JANUARY 2024

THE INSOLVENCY PROFESSIONAL

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 fulfil all requirements set out in its bye laws 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.

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Events

January 5, 2024	Master Class on Managing the affairs of Corporate Debtor by IRP/RP under IBC, 2016. (Active interactive with free exchange of views on the subject, during the seminar, was the highlight of the program.)
January 12, 2024	Workshop on Disciplinary Aspects & Governance under IBC, 2016.
January 17, 2024	Preparatory Educational Course for Clearing Limited Insolvency Examination. (The Preparatory Educational Course conducted by our expert faculty who shared their knowledge enriching experiences with practical aspects)
January 19, 2024	Executive Development Program on Financial Forensics Boot Camp. (The program was well appreciated by the participants who gained immensely with it. There were several take-away for the benefit of participants.)
January 24, 2024	Interactive Meet on Compliances to be made by IPs under IBC, 2016
January 25, 2024	Workshop on Judicial Pronouncements under IBC, 2016

From MD Desk

Dear Reader,

This issue of 'Your Insight Journal' comes to you in the new leap year. All of my colleagues at IPA of ICMAI join me in wishing, all the members, IPs and other professionals active in the IBC ecosystem, a very happy new year. I wish all the readers continued professional satisfaction as also excellent health, professional and personal growth.

Professional development happens through continuous professional education including updates on changes in code and relevant laws and regulations as also new case laws. The equally important side of professional development is expression of a professional's knowledge and experience and competent sharing with fellow IPs. As our ancestors said, teaching and articulation is the highest level of learning. I invite more and more members to contribute articles and opinions to the E- Journal on all aspects that IBC ecosystem and related domains that will enrich the knowledge base of the readers.

At IPA-ICAI, we strive to make our publications relevant, informative, interesting and lucid. This issue of the 'Insolvency Professional – Your Insight Journal' has two interesting articles-

- one on Authorised Representative (AR), a professional whose role and responsibilities have been gaining more prominence with increased incidence of CIRP cases involving debtors in the real estate segments.

- and the second insolvency process of personal guarantors of corporate debtors – an area that has been set alight by the recent Supreme Court ruling and is expected to see a lot of action including regulatory changes.

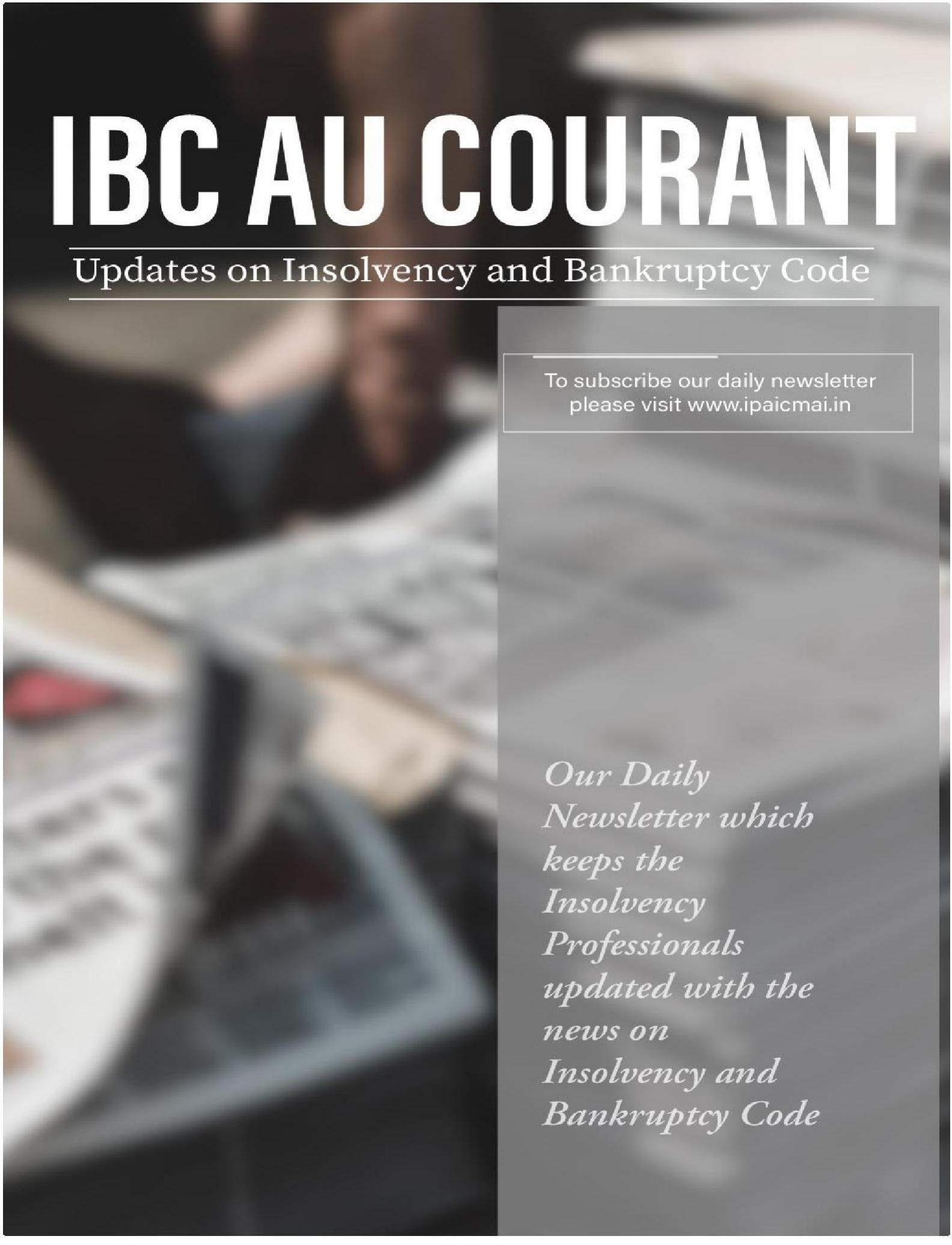
I am sure you will find both the articles interesting and useful. We welcome your responses to the published articles in this journal. You are welcome to write to publication@ipaicmai.in.

Wish you all happy reading.

Managing Director
G.S. Narasimha Prasad

PROