on 31.03.2019**
Turnover (Rs. Crore)	15,027.30	17,404.43	20,891.60
Sales and Production Volume (in MT)	3.42	3.84	4.16
Net Profit Ratio (%)	-23.30%	-142.57%	8.20%
PBDIT (Rs. Crore)	2993.98	2299.93	3931.00
EBIDTA Margin %	19.88	12.67	18.18
]Interest Coverage ratio (Times)	0.55	0.08	0.66

Interest and Financial charges (Rs. Crore)	5426.76	5304.9	3752.18
EPS (Rs.)	-154.56	-195.45	17.45
Inventory Turnover Ratio	0.13	5.63	5.93
Current Ratio	0.21	0.11	1.91
Debt to Equity Ratio	24.59	0.03	0.93
Net Debtors (Rs. Crore)	1525	1220	697
Debtors Turnover ratio (Days)	31.10	28.78	16.74
Net Cash Flow from Operating activities (in Crore)	752	1789	5800

Source : Annual Reports for FY16-17, FY17-18 , FY18-19

Pre and During CIRP

- The performance of the company improved significantly in 2017-18 (during the period of CIRP) as compared to pre CIRP. Turnover increased by 15.82%. Sales and production volume (in MT) increased by 12%. Net debtors were reduced by 20% and net cash flow from operating activities increased by137% as a result of better management control and operational efficiency which arrested the progressive decline in key performance indicators witnessed in the period prior to CIRP

During and Post CIRP

- The results of financial year 2018-19 are a testimony to the overall improvement the company has been able to achieve in a short period of time. There was an increase in revenue by 20.04% in 2018-19 (during / post CIRP) over last year due to production ramp up. This was largely compensated by an increase in raw material prices due to increase in cost of Coking Coal, Hot Rolled Coil (HRC) and other Alloys.
- During the financial year 2018-19, the saleable steel production of Tata Steel BSL stood at 4.16 million tons that is more than 10 per cent over FY18 (3.8 MTPA). This has been possible because of higher mill availability with improvement in maintenance practices and uninterrupted raw material supply
- Current Ratio Improved in 2018-19 primarily on account of reduction in the current liabilities due to reduction in current portion of long term borrowings and short term borrowings (due to repayments).
- EBITDA Margin Improved in 2018-19 primarily on account of higher operating profits.
- Debtor Turnover Ratio improved in 2018-19 primarily on account of introduction of channel financing facilities across the distributor segment and discounting arrangements across the other segments.
- Interest Coverage Ratio Improved in 2018-19 primarily on account of higher operating profits and reduction of finance cost on account of reduction in external borrowings.
  Total amount of loans (including interest) which were outstanding during FY18 were approximately Rs.58,000 crore with an interest rate varying from 9% to 20% including penal interest. The existing debts of the Company were settled by paying Rs. 35,200 crore. Therefore, the loan amount has decreased significantly in 2018-19 YoY resulting in decline in finance cost from Rs 6,305 crore in 2017-18 to Rs 3,752 crore.

FY 2019-20

The company announced its Q3 FY20 and 9M FY20 key production and sales figures (provisional) on 9th January, 2020. The company achieved crude steel production of

1.154 MT in Q3 FY20 compared to 1.067 MT in Q2 FY 2020 and 1.039 MT in Q3 FY19. For 9M FY20, the crude steel production stood at 3.343 MT compared to 3.132 MT in corresponding period of previous year. The company's sales stood at 1.254 MT in Q3 FY20 compared to 1.041 MT in Q2 FY 2020 and 0.0917 MT in Q3 FY19. For 9M FY20, the sales stood at 3.159 MT compared to 2.911 MT in corresponding period of previous year. Net sales in the financial year 2019-20 are : Q1 – Rs. 4124.45 crore, Q2 – Rs. 4311.67 crore and Q3 – Rs. 5038.11 crore.

Future outlook

With focus on overall improvement, taking the workforce of erstwhile Bhushan Steel along, the emphasis of the new management has been on safety, environment and social responsibility, in addition to operational and financial excellence. As part of the synergy drive between Tata Steel and Tata Steel BSL, it has launched many products such as Tata Steelium, Tata Shaktee and Tata Kosh, expanding our customer base and driving new process and product development. Tata BSL Limited is expected to maintain its buoyancy and progressively improve its performance and operational efficiency on account of the following expected business scenarios which are likely to favourably impact the business of the company.

- The construction sector is witnessing a consistent revival, mainly supported by government spending on infrastructure. The construction sector is likely to maintain its current momentum with gradual rise in investment.
- The Capital Goods sector is showing signs of rising manufacturing capacity utilization. The Renewable energy segment is also witnessing strong demand with several new projects being launched due to strong government focus.
- Consumer durables demand emanating from Refrigerators, Washing machines, Air Conditioners and Ceiling Fans is likely to normalize to around 7% in coming years
- On-going freight corridor and metro rail projects will continue to support the demand in railway sector, along with the electrification of 16,540 track kms. by 2022

CROSS BORDER INSOLVENCY

MR. RAJENDER KUMAR,
Dy. Registrar of Companies,
CRC, Manesar (Haryana)

Background

If the insolvency/liquidation proceedings on account of unpaid debt is initiated in the country other than the country wherein the registered office of the corporate debtor (company) is existed, it amounts to cross border insolvency.

Enforceability of foreign Judgments & decrees passed by foreign courts

The Foreign Judgement or decree is required to pass the test of Section 13, 14 and 44-A of the Civil Procedure Code, 1908. Indian Judiciary enforce such foreign decrees and judgments in India which is in consonance with the basic fundamental rules and laws in force in India. A foreign judgment, whether passed by a Court in a **reciprocating or non-reciprocating territory**, must pass the test of Section 13 of the Code. Vis-à-vis in case of a decree of a Court in a Non-Reciprocating foreign territory, the same can be enforced in an Indian Court of competent jurisdiction by filing a suit on that foreign decree or on the original, underlying cause of action, or both. Such decree cannot be straightaway executed. *In the matter of Viswanathan v Rukn-Ul-Mulk Syed Abdul Wajid, AIR 1963 SC 1 19 of 22 CP69-13-F.DOC*

Section 13 embodies the principle of res judicata in foreign judgments. The judgment of a foreign court is enforced on the principle that where a foreign court of competent jurisdiction has adjudicated upon a claim, a legal obligation arises to satisfy that claim in the country where the judgment needed to be enforced. Such a recognition is accorded on the basis of consideration of basic principle of justice, equity and good conscience. Section 13 lays down the fundamental rules which should not be violated by any foreign court in passing a decree or judgment. The decree or judgment of foreign court will be conclusive except where it comes under any of the clauses (a) to (f) of Section 13. Otherwise, it would not be considered conclusive and consequently not legally effective and binding. The provisions of the CPC are applicable for enforcement of foreign judgments, both from reciprocating and non-reciprocating territories. Section 44-A of the Code of Civil Procedure, 1908 are applicable in both the cases. A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title.

Foreign Judgement or decree which is inconclusive or falling u/s 13 of CPC

(a) Where it has not been pronounced by a Court of competent jurisdiction.

