



# IBC AU-COURANT

*Latest updates On Insolvency & Bankruptcy*

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**"What is coming is better than what is gone."**

## ➤ **Bidding for Reliance Capital ends tomorrow amid concerns of investors**

The due date for submitting bids for debt-laden Reliance Capital is likely to end on Monday. Despite giving extensions in deadlines numerous times, there has been a very tepid response from investors for Reliance Capital and its subsidiaries. Investors seem to be cautious in bidding for Reliance Capital amid concerns over its most valuable arm Reliance General Insurance Company. Currently, the completion of the corporate insolvency resolution process of the company is extended till November 1, 2022.

It is known that the administrator handling the CIRP of Reliance Capital, wanted to include Reliance General Insurance in the insolvency process. However, DBI Trusteeship Services who is acting as the debenture trustee on behalf of Credit Suisse, have rejected to release the shares of the general insurance firm under the IBC.

On behalf of Credit Suisse, IDBI Trusteeship Services invoked the pledge of Reliance Capital's 100% in Reliance General in November 2019.

Sources told PTI that the Administrator wants to include Reliance General as part of RCL's insolvency process, but the IDBI Trustee has refused to release the shares of the general insurance firm for the resolution process under the Insolvency and Bankruptcy Code (IBC). They added, "this seems to have hit a roadblock."

As per the sources, investors are cagey about the submission of bids in the absence of clarity over Reliance General shares.

In regards to Reliance Commercial Finance (RCF), and Reliance Home Finance (RHF), the sources said that they had gone through a separate resolution process with Authum Investment and Infrastructure much before RCL was referred to NCLT.

Reliance Capital has a consolidated debt of about Rs40,000 crore. RBI had applied to initiate CIRP against the Reliance Group company at the National Company Law Tribunal (NCLT) Mumbai bench.

Subsidiaries of Reliance Capital that are pushed for insolvency resolution are - Reliance General Insurance, Reliance Nippon Life Insurance, Reliance Securities, Reliance Asset Reconstruction Company, Reliance Home Finance, and Reliance Commercial Finance.

**Source: Mint**

**Read Full news at:** <https://www.livemint.com/companies/news/bidding-for-reliance-capital-ends-tomorrow-amid-concerns-of-investors-11661692283614.html>

## ➤ **In case of conflict, IBC prevails over Customs Act: Supreme Court**

The Supreme Court on Friday held that Insolvency and Bankruptcy Code (IBC) will prevail over the Customs Act, to the extent that once moratorium proceedings begin under the Code, the customs authority does not have the power to initiate any recovery actions for dues from the corporate debtor. The top court also held that the customs authority cannot claim title over the goods and issue notice to sell the goods in terms of the Customs Act when the liquidation process has been initiated against the corporate debtor.

A bench of Chief Justice NV Ramana and Justices JK Maheshwari and Hima Kohli set aside an order of the National Company Law Appellate Tribunal (NCLAT) by which it had allowed the appeal of the Central Board of Indirect Taxes and Customs (CBIT-C) against the verdict of NCLT directing the release of certain goods lying in the Customs Bonded Warehouses without payment of customs duty and other levies.

**Source: Economic Times**

**Read Full news at:** <https://economictimes.indiatimes.com/markets/stocks/news/in-case-of-conflict-ibc-prevails-over-customs-act-sc/articleshow/93811789.cms>

## ➤ **Operational Creditors lead in filing bankruptcy cases**

Operational creditors, especially small vendors and suppliers, are increasingly initiating corporate insolvency resolution proceedings against corporate debtors. According to the latest available data, a majority of insolvency cases under the Insolvency and Bankruptcy Code (IBC) are being led by operational creditors seeking to recover dues for goods and services provided to companies.

As a result, some experts are concerned that this will go against the basic tenet of the IBC, which they say is a resolution, not recovery, mechanism by putting firms under pressure to clear their dues. However, the aggressive stance by operational creditors also points to increasing delays in payments to small suppliers and vendors, worsening their financial distress.

"Yes, small vendors and suppliers are stressed because of the delays in recovering receivables and, as a result, have started opting for IBC mechanism to recover their dues," said Sandeep Bajaj, managing partner, PSL Advocates and Solicitors. Another reason for the large number of cases by operational creditors could be the relatively

lower fee of ₹2,000 needed to file an application under Section 9 of the IBC, Bajaj added.

While operational creditors have initiated 51.2% of insolvency resolution cases since the inception of IBC, 42.8% were initiated by financial creditors or lenders. The remaining were by companies declaring themselves insolvent, showed data from the April-June newsletter of the Insolvency and Bankruptcy Board of India (IBBI).

In fact, about 80% of all insolvency resolutions with an underlying default of less than ₹1 crore were initiated by operational creditors, while about 80% of those with a default of over ₹10 crore were initiated by lenders.

"In recent times, operational creditors have been observed to be initiating insolvency process to recover the debt owed to them. The petitions before the NCLT (National Company Law Tribunal), show a tendency to use the law by small creditors as a debt collection tool rather than for rehabilitation of non-performing assets by the banks, thereby undermining its objective," said Raj Bhalla, a partner at law firm MV Kini.

Bhalla said an operational creditor, who is not entitled to a voting share in the committee of creditors, files a petition for insolvency under Section 9 of IBC, with the intention to reach a settlement with a company, despite being aware that they might not get anything in the resolution plan. This tendency to settle through insolvency proceedings is clear from the IBBI data. Over 19% of all insolvency cases initiated by operational creditors have been closed via appeals, reviews or have been settled. The number is 9% for financial creditors, the data showed.

Other legal experts said the IBC in its present form is not operational creditor-friendly and even if their claims are admitted, the payout, more often than not, is nil. Operational creditors, therefore, issue threats to initiate insolvency proceedings, which, leads to companies settling the dues.

"Stressed operational vendors do not have the ability or wherewithal to await delayed recovery through regular civil or arbitration proceedings. Therefore, they take this shortcut to enforce some sort of recovery. This is the reason we are witnessing a surge in operational creditor filings cases more than financial creditors," said Abhishek Swaroop, a partner at Saraf & Partners.

**Source: Live Law**

**Read Full news at:** <https://www.livelaw.in/news-updates/nclat-new-delhi-insolvency-bankruptcy-code-personal-guarantors-resolution-professional-corporate-debtor-207619>

