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# IBC AU-COURANT

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



**"Freedom is free! We only have to refuse to enslave ourselves to anything else"**

## **Updates on Insolvency and Bankruptcy Code**

### ➤ **Resolution primary objective of IBC; but recovery important too: SBI MD**

The primary objective of the Insolvency and Bankruptcy Code (IBC) process is resolution of a distressed firm, but the recovery percentage also needs to be kept in mind, SBI Managing Director J Swaminathan said on Sunday.

Financial and operational creditors owe money to companies facing insolvency proceedings and so recovery has to be an important factor while achieving resolution of stressed assets, he noted.

"All of us clearly understand, as the lenders' forum, that resolution is the primary objective of legislation like IBC. So, I don't think that there is any moving away from that particular point.

"We will stay the course on those lines, despite the criticism that either we are being pushed more towards recovery, or we are just being mindful of a resolution, disregarding the recovery percentage," Swaminathan said at an event organised by Indian Institute of Management, Ahmedabad.

He, however, added that while attempting a resolution, "we cannot lose sight of recovery".

Swaminathan said if the narrative starts building towards haircuts, then it is likely that the lenders may not take any decision, which will lead to paralysis, and then the stressed units will go into liquidation.

"In such a case, the entire objective of legislation like IBC towards resolving corporate stress in an orderly manner will be defeated," he pointed out.

Haircut taken by lenders as part of resolution plans approved under IBC refers to the shortfall in recovery to creditors as compared to their claims submitted in the insolvency process of a stressed borrower.

Speaking on providing interim financing to borrowers facing insolvency proceedings, Swaminathan said State Bank of India (SBI) has become the first bank to put a board approved interim financing policy in place.

"We have now put our metrics in place. The board has approved a policy that if a particular proposal satisfies certain metrics, the bank is willing to take that additional risk," he said.

He expects other lenders also to follow suit.

There is also a need for looking at other players providing distressed asset or private debt funding to give interim finance to borrowers, he said.

"Rather than looking at the same set of lenders who have got their money already struck, are there any players who can come in for distressed asset funding, or litigation financing or priority debt funding, and may have a much higher risk appetite than a usual commercial bank?"

"Maybe if we can develop that, it can be an alternative means of financing," he added.

**Source: Business Standard**

**Read Full news at:**

[https://www.business-standard.com/article/companies/resolution-primary-objective-of-ibc-but-recovery-important-too-sbi-md-122050100491\\_1.html](https://www.business-standard.com/article/companies/resolution-primary-objective-of-ibc-but-recovery-important-too-sbi-md-122050100491_1.html)

## ➤ **International conference on insolvency, bankruptcy: Minister says IBC provided effective ecosystem for insolvency resolution**

The first two-day International Research Conference on Insolvency and Bankruptcy organised by the Insolvency and Bankruptcy Board of India (IBBI), jointly with the Indian Institute of Management Ahmedabad (IIMA) concluded Sunday.

The Minister of State for Statistics and Programme Implementation, Planning and Corporate Affairs, Rao Inderjit Singh, highlighted the journey of the Insolvency and Bankruptcy Code (IBC), 2016, and praised the significant contribution it made by establishing a framework and effective ecosystem for insolvency resolution in the economy.

As per a release issued by IIMA, in his inaugural address, Singh cited that the Code has assumed larger significance during the Covid-19 pandemic and has been instrumental in saving both lives and livelihoods.

He also lauded the extraordinary contributions of judiciary, government agencies, regulators, and stakeholders of the IBC ecosystem in facilitating swift and effective implementation of the Code.

He highlighted that introduction of the proposed cross border insolvency resolution framework will be a landmark step in redefining India's business and economic relations with the rest of the world.

The two-day research conference was held under the aegis of the Misra Centre of Financial Markets at IIMA. Other associate partners of the conference include the National Stock Exchange, State Bank of India, BSE Investors' Protection Fund, and National Institute of Securities Markets.

Rajesh Verma, Secretary, Ministry of Corporate Affairs (MCA), emphasized on the need to promote culture of research in regulatory framework. Noting the achievements of the Code, he also highlighted that a comprehensive IT platform for processes under the Code is being worked upon.

While M Rajeshwar Rao, Deputy Governor, Reserve Bank of India (RBI) highlighted the importance of timely resolution of stressed assets for the banking sector, Ravi Mital, Chairperson, IBBI noted the importance of evidence-based research in policy making.

He emphasized that time is the essence of Code and basic research efforts should be made by all stakeholders to cut down the delays at all stages of insolvency resolution beginning recognition of stress to final resolution.

Professor Errol D'Souza, Director, IIMA said, "Just a few months ago, the Parliamentary Standing Committee on Finance had put up some issues regarding insolvency and bankruptcy. Some of the findings that they reported were interesting and we thought that is a great opportunity to go back to the drawing board and think about what is happening in this very important part of the economy. This conference is an appropriate juncture for us to do so."

**Source: The Indian Express**

**Read Full news at:**

<https://indianexpress.com/article/cities/ahmedabad/international-conference-on-insolvency-bankruptcy-minister-says-ibc-provided-effective-ecosystem-for-insolvency-resolution-7896864/>

## ➤ **Corporate Insolvency Resolution Process Can Be Resume on Failure of Settlement Agreement: NCLAT Chennai**

NCLAT Chennai bench comprising of Justice M Venugopal and Mr. Kanthi Narahari in the case of ICICI Bank versus OPTO Circuits (India) limited held that Corporate Insolvency Resolution Process (CIRP) can be revive/resume in case of failure of settlement agreement between the parties.

ICICI Bank filed an appeal before NCLAT Chennai under Section 61 of the Insolvency & Bankruptcy Code, 2016 against the order dated 17.08.2020 of NCLT Bengaluru wherein it has allowed the withdrawal of IBC petition but instead of giving liberty to revive the CIRP granted liberty to file a fresh petition under IBC against OPTO Circuits (India) limited (OPTO).

ICICI Bank filed a petition under Section 7 of the Code against OPTO which was admitted by NCLT Bengaluru on 18.03.2020 and CIRP was initiated. OPTO filed a writ petition before Karnataka High Court and a stay was granted on CIRP on 24.03.2020. However, in the meanwhile settlement was entered between ICICI Bank and OPTO. Accordingly, ICICI Bank file an application before NCLT Bengaluru to terminate the CIRP and grant liberty to revive/resume CIRP in case of failure of settlement between the parties.

NCLT Bengaluru allowed the termination of CIRP but did not grant the liberty to revive/resume rather granted liberty to file a fresh petition against OPTO.

It was contended by ICICI Bank that liberty to revive/resume the CIRP ought to have been granted by NCLT in terms of the Appellate Tribunal judgement dated 14.07.2020 in the case of Vivek Bansal v. Burda Druck India Pvt. Ltd.

It was contended by OPTOT that it has unable to pay the balance amount as its accounts have been blocked in terms of order passed by Enforcement Directorate and it may be permitted to submit a fresh proposal of settlement to ICICI Bank.

NCLAT noted that there is only one point of consideration in the present appeal whether the Adjudicating Authority's decision in directing that failing to adhere to terms and conditions of one-time settlement, the Appellant Bank is entitled to file fresh Company Petition is justifiable?

NCLAT held that the NCLT ought to have taken into consideration the decision of NCLAT in the case of Vivek Bansal as a precedent in a similarly situated facts. "21...Even otherwise the Adjudicating Authority failed to take note of the prayer made by the Corporate Debtor in I.A. No. 273 of 2020 dated 05.08.2020 wherein it is prayed that the matter may be disposed of as settled by giving liberty to the Petitioner Bank (Appellant) to resume the CIRP in case of non-compliance of the terms of the OTS."

NCLAT modified the liberty granted by NCLT Bengaluru and granted liberty to ICICI Bank to seek revival/restoration of CIRP in case of non-compliance of the settlement agreement.

**Source: Live Law**

**Read Full news at:**

<https://www.livelaw.in/ibc-cases/nclat-chennai-section-61-of-the-insolvency-bankruptcy-code-opto-circuits-india-limited-icici-bank-corporate-insolvency-resolution-process-nclt-bengaluru-settlement-agreement-197937>



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