In the matter of *Kitply Industries Ltd Vs. California Pacific Trading Co*. Company Judge on 19.11.2008 held that Court can't go behind decree of the U.S. Court and

examine the legality of the foreign decree. The respondent Kitply filed Company Appeal No. 1/2009. The learned Division Bench considered the appellant's contentions and noted, inter- alia, in its preliminary order that proceeding under Section 439 is not a proceeding for execution of a decree. and rejected Kitply's objection that a petition under Section 439 of the Company's Act is not maintainable. The Appellate Court opined that California is seeking recognition of a decree passed by a foreign court and not its execution and since winding up is not an execution proceeding, even in the absence of an appropriate notification by the Central Government under Section 44 A of CPC, the company proceeding is maintainable and accordingly the appeal was posted for hearing. The Supreme Court while disposing of the S.L.P. on 23.10.2009 ordered the High Court to decide all the points urged by the parties. Thereafter*, in the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011*. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that the foreign decree was not by a Court of competent jurisdiction, from the reasoning given earlier, it is hereby held that the North Carolina Court neither had jurisdiction to try a claim for damage nor does the said Court acquire jurisdictional competence, through the pro-se response filed by the defendant in that Court. *Similarly,* In *R.M.V. Vellachi Achi v. R.M.A. Ramanathan Chettiar.* Such judgment must be by a court competent both by law of the state which has constituted it and in an international sense and it must have directly adjudicated upon the matter which is pleaded as Res judicata

(b) Where it has not been given on the merits of the case.

In the matter of *California Pacific Trading Co vs Kitply Industries Ltd* on 2 May, 2011. Before the Hon'ble Mr Justice Hrishikesh Roy of Gauhati High Court held that Foreign Court's decree is also declared to be inconclusive and hit by Clause (b) of Section 13 of the CPC. This is because the damage quantification was made by the Court without any acceptable evidence on record and the claimed loss suffered by the plaintiff was given on conjecture and surmise and accordingly it is declared that the North Carolina Court has not given its judgment on the merit of the case. *In Gurdas Mann v. Mohinder Singh* Brar. The Punjab & Haryana High Court held that an ex-parte judgment and decree which did not show that the plaintiff had led evidence to prove his claim before the Court, was not executable under Section 13(b) of the CPC since it was not passed on the merits of the claim; *In the case of I & G Investment Trust v. Raja of Khalikote*

(c) Where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognize the law of India in cases in which such law is applicable.

In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011. It is further seen that the suit for damage was filed by the petitioner in the North Carolina Court 3 years after the alleged breach which is beyond the prescribed period of limitation in India. Since the foreign judgment to be conclusive, is required to be in conformity with the law in India, I hold that the North Carolina Courts decree is inconclusive, as it is covered by exception Clause (c) of Section 13 of the Code.

(d) Where the proceedings in which the judgment was obtained are opposed to natural justice.

Under Section 13(d) of CPC, the following proposition may be laid:

(i) The foreign court must follow the principle of natural justice while delivering the judgment. Judgement must be impartial, given fairly, moreover, the parties to the dispute should be given appropriate notice of the initiation of legal proceedings.

(ii) Foreign judgment obtained by fraud. *Satya v. Teja Singh*

(e) Where it has been obtained by fraud.

In the matter of California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011. There is also reasonable basis for concluding that the judgment of the North Carolina Court has been obtained by playing fraud on Court. The relevant certificates showing that the materials were of contracted standards and dispatch worthy were withheld and the probability of the Court giving a different verdict if the withheld materials were available, is a distinct possibility. *In the matter of Sankaran Govindan vs. Lakshmi Bharathi reported in AIR 1974 SC 1764*, where the Court accepted that if a foreign judgment was obtained by fraud, it will be covered by the exceptions in Section 13 of the CPC and such judgment can't be held to be conclusive for use in Indian Courts. In China Shipping Development Co. Limited v. Lanyard Foods Limited, since the records of the case manifestly revealed that the respondent Indian company was unable to pay its debts, the petition for winding up was admitted vide order dated 4.4.2007 under sections 433 and 434 of the Companies Act, 1956.

(f) Were it sustains a claim founded on a breach of any law in force in India.

In Brijlal Ramjidas v. Govindram Gordhandas Seksaria, Supreme Court held that Section 13 speaks not only of "Judgment" but "any matter thereby directly adjudicated upon". The word 'any' clearly shows that all the adjudicative parts of the judgment are equally conclusive.

Section 13 of the CPC sets out the limits on application of decree passed by a foreign Court and no proceeding to recover a debt on the basis of a foreign decree can be initiated, without fulfilling the conditions laid down in Clauses (a) to (f) of Section 13 of the CPC. In support of this contention, he relies upon the decision of the Supreme Court *in Roshanlal Kuthalia vs. R.B. Mohan Singh Oberio* reported in (1975) 4 SCC 628 and Smt. Satya vs. Teja Singh reported in AIR 1975 SC 105. The decision of the Apex Court in *Raj Rajendra Sandar Moloji Nar Singh Rao Shitole vs. Shankar Saran reported* in AIR 1962 SC 1737 is also relied on by the learned counsel to show that the provisions of Section 13 of the CPC are not merely Rules of procedure but are Rules of substantive law and the decree of the U.S. court must be valid in the international sense and can't be enforced ipso facto in Indian Courts only because, the proceeding in the North Carolina Court conforms to the municipal laws applicable in USA. *In the case of Narhari Shivram Shet Narvekar vs. Pannalal Umediram* reported in AIR 1977 SC 164 to contend that an incompetent Court cannot exercise jurisdiction over a foreign subject merely because, the foreign subject responded to the summons of the Court particularly when, response was to the effect that the U.S. Court lacked territorial jurisdiction, to examine the claim of damages against the foreign defendant.

In R. Viswanathan vs. Rukn Ul Mulk Syed Abdul Wajid reported in AIR 1963 SC 1, the Apex Court held that for a foreign judgment to be conclusive, it must be rendered by a competent court both by the law of the State which has constituted it and in an international sense, ... and the foreign court must be a court of competent jurisdiction. Sec.13(a)

The Supreme Court *in Roshanlal Kuthalia vs. R.B. Mohan Singh* Oberoi reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC. *In Sankaran Govindan vs. Lakshmi Bharathi reported in AIR 1974 SC 1764,* it has been held that a foreign judgment can be impeached for fraud of the party, in whose favour the judgment is obtained. *In the Renusagar Power Co. Ltd. vs. General Electric Co*. reported in 1994 (Supp) 1 SCC 644, in the context of an award given by an Arbitrator, the Supreme Court declared that the phrase Public Policy of India would cover: - "(a) Fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality, or (d) in addition, if it is patently illegal." *In R.M.V.Vellachi Achi Vs. R.M.A.ramanathan Chettiar reported in (1972) 2 MLJ 468*. This case turns on Section 44-A CPC and it is essentially for the proposition that a foreign decree cannot be executed under CPC if it is hit by condition, as provided in Section 13(a) to (f) of CPC. It is also regarding the validity of ex parte foreign decree. The order of Supreme Court refused to interfere.

The Apex Court *in Raj Rajendra Sardar Moloji Nar Singh Rao Shitole*, it must be declared that the objections are substantive and not procedural and the U.S. Court's decree is not valid in the International Sense since it is hit by one or the other exception(s), stipulated in Section 13 of the Code.

A foreign Judgment which is conclusive and does not fall within section 13 (a) to (f), may be enforced in India in either of the following ways.

(i) By instituting execution proceedings-

Section 14 states the presumption that an Indian court takes when a document supposing to be a certified copy of a foreign judgment is presented before it. The Indian Courts presume that a foreign Court of competent jurisdiction pronounced the judgment unless the contrary appears on the record, but by proving want of jurisdiction may overrule such presumption.

Foreign judgement may be enforced by proceedings in execution in certain specified cases mentioned in Section 44-A of the CPC. Section 44A – Execution of decrees passed by Courts in reciprocating territory-(1) Where a certified copy of a decree of any of the superior courts of any reciprocating territory has been filed in a District Court, the decree may be executed in India as if it had been passed by the District Court. *In the matter of Goyal Mg Gases Private Ltd.(Appellant) vs Messer Griesheim Gmbh on 1 July, 2014, EFA (OS) 3/2014.* The definition of section 44A was discussed that any country or territory outside India which the Central Government, may by notification in the official gazette, declare to be a reciprocating country, so that now the Code puts all countries or territories outside India on an equal footing. Delhi High Court held that High Court of Delhi not being a 'District Court' in terms of Section 44A of the Code of Civil Procedure, 1908 is not vested with the jurisdiction to entertain the present Execution Petition. In view thereof, the same is liable to be transferred to the 'Court of

District Judge“ within whose jurisdiction the property sought to be attached is situated for being dealt with in accordance with law. *In California Pacific Trading Cor vs Kitply Industries Ltd on 2 May, 2011; COMPANY PETITION No. 10 OF 2002. Gauhati High Court.*

(a) Certificate with the certified copy of decree- The certified copy of the decree shall be filed together with a certificate from such superior court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

(b) The provisions of section 47 shall as from the filing of the certified copy of the decree apply to the proceedings of a District Court executing a decree under this section, and the District Court shall refuse execution of any such decree, if it is shown to the satisfaction of the Court that the decree falls within any of the exceptions specified in clauses (a) to (f) of section 13.

Explanation I: “Reciprocating territory” means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare to be a reciprocating territory for the purposes of this section, and “Superior Courts”, with reference to any such territory, means such courts as may be specified in the said notification.

Explanation II: “Decree” with reference to a superior Court means any decree or judgment of such court under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalties, but shall in no case include an arbitration award, even if such an award is enforceable as a decree or judgment.[Explanation:-Judgement means the statement given by the judge on the ground of a decree or order. It is the decision of the court of justice upon the respective rights and claims of the parties to an action in a suit submitted to it for determination. Decree is a code as the formal expression of an adjudication which so far as regards the court expressing it concussively determines the right of the parties with regard to all or any of the matters in controversy in the suit. An order is nothing but a judgement while a decree is a final part of judgement. The primary difference between decree and order is that the decree is given in a site, which determines the substantive legal rights of the parties concerned, the order is given in the part course of proceedings, and determines the procedural legal rights of the parties concerned].

The List of the Reciprocating Territories as per the Provisions of Section 44 A of the Code of Civil Procedure, 1908

United Kingdom, Singapore, Bangladesh, UAE, Malaysia, Trinidad & Tobago, New Zealand, The Cook Islands (including Niue) and The Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea, Fiji, Aden.

In the matter of *Moloji Nar Singh Rao vs Shankar Saran* Supreme Court held that a foreign judgment which does not arise from the order of a superior court of a reciprocating territory cannot be executed in India. It ruled that a fresh suit will have to be filed in India on the basis of the foreign judgment.” Therefore, under Section 44A of the CPC, a decree or judgment of any of the Superior Courts of any reciprocating territory are executable as a decree or judgment passed by the domestic Court. The judgment, once declared, will be executed in accordance with section 51 of the Code. Thereafter, the court may order measures such as attachment and sale of property or attachment without sale, and in some cases arrest (if needed) in enforcement of a

decree. This is done by the methods discussed below.

ii) By instituting a suit on such foreign judgment

Where a judgment or decree is not of a superior court of a reciprocating territory, a suit has to be filed in a court of competent jurisdiction in India on such foreign judgment. The general principle of law is that any decision of a foreign court, tribunal or any other quasi-judicial authority is not enforceable in a country unless such decision is embodied in a decree of a court of that country. In such a suit, the court cannot go into the merits of the original claim and it shall be conclusive as to any matter thereby directly adjudicated between the same parties. Such a suit must be filed within a period of 3 years from the date of judgment. *In the case of Marine Geotechnics LLC v/s Coastal Marine Construction & Engineering Ltd.,* the Bombay High Court observed that in case of a decree from a non-reciprocating foreign territory, the decree-holder should file, in a domestic Indian court of competent jurisdiction, a suit on that foreign decree or on the original, underlying cause of action, or both.

However, in both the cases, the decree has to pass the test of Section 13 CPC which specifies certain exceptions under which the foreign judgment becomes inconclusive and is therefore not executable or enforceable in India.

Limitation period for Enforcement of Foreign Judgments

As per the provisions of the Code, foreign judgments from reciprocating territories are enforceable in India in the same manner as the decrees passed by Indian courts. The Limitation Act, 1963 prescribes the time limit for execution of a foreign decree and for filing of a suit in the case of judgment passed by foreign court.

• Three years, commencing from the date of the decree or where a date is fixed for performance; in case of a decree granting a mandatory injunction; and

• Twelve years for execution of any other decree commencing from the date when the decree becomes enforceable or where the decree directs any payment of money or the delivery of any property to be made at a certain date, when default in making the payment or delivery in respect of which execution is sought, takes place.

A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian court for which a limitation period of 3 years has been specified under the Limitation Act, 1963 commencing from the date of the said judgment passed by foreign court.

Thus, application for winding up of the company could be filed on the basis of foreign judgement, decree or award only it pass the test of section 13, 14 and 44A of CPC 1908, otherwise suit was to be field in the District Court.

Recommendation for adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997

The ILC has recommended the adoption of the UNCITRAL Model Law of Cross Border Insolvency, 1997 to deal with cross border insolvency issues. It shows that there is no inconsistency between the domestic insolvency framework and the proposed Cross Border Insolvency Framework.

It is envisages in the PREAMBLE of UNCITRAL Model Law on Cross-Border Insolvency that the purpose of this Law is to provide effective mechanism for dealing with cases of cross-border insolvency so as to promote the objective of:

(a) Cooperation between the courts and other competent authorities this State

and foreign States involved in cases of cross-border insolvency;

(b) Greater legal certainty for trade and investment;

(c) Fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;

(d) Protection and maximization of the value of the debtor's assets, and

(e) Facilitation of the rescue of financially troubled business, thereby protecting investment and preserving employment.

The necessity of having Cross Border Insolvency provisions under the Insolvency and Bankruptcy Code arises from the fact that many Indian companies have a global footprint and many foreign companies have presence in multiple countries including India. Although the proposed Framework for Cross Border Insolvency will enable us to deal with Indian **companies having foreign assets and vice versa, it still does not provide for a framework for dealing with enterprise groups, which is still work in progress with UNCITRAL an**d other international bodies. The inclusion of the Cross Border Insolvency Chapter in the Insolvency and Bankruptcy Code of India, 2016, will be a major step forward and will bring Indian Insolvency Law on a par with that of matured jurisdictions.

The model law deals with four major principles of cross-border insolvency, namely direct access to foreign insolvency professionals and foreign creditors to participate in or commence domestic insolvency proceedings against a defaulting debtor; recognition of foreign proceedings & provision of remedies; cooperation between domestic and foreign courts & domestic and foreign insolvency practioners; and coordination between two or more concurrent insolvency proceedings in different countries. The main proceeding is determined by the concept of center of main interest ("COMI").

Therefore, Insolvency Law Committee decided to attempt to provide a comprehensive framework for this purpose based on the UNCITRAL Model Law on Cross-Border Insolvency, 1997 which could be made a part of the Code by inserting a separate part for this purpose. Accordingly, this ILC Report provides recommendations of the Committee on adoption of the UNCITRAL Model Law and the modifications necessary in the Indian context. Globally, the UNCITRAL Model Law has emerged as the most widely accepted legal framework to deal with cross-border insolvency issues and legislation based on the Model Law has been adopted in 44 countries in a total of 46 jurisdictions. The UNCITRAL Model Law ensures full recognition of a country's domestic insolvency law by giving precedence to domestic proceedings and allowing denial of relief under the Model Law if such relief is against the public policy of the enacting country.

The Committee has recommended that the Model Law be adopted with necessary modifications. Broadly, the four main principles on which the Model Law is based on are as follows:

(i) *Access*: The Model Law allows foreign insolvency professionals and foreign creditors direct access to domestic courts and confers on them the ability to participate in and commence domestic insolvency proceedings against a debtor. Direct access with regards to foreign creditors is envisaged under the Code even presently. With respect to access by foreign insolvency professionals to Indian courts, the Committee has recommended that the Central Government be empowered to devise a mechanism that is practicable in the current Indian legal framework**.** The provision is corresponding to the Supreme Court in *Roshanlal Kuthalia vs. R.B. Mohan Singh Oberoi* reported in (1975) 4 SCC 628 declared that foreign judgment is enforceable and conclusive subject to the exceptions enumerated in Section 13, CPC.

(ii) ***Recognition***: The Model Law allows recognition of foreign proceedings and provision of remedies by domestic courts based on such recognition. Relief can be provided if the foreign proceeding is either a main or a non-main proceeding. If domestic courts determine that the debtor has its center of main interests ("COMI") in the foreign country, such a foreign insolvency proceeding is recognized as the main proceeding. If domestic courts determine that the debtor has an establishment (applying a test based on carrying on of non-transitory economic activity), such a foreign insolvency proceeding is recognized as the non-main proceeding. Recognition as a main proceeding will result in automatic relief, such as a moratorium on transfer of assets of the debtor, and allow the foreign representative greater powers in handling the estate of the debtor. For non-main proceedings, such relief is at the discretion of the domestic court. As per para (a) of Article 2 (Definitions) of INCITRAL Model Law on Cross-Border Insolvency, "Foreign proceeding" means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to a law relating to insolvency in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

Para (b) provides "Foreign main proceeding" means a foreign proceeding taking place in the State where the debtor has the center of its main interests. Para c envisages, "Foreign non-main proceedings" means a foreign proceeding, other than a foreign main proceeding, taking place in a State where the debtor has an establishment within the meaning of subparagraph (f) of this article.

It is provided in para 1.8 of the ILC Report that the Committee recommended that initially the Model Law may be adopted on a reciprocity basis. It is corresponding to various cases.

Some of the key advantages of adopting the Model Law with specific carve outs as recommended by the Committee are as under:

(i) *Increasing foreign investment:* Even though foreign creditors have a remedy under the Code presently, adoption of the Model Law will provide added avenues for recognition of foreign insolvency proceedings, foster cooperation and communication between domestic and foreign courts and insolvency professionals and so on. Popularity of the Model Law has increased in recent years and its adoption shall also enable India to align with global best practices in insolvency resolution and liquidation. Moreover, there will be significant positive signaling to global investors, creditors, governments, international organizations such as the World Bank as well as multinational corporations with regard to the robustness of India's financial sector reforms.

(ii) ***Flexibility****:* The Model Law is designed to be flexible and to respect the differences amongst national insolvency laws. Therefore, necessary carve outs may be made in relation to the Model Law to maintain consistency with domestic insolvency law while adopting a globally accepted framework. For example, the moratorium under the Model Law may be tweaked to make it harmonious with the moratorium under section 14 of the Code; a reciprocity requirement may be incorporated for stakeholders in other countries.

(iii) *Protection of domestic interest*: The Model Law enables refusal of recognition of foreign proceedings or provision of any other assistance if such action contradicts domestic public policy.7 Hence, it provides enough flexibility to protect public interest.

(iv) *Priority to domestic proceedings:* The Model Law gives precedence to domestic insolvency proceedings in relation to foreign proceedings. For example, a moratorium due to recognition of a foreign proceeding will not prevent commencement of domestic insolvency proceedings.

(v) *Mechanism for cooperation:* The Model Law incorporates a robust mechanism for cooperation and coordination between courts and insolvency professionals, in foreign jurisdictions and domestically. This would facilitate faster and effective conduct of concurrent proceedings. The overseas Corporate Insolvency will create an internationally aligned and comprehensive insolvency framework for corporate debtors under the Code, which is most essential in a globalized environment.

Treatment of Foreign Judgment or decree under the Insolvency & Bankruptcy Code, 2016.

The foreign judgement, decree was held by the Adjudicating Authority to be admitted on passing the test of section 13, 14 & 44A of the CPC, 1908, i.e. on the same basis. *In the matter of Usha Holding LL.C. & Anr. [Applicant/Operational Creditors* v. *Francorp Advisors Pvt. Ltd*. [Respondent/Corporate Debtor]. Date of Judgment: 11.12.2017, NCLT, Principal Bench, New Delhi wherein the Adjudicating Authority by detailed order held:-

1. (a) In absence of a certified copy of a decree of any of the superior courts of any reciprocating territory, the said decree cannot be executed;

   (b) Foreign judgement is not conclusive where it has not been pronounced by a Court of competent jurisdiction and founded on an incorrect view of international law;

   (c). The Court shall presume, upon the production of any document purporting to be a certified copy of a foreign judgment, that such judgment was pronounced by a Court of competent jurisdiction unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

2. While holding so, the Adjudicating Authority by impugned order dated 11th December, 2017, also held as follows:

"28. A conjoint reading of Section 44A of CPC along with Section 13 & 14 would show that the petitioner need to satisfy a number of requirements.

(A) *A certified copy is sine qua non for recognizing a decree as valid in India. Moreover, its compliance with the principles of natural justice also need to be shown.*

(B*) it is required to be executed in the District Court of this Country.*

(C*). It is also required that the decree should be pronounced by a Court of competent jurisdiction and on merits.*

(D) The decree must not have been obtained by fraud and its must not be founded on a breach of any law in force in this Country.

29. The petitioner has founded its claim and consequential default on the basis of decree dated 5.10.2015 and the order dated 27.3.2014. Both the documents placed on record are not certified copies of the decree and order. We further dind that the decree needs to be made rule of the Court before the District in India if at all its is executable. The petitioner has miserably failed to show any notification of the reciprocation between United States and India in terms of Section 44 of CPC."

3. The Adjudicating Authority while rejecting the application under Section 9 of the I&B Code preferred by the Appellants for the grounds mentioned above, also held that the Appellants do not come within the meaning of Operational Creditors as the amount due has not been regarded as an 'Operational Creditors within the meaning of Section 5(21) of the "I&B Code".

The appeal was raised against the order. The Appellate Authority in the matter of *Usha Holding LL.C. & Anr.* v. *Francorp Advisors Pvt. Ltd; Company Appeal (AT)(Insolvency) No.44 of 2018:* Date of decision 30th November, 2018. The NCLT observed, we also find force in the agreements that the decree dated 5.10.2015 and the order dated 27.03.2014 is in violation of the law prevailing in India in as much as Section 8 of the Arbitration and Conciliation Act, 1996 has not been followed" (para-2, page-3). Reversing the order, the Appellate Authority held that Adjudicating Authority has no jurisdiction to decide the question of legality and propriety of a foreign judgement and decree in an application under Section 7 or 9 or 10 of the I&B Code. The reliance was placed upon the case of Binani Industries Limited Vs. Bank of Baroda & Anr.-Company Appeal (AT)(Insolvency) No.82 of 2018. In the matter of Arcelor Mittal Indi Pvt. Ltd Vs. Satish Kumar Gupta and Ors.

In Binani Industries Limited Vs. Bank of Baroda & Anr.- Company Appeal (AT)(Insolvency) No.82 of 2018 etc. NCLAT Date of decision 14th November, 2018. The NCLAT held that Adjudicating Authority not being a Court or Tribunal and Insolvency Resolution Process not being a litigation, it has no jurisdiction to decide whether a foreign decree is legal or illegal. Whatever findings the Adjudicating Authority has given with regard to legality and propriety of foreign decree in question being without jurisdiction is nullity in the eye of law.

In Mrs. Jai Kumar & Anr. Vs. Stanbic Bank Ghana Limited, C.S.(Comm. Div.) D.No.41401 of 2018, in the High Court of Judicature at Madras; Date of Decision 4.12.2018. The contention of the plaintiff that the judgement/decree/order dated 8.8.2017 made by the U.K. Court, is in violation of Section 13 of the "The Code of Civil Procedure, 1908' and placing reliance on Section 44-A of CPC. On the basis of that decree application u/s 7 of IBC was filed in NCLT Chennai. The NCLT admitted the application and declared moratorium against the corporate debtor. The appeal was filed in NCLAT. NCLAT in its order particularly in paragraphs 11 and 12 has clearly said that validity of foreign decree cannot be challenged before NCLAT and that it has to be done before an appropriate forum. The order was challenged in the Supreme Court, the Hon'ble Court held that it does not find any reason to interfere with the impugned order dated 29.8.2018 passed by the National Company Law Appellate Tribunal, New Delhi and dismissed the appeal. The Hon'ble High Court held that this suit to be not maintainable, but reserving the rights of corporate debtor (second defendant) to approach to NCLT under section 60(5) if the IB Code and further reserving the right of Resolution Professional to file a suit on the same ground with regard to the same issue if the NCLT permits the Resolution Professional to do so.

Insolvency proceedings in two countries

Insolvency proceedings is continued in India, wherein the registered office of the corporate Debtor (Company) is existed and in the another country where in the assets of the corporate debtor is existed. In the matter of State Bank of India & Ors. Vs. Jet Airways (India) Limited u/s 7 & 9 o the I & B Code in CP 2205(IB)/MB/2019, CP1968 (IB)/(MB)/2019, CP 1938(IB)/MB/2019, NCLT Mumbai Bench: Date of order

20.06.2019. The Adjudicating Authority discussed that judgement of NOORD-HOLLAND, Netherland District court dated 21.05.2019, neither submitted on affidavit nor the original/certified copy of the Judgement is submitted along with the translated copy. It is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognize the judgement of an insolvency court of any Foreign Nation. So we cannot take the order on record (para 21). It is provided in contention of the Administrator regarding insolvency order passed by Holland Court, inter-alia in para 24(d) even though the provisions of law, Section 234 and 235 of the IBC have not been given effect to by the Central Government, there is no bar or prohibition under the IBC for the Adjudicating Authority recognising the Insolvency proceedings in a foreign jurisdiction.; in para (e) the provisions of sections 13, 14 and 44-A of the Code of Civil Procedure, 1908 do not apply to insolvency proceedings. They deal with the procedure of recognition an enforcement of foreign judgement/decree/orders etc.; in para (f), the judgement dated 21 May 2019 has been passed by the court of competent jurisdiction is final and binding on the Corporate Debtor and lenders. Despite notice the corporate debtor and State Bank of India have to file any appeal against the judgement till date. It is stipulated in para (g) two parallel proceedings are likely to obstruct smooth and uninterrupted, sustainable and certain proceedings. (para-24, p-8).

It is pertinent to mention that Section 234-235 of the IBC, 2016 deals with the matter regarding the agreement with foreign countries and the letter of request to a country outside India in the insolvency Resolution Process where the assets of the corporate debtor exist outside India (para-26, p-8). The adjudicating authority discussed that the above provision of IB Code is yet to be notified, hence not enforceable. The Adjudicating Authority is not empowers to entertain the order passed by the foreign jurisdiction, where the registered office of the corporate debtor company is situated in India and the jurisdiction lies with Indian court (para-27).

The adjudicating authority admitted the petition u/s 7 of the Code for initiating corporate insolvency resolution proceedings and directed the interim resolution professional to proceed in the matter without being influenced by order of the Netherland.

In the matter of Jet Airways (India) Limited (Offshore Regioal Hub) Vs. State Bank of India & Anr., NCLAT New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019. NCLAT Date of decision. 12.7.2019. The question arises for consideration in this Appeal is whether separate proceeding(s) in Corporate Insolvency Resolution Process against Common corporate Debtor in two different countries one having no territorial jurisdiction over the other. The Appellate Authority observed that separate Corporate Insolvency Resolution Process/liquidation proceedings have been initiated against same Corporate Debtor namely-Jet Airways (India) Limited, one in India where Registered office of the Corporate Debtor is situated and another in Netherland (North Holland), where the Regional Hub of the Corporate Debtor is situated. A Joint Agreement or understanding between the Resolution Professional of Corporate Debtor in India and Administration from was made. In the same case the Appellate Authority vide its order dated 21.8.2019 held to ensure that insolvency proceedings both by Administrator, appointed by Netherland (North Holland) court and Resolution Profession, appointed by state Bank of India is doing in the same spirit.

In the matter of *Jet Airways (India) Ltd (*Offshore Regional Hub/office) Holland Vs.

State Bank of India & Anr. National Company Law Appellate Tribunal, New Delhi, Company Appeal (AT)(Insolvency) No.707 of 2019, Date of order 4.09.2019. The NCLAT ordered that in view of the duties empowered on the Interim Resolution Professional', he is required to collate the claim of all offshore creditors' or take control and custody of the assets of the corporate debtor situated outside India (in Holland) or other places, but for giving it effect the 'Resolution Professional' is required to reach an arrangement/agreement with the Administrator appointed pursuant to the proceeding initiated at Holland (para 4). In the same case of *Jet Airways (India) Limited* NCLAT New Delhi order dated 26.09.2019. Company Appeal (AT)(Insolvency) No.707 of 2019 it is observed that an agreement between the Administrator of Jet Airways (India) Limited and the Resolution Professional of Jet Airways (India) Limited, termed as "Cross Border Insolvency Protocol" to run the parallel proceedings. The Aim of the Protocol is the parties recognize that the Company being an Indian company with its center of main interest in India, the Indian Proceedings are the main insolvency proceedings and the Dutch Proceedings are the non-main insolvency proceedings (para 3, p-5).

The NCLAT, therefore, made clear that the 'Dutch Trustee (Administrator) will work in cooperation with the 'Resolution Professional of India' and if any suggestion is required to be given, he may give it to the Resolution Professional. It should be treated as a direction and it would be mandatory to comply with the order of this Appellate Tribunal subject to the other procedures which are to be followed in terms of the Insolvency and Bankruptcy Code, 2016. Thus, the Appellate Authority set aside part of the order passed by the Adjudicating Authority so far it relates to the observations that the 'Dutch Court' has no jurisdiction in the matter of corporate insolvency resolution process of Jet Airways (India) Limited (Offshore Regional Hub) and the consequential direction as given to the Resolution Professional in respect of offshore proceedings. The appellate authority allowed to continue joint insolvency Resolution Process in accordance with the I& B Code.

In view of above, the NCLAT New Delhi has also directed the Resolution Professional to take custody of the assets situated Neither land and receive claims of outside India. The registered office of the corporate debtor (company) is within India, therefore, corporate insolvency resolution process is to be carried out in India Therefore, it is required to make amendment in the law

In view of the above, the judgement, decree passed by foreign courts without complying with the provisions of section 13, 14 and 44A of CPC, 1908 have been made eligible to file application under Insolvency and Bankruptcy Code,2016. The application for winding up on the basis of foreign judgement, decree have been admitted on passing the test of section 13, 14 & 44-A of CPC, 1908. of **reciprocating territory**. As well, it has held *in the matter of State Bank of India & Ors. Vs. Jet Airways (India) Limited* by Adjudicating Authority that it is important to note that there is no provision and mechanism in the I & B Code, at this moment to recognize the judgement of an insolvency court of any Foreign Nation. Section 234 and 235 of the IBC have not been given effect to by the Central Government. But the insolvency/liquidation proceedings in the case of Jet Airways (India) Limited (Offshore Regional Hub) is going in both countries. As against, there is no provision to initiate insolvency proceedings against a foreign corporate debtor for non payment of debt existed in India. Therefore, it is required to be made Amendment in the Code to this effect.

AN INSIGHTFUL VIEW

CMA Raju Iyer
Insolvency Professional

1. **When and Why did you join this profession?**

   I got myself registered as an Insolvency Professional in 2017. I have taken up this profession as it is a very significant piece of legislation which provides opportunities for revival of a company in distress. As an advisor I suggest to the clients effective steps to be taken for revival / restructuring of the company.

2. **Why Choose a career in Insolvency?**

   Practice in Insolvency and Bankruptcy law offers the opportunity for revival of a viable company which may get into distress due to various reasons. This is an area of professional practice which helps realize economic benefits for the country and provides huge professional satisfaction.

3. **Are courts able to meet the Timeline framed in IBC?**

   No. Courts are not able to meet the Timelines prescribed in the Insolvency and Bankruptcy Code, 2016 as the number of NCLT benches and the number of Judges is not commensurate with the work load as a significant number of cases are getting filed under IBC.

4. **What are the challenges in dealing with the Suspended Promoters/Directors?**

   Once a case under IBC gets filed against a Corporate debtor, normally the promoters and Directors of the company whose powers are suspended create problems in the functioning of the Interim Resolution Professional / Resolution Professional in order to delay / stall entire proceedings. Competent Resolution Professionals are able to carry out their duties and responsibilities in spite of such attitude of the promoters / Directors.

5. **What is the biggest challenge you have faced till now?**

   Antagonistic attitude of the promoters / directors, surfacing of evidence of funds diversion, and operational challenges. The significant challenge is to prove fund diversion. The code restricts analysis of the transactions only for last 2 years but in many cases the fund diversion had happened much before that period.

6. **What is your view on recent Amendments in the IBC?**

   This is an evolving law and the Government is being very proactive in bringing the necessary amendments in the

Code and the Regulations in line with the emerging scenario. There is need for promulgating provisions relating to Cross border Insolvency, Group Insolvency and Individual Insolvency through suitable amendments to the Code.

7. What is your advise to upcoming IPs?

Be bold enough to take up assignment and work in a structured and well organised manner with a competent team to work through and complete the assignment within prescribed timeline. It is a challenging assignment but this has huge ramifications for the economic growth of the country.

8. How was your experience so far?

My experience of handling matters under Insolvency and Bankruptcy Code so far has been professionally very satisfying. I look forward to contributing to the revival of companies in distress through the Corporate Insolvency Resolution Process.

CASE LAWS

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM - GENERAL

- **Oriental Bank of Commerce v. Devendra Singh [2019] 107 taxmann.com 258 /154 SCL 87 (NCL-AT)**

Where claim of bank to appropriate FDRs lying with it as corporate guarantee was disallowed by Adjudicating Authority on ground that once moratorium had been declared it was not open to any person to recover any amount from account of corporate debtor, since, corporate debtor had undergone liquidation and bank had filed its claim before liquidator also, which was accepted, appeal against impugned order passed by Adjudicating Authority was to be dismissed

The Appellant bank granted credit facilities to the principal borrower. While giving said facilities, the corporate debtor company stood as a corporate guarantor and created fixed deposits with bank. In the meantime, the loan account of principal borrower was declared as NPA and bank recalled said facilities. Corporate guarantee given by the corporate debtor had also been invoked. Thereafter, CIRP was initiated against the corporate debtor and moratorium under section 14 was declared. Pursuant to invocation of corporate guarantee, bank sent notice subject to encashment of FDRs to the corporate debtor with a copy to the RP. An application was filed by the RP for direction to bank to prematurely cancel FDRs lying with it in name of the corporate debtor and transfer proceeds of FDRs into account known as 'Trust and Retention Account'. Bank also filed an application to consider it as a financial creditor as guarantee given by the corporate debtor had been invoked by it. The Adjudicating Authority allowed claim of the RP and disallowed claim of bank on ground that once moratorium had been declared it was not open to any person to recover any amount from account of the corporate debtor nor it could appropriate any amount towards its own dues. Meanwhile, corporate debtor had undergone liquidation and bank had filed its claim before liquidator also, which was accepted.
Held, that appeal against impugned order passed by Adjudicating Authority was to be dismissed.

Case Review: Alchemist Asset Reconstruction Co. Ltd. v. Moser Baer India Ltd. [2019] 107 taxmann.com 257 (NCLT - New Delhi) affirmed.

SECTION 9 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- **Overseas Packaging Industries (P.) Ltd. v. Sify Technologies Ltd. - [2019] 107 taxmann.com 321 / 154 SCL 523 (NCL-AT)**

Where operational creditor supplied power to corporate debtor and raised invoices, in which name of corporate debtor was not shown as buyer, such disputed question related to invoices was to be decided by a Court of Competent Jurisdiction and not by NCLT/NCLAT

The operational creditor supplied power to the corporate debtor and raised invoices. Since same were not paid, the operational creditor sought to initiate CIRP against the corporate debtor. Said invoices had been taken into consideration by the Adjudicating Authority to come

to a definite conclusion that buyer was company 'P' as shown in invoice and not the corporate debtor.
Held that there being a disputed question related to invoices, it was a case which could be decided by a Court of Competent Jurisdiction and not by the NCLT or NCLAT and hence application under section 9 was not maintainable

SECTION 30 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - SUBMISSION OF

- **IDBI Bank Ltd. v. Anuj Jain - [2019] 107 taxmann.com 469 /155 SCL 199 (NCLAT- New Delhi)**

Where in corporate insolvency resolution process of Jaypee Infratech Ltd. (corporate debtor) Resolution Professional sought exclusion of period during which matter remained pending for consideration before Adjudicating Authority relating to voting share of allottees for purpose of counting 270 days, period from date of application filed by Association of allottees for clarification and till final decision could be excluded for purpose of counting 270 days, however, as matter was pending since long, total period of 260 days was not excluded but 90 days were excluded for purpose of counting period of 270 days of corporate insolvency resolution process

