



April 19, 2022

# IBC AU-COURANT

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



**"The best way to predict the future is to invent it"**

**Updates on Insolvency and Bankruptcy Code**

## ➤ **No TDS on buying property under liquidation: NCLAT**

Liquidation of companies is set to get easier with the National Company Law Appellate Tribunal throwing out taxman's claims that the liquidator has to get tax deducted at source while liquidating a bankrupt company.

In the case between S Kumars Nationwide and Chief Commissioner of Income Tax, the NCLAT ruled the liquidator is not required to prepare a balance sheet and profit & loss account and get it audited during the liquidation process.

"We are of the view that the liquidator of a company in liquidation under the Code is not required to file income tax return, then there is no question of claiming refund of TDS deducted," a two-judge bench of Jarat Kumar Jain and Ashok Kumar Mishra said in its order.

The order was passed on Monday stating that any buyer of property from a liquidator under Insolvency and Bankruptcy Code, 2016 shall not be required to deduct and pay 1% TDS from the sale consideration under Section 194-IA of the Income-tax Act, 1961. The bench also observed that TDS once deducted could not be claimed as refund during liquidation process without filing of return of income of the company under liquidation.

"The landmark case will set a precedent, making the liquidation process easy," said Anil Goel, a chartered accountant who appeared before NCLAT for submissions on behalf of the liquidator, Om Prakash Agarwal.

“Tax deducted at source (TDS) was detrimental to the interest of creditors, adversely impacting the recovery from the liquidation process. This order has permanently removed this difficulty,”  
Goel said.

Income tax authority not to deduct 1% TDS from the sale consideration of ₹43 crore on the premise that income tax dues can be recovered by the department as per waterfall mechanism set out under IBC. The provision of deduction of TDS is inconsistent, said the court, citing “over-riding” effect of different legal provisions. The scheme of IBC and regulations does not require a liquidator to prepare audited financial statements during liquidation process and filing of income tax return is not possible under the income tax law without preparing an audited annual financial statement and other documents.

“It is clear that when the company is wound up under the orders of court or otherwise, the return shall be verified by the liquidator,” the court said.

**Source: The Economic Times**

**Read Full news at:**

<https://economictimes.indiatimes.com/industry/services/property/-/construction/no-tds-on-buying-property-under-liquidation/printarticle/80775498.cms>

## ➤ Vendors can use GST returns as proof of default: Insolvency regulator

In a bid to reduce the delays in the resolution process, the Insolvency Bankruptcy Board of India (IBBI) has proposed some changes in the insolvency and bankruptcy regulations. The IBBI has recommended changes in the law to provide for filing copies of GSTR-1 and GSTR-3B returns filed by the operational creditors along with e-way bills as additional documentary evidence of the debt and default.

It is also proposed that the same information may also be submitted as part of the claim documents submitted to the IRP or the interim resolution professional for easier verification and admission of claims.

The insolvency regulator has cited delay in the admission of insolvency cases by the National Company Law Tribunal (NCLT) for taking such measures. According to IBBI, the average time taken for admission or rejection of a case from the day of filing of an insolvency petition was 650 days in 2021-22 against the prescribed time of 14 days.

IBBI has also proposed an amendment to impose an obligation on the committee of creditors (CoC) with regard to providing all the relevant information they possess in terms of the assets of the corporate debtors (CD) from valuation exercises of stock audits, the relevant extracts from the transaction or forensic audits to IRP/RP in a timely manner. In addition, an amendment to enable the interim resolution professionals/resolution professional to seek relevant information from the promoters of a defaulting company, employees, partners and others and to place an obligation on them to share all the information that is sought by the IRP/RP in a timely manner has also been sought.

The insurance regulator has also proposed to remove the ambiguity regarding the appointment of a third valuer in case of a significant difference in the valuation of a corporate debtor's assets given by two values.

The IBBI proposes that if the difference between two valuations is more than 25%, in that case, the resolution professional can appoint a third valuer. Stakeholders can submit their views on the proposed changes by 02 May 2022.

**Source: The New Indian Express**

**Read Full news at:**

<https://www.newindianexpress.com/business/2022/apr/16/vendors-can-use-gst-returns-as-proof-of-default-insolvency-regulator-2442608.html>



**Insolvency Professional Agency of Institute of Cost Accountants of India  
(A Section 8 Company registered under Companies Act, 2013)  
CMA Bhawan, 3, Institutional Area, Lodhi Road  
New Delhi - 110003**