Corporate insolvency resolution process was initiated against Jaypee Infratech Ltd., the corporate debtor, pursuant to an application under section 7 filed by IDBI. However, pursuant to decision of the Supreme Court, Home Buyers Association sought clarification about calculation of voting percentage of allottees (financial creditors). Resolution Professional filed an application, seeking exclusion of period of pendency of application for clarification, for counting total period of 270 days of corporate insolvency resolution process, i.e. period during which matter remained pending for adjudication as to how voting share of allottees (financial creditors) would be counted
Held that as matter was pending since long total period of 260 days was not excluded but period of 90 days was excluded for purpose of counting period of 270 days of corporate insolvency resolution process, which should be counted from date of receipt of copy of order

SECTION 7 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

- **Arun Rathi v. Indian Overseas Bank - [2019] 107 taxmann.com 325 (NCL-AT)**

Where application under section 7 was filed by one of officer of financial creditor who had been authorized by financial creditor to act on its behalf and claimed amount was more than threshold of rupees one lakh, application filed under section 7 was rightly admitted by Adjudicating Authority

Case Review: Indian Overseas Bank v. Rathi TMT Saria (P.) Ltd. [2019] 107 taxmann.com 324 (NCLT - New Delhi) affirmed

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- **Substantia Capital Services LLP v. Neelkanth Realtors (P.) Ltd. - [2019] 107 taxmann.com 116 /154 SCL 532 (NCL-AT)**

Where operational creditor rendered financial advisory services to corporate debtor and corporate debtor raised a dispute that operational creditor failed to conclude financing arrangement with any of institutions and thus, was not entitled for professional fees, since, there being pre-existing dispute, CIRP application against corporate debtor was to be dismissed

The operational creditor company was engaged in the business of providing financial advisory services. Claim of the operational creditor was that it facilitated the corporate debtor, to get loan from the financial creditor, and was entitled for its fee as an agent/facilitator which had not been paid since 2015. There being a default, application under section 9 was filed. The corporate debtor raised a dispute that the operational creditor failed to conclude financing arrangement with any of institutions.
Held that since dispute was raised prior to sending of demand notice, there was pre-existence of dispute, thus, application to initiate CIRP against corporate debtor was to be rejected

Case Review: Substantia Capital Services LLP v. Neelkanth Realtors (P.) Ltd. [2019] 107 taxmann.com 115 (NCLT - Mum.) Affirmed

SECTION 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS - MORATORIUM

- **Canbank Fectors Ltd. v. Dharmendra Kumar - [2019] 107 taxmann.com 319 / 154 SCL 527 (NCL-AT)**

Even though lien on corporate debtor's property was created prior to commencement of CIRP proceedings, recovery sought to be made after commencement of CIRP would be barred by moratorium

On CIRP being admitted, moratorium was declared against the corporate debtor. However, the appellant-creditor proceeded with recovery of dues by exercising its right to lien on properties of the corporate debtor. The Adjudicating Authority held that the creditor could not enforce claim in relation to property of the corporate debtor and directed the appellant to refund money collected against receivables of the corporate debtor. The appellant creditor took plea that lien on the corporate debtor's property was created prior to commencement of CIRP proceedings and demand to make payment was also made prior to commencement of moratorium; hence, section 14 would not come into play. However, no bank statement was submitted to prove that recovery was made prior to commencement of moratorium.
Held that recovery sought to be made after commencement of CIRP was barred by moratorium

SECTION 238 - OVERRIDING EFFECT OF CODE

- **Encore Asset Reconstruction Company (P.) Ltd. v. Ms. Charu Sandeep Desai - [2019] 107 taxmann.com 100 /154 SCL 382 (NCL-AT)**

Even where possession of property of corporate debtor was taken by bank under SARFAESI Act prior to declaration of moratorium under Code, in view of overriding effect of Code, bank could not retain possession of property belonging to corporate debtor

Loan taken by the corporate debtor from Dena Bank became 'bad' and, hence, same was declared as NPA. The appellant bank initiated proceedings under SARFAESI Act and under order of authority, took physical possession of the mortgaged property. Subsequently, CIRP proceedings were admitted against the corporate debtor.
Held that it was duty of IRP to take control and custody of any asset over which the corporate debtor had ownership right as recorded in balance sheet of the corporate debtor which included assets that might or might not be in possession of the corporate debtor. And since section 18 of the Code would prevail over section 13(4) of SARFAESI Act, 2002, bank could not retain possession of property of which the corporate debtor was owner

Case Review: State Bank of India v. Calyx Chemicals & Pharmaceuticals Ltd. [2018] 100 taxmann.com 466 (NCLT - Mum.) affirmed

SECTION 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS - DISPUTE

- **Naveen Kumar Dixit v. Jaswant International (P.) Ltd. - [2019] 107 taxmann.com 427 / 154 SCL 105 (NCL-AT)**

Where corporate debtor raised dispute regarding defective material supplied by operational creditor and claimed that letter informing same was sent to operational creditor prior to issuance of demand notice, however, there was no proof of service of such letter, impugned order passed by Adjudicating Authority admitting application under section 9 did not require any interference

The operational creditor supplied multi-layer plastic films to the corporate debtor and raised invoices. On account of non-payment of invoices, the operational creditor filed application under section 9 to initiate CIRP against the corporate debtor. The Adjudicating Authority by impugned order admitted said application. The corporate debtor claimed pre-existence of dispute on ground that the operational creditor was to supply plastic film of thickness of 12 microns but supplied film having density of 18 microns, because of which client of the corporate debtor imposed penalty on it. The corporate debtor also claimed that letter informing said issue was sent to the operational creditor prior to issue of demand notice. It was noted that although the corporate debtor claimed existence of dispute and that letter was sent to the operational creditor, there was no proof of service of such letter on the operational creditor and, thus, plea was unsupported by evidence.
Held that Adjudicating Authority having found application complete, impugned order passed by Adjudicating Authority admitting CIRP application did not require any interference

SECTION 12A - CORPORATE INSOLVENCY RESOLUTION PROCESS - WITHDRAWAL OF APPLICATION

- **Ashish Choudhery v. Unipik Automation Solutions - [2019] 107 taxmann.com 190 /154 SCL 413 (NCL-AT)**

Where parties had settled matter prior to constitution of CoC, application filed under section 9 was to be dismissed as withdrawn

An application filed under section 9 in case of the corporate debtor was admitted by the Adjudicating Authority. Before constitution of the Committee of Creditors (CoC), parties reached a settlement. In terms of settlement three demand draft had also been issued to the operational creditor.
Held that in view of settlement arrived at between parties, the application filed under section 9 was to be dismissed as withdrawn

Case Review: Unipik Automation Solution v. Choudhery Cheese Bazar (P.) Ltd. [2019] 107 taxmann.com 189 (NCLT - New Delhi) reversed

SECTION 29A - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT PERSONS NOT ELIGIBLE TO BE
SECTION 31 - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION PLAN - APPROVAL OF

- **Jagmeet Singh Sabharwal v. Rubber Products Ltd. - [2019] 107 taxmann.com 415 /155 SCL 89 (NCL-AT)**

A. In absence of any evidence, it is not open to Adjudicating Authority to observe that resolution applicant had a nexus with corporate debtor and, thus, ineligible under section 29A to file resolution plan.
B. Resolution plan cannot be arbitrary or discriminatory amongst class of operational creditors

In the resolution plan submitted by the successful resolution applicant, workmen dues, employee dues, secured financial creditors and unsecured financial creditor (promoters) were proposed to be paid 100 per cent. Other operational creditors like 'supplier of goods' were proposed to be paid 70.81 per cent. The Central Government or the State Government were proposed to be paid 36.31 per cent of dues. It was noted that the operational creditors who were supplying goods or rendered services, including employees, were working for keeping the company operational and, therefore, they were class in themselves. On the other hand, the Central Government or the State Government only drive advantage of existing law, without supplying any goods or rendering any services.
Held that in absence of any evidence, it is not open to the Adjudicating Authority to observe that the resolution applicant has a nexus with corporate debtor and, thus, ineligible under section 29A to file resolution plan.
Further held that the aforesaid classification between operational creditor who had supplied goods or rendered services and operational creditor like Government dues, i.e., debt payable to Central or State Government was rational and correct.

Case Review: Manoj Kumar Agarwal, In re [2019] 103 taxmann.com 372 (NCLT - Mum.) reversed

SECTION 238A - LIMITATION PERIOD

- **Devanathan Ranganathan v. IDBI Bank Ltd. - [2019] 107 taxmann.com 372 / 154 SCL 565 (NCL-AT)**

Right to initiate CIRP accrued since 1-12-2016 thus, application under section 7 filed on 24-10-2018 being within limitation period of three years from date of right to accrue application was to be admitted

Whether since Code came into force with effect from 1-12-2016, right to apply under code accrued only on or after 1-12-2016 and, therefore, application under section 7 filed in 24-10-2018, being within limitation period of three years from date of right to accrue application, was to be admitted.

Case Review : IDBI Bank Ltd. v. Jeypore Sugar Company Ltd. [2019] 104 taxmann.com 141 / 153 SCL 39 (NCLT -Chennai) affirmed

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT
SECTION 7 - INITIATION BY FINANCIAL CREDITOR
SECTION 238 - OVERRIDING EFFECT OF CODE

- **Pioneer Urban Land & Infrastructure Ltd. v. Union of India - [2019] 108 taxmann.com 147 / 155 SCL 622 (SC)**

A. Section 5(8)(f) always subsumed within it allottees of flats/apartments.
B. Amendment made to Code by Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 does not infringe articles 14, 19(1)(g) or 300-A of Constitution of India
C. Period of 14 days given to NCLT for decision under section 7(4) is directory and not mandatory.
D. RERA and Code must be held to co-exist and in event of a clash, RERA must give way to Code.

SECTION 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- **Indiabulls Housing Finance Ltd. v. Rudra Buildwell Projects (P.) Ltd. - [2019] 108 taxmann.com 57 / 155 SCL 32 (NCL-AT)**

Where a tripartite agreement was executed between appellant, respondent/builder and borrower and in terms of said tripartite agreement, borrower and respondent were jointly and severally liable for repayment, since appellant disbursed amount for consideration of time value of money in favour of borrower, Adjudicating Authority had rightly held that respondent

was not corporate debtor to appellant and therefore, application under section 7 against respondent was not maintainable

The appellant company sanctioned loan facilities to borrower 'D' under a loan agreement for purchase of residential apartment developed by the respondent/builder. In addition, a tripartite agreement was also executed between the appellant, the respondent/builder and the borrower and in terms of said tripartite agreement, the borrower and respondent were jointly and severally liable for repayment. Borrower and respondent failed to maintain financial discipline and had defaulted in repayment. Thus, appellant filed application to initiate CIRP against the respondent-builder. It was noted that in terms of clause 5(8), if disbursement is made for consideration of time value of money, a person can claim to be a financial creditor with regard to amount paid. Admittedly, the appellant had disbursed amount for consideration of time value of money in favour of borrower 'D' and not to the respondent builder
Held that the Adjudicating Authority had rightly held that respondent-builder was not corporate debtor to appellant and therefore, application under section 7 against respondent was not maintainable

Case Review : Indiabulls Housing Finance Ltd. v. Rudra Buildwell Projects (P.) Ltd. [2019] 108 taxmann.com 56 (NCLT-New Delhi) (SB) affirmed

SECTION 36 - CORPORATE LIQUIDATION PROCESS - LIQUIDATION ESTATE

- **State Bank of India v. Moser Baer Karamchari Union - [2019] 108 taxmann.com 251 (NCL-AT)**

In terms of section 36, liquidation estate/assets of corporate debtor do not include all sum due to any workmen or employees from provident fund, pension fund and gratuity fund and, therefore, for purpose of distribution of assets u/s 53 provident fund, pension fund and gratuity fund cannot be included

Corporate insolvency resolution process was initiated against the corporate debtor and order of liquidation was passed. The liquidator denied payment of gratuity fund, provident fund and pension fund preferentially and included same for payments under waterfall mechanism under section 53. The NCLT by impugned order held that the 'Provident Fund Dues', 'Pension Fund Dues' and 'Gratuity Fund Dues' cannot be part of section 53
Held that liquidation estate/assets of corporate debtor do not include all sum due to any workmen or employees from provident fund, pension fund and gratuity fund and, therefore, for purpose of distribution of assets under section 53 provident fund, pension fund and gratuity fund cannot be included. In terms of section 36, impugned order was not to be interfered with.

Case Review : Order of NCLT in Alchemist Asset Reconstruction Co. Ltd. v. Moser Baer India Ltd. [2019] 107 taxmann.com 473 (NCLT - New Delhi) affirmed

SECTION 66 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - FRAUDULENT OR WRONGFUL TRADING

- **Axis Bank Ltd. v. Anuj Jain - [2019] 108 taxmann.com 13 / 156 SCL 47 (NCL-AT)**

Where mortgage(s) were made in favour of 'banks and financial institutions' by 'corporate debtor' i.e., 'Jaypee Infratech Ltd.' (JIL), in ordinary course of business of 'corporate debtor' as appellant-banks and financial institutions had given loans to holding company namely 'Jaiprakash Associates Ltd.' (JAL) and 'corporate debtor' being one of group company, like a guarantor, executed mortgage deed(s) in favour of appellants-banks and financial institutions, mortgage deed were not made to defraud creditors of corporate debtor or for any fraudulent purpose and, therefore, transactions were not 'fraudulent trading' or 'wrongful trading' under section 66 and appellant banks were entitled to exercise their rights under 'I&B Code'

The resolution professional of Jaypee Infratech Limited (JIL), the corporate debtor, filed application under sections 43, 45, and 66 before the NCLT seeking direction that transactions entered into by promoters and directors of the corporate debtor creating mortgage of 858 acres of immovable property owned by it and in possession of corporate debtor, to secure debt of related party i.e., Jaiprakash Associates Limited (JAL) by way of mortgage deeds were fraudulent and wrongful transactions within meaning of section 66. The NCLT by impugned order held that transactions were fraudulent, preferential and undervalued and were fraudulent or wrongful trading under section 66.
Held that the corporate debtor being one of group company, like a guarantor, executed mortgage deed(s) in favour of appellants-banks and financial institutions and transactions were in ordinary course of business of corporate debtor. In absence of contrary evidence to show that transactions were made to defraud creditors of the corporate debtor or for any fraudulent purpose, on mere allegation made by the resolution professional, it was not open to the Adjudicating Authority to hold that mortgage deeds, in question, were made by way of transactions which came within meaning of fraudulent trading or wrongful trading under section 66. None of transactions were preferential transaction or undervalued transaction and, thus, impugned order was to be set aside and appellant-banks were entitled to exercise their rights under IBC

Case Review: IDBI Bank Ltd. v. Jaypee Infratech Ltd. [2018] 93 taxmann.com 308 (NCLT - All.) (para 80) set aside.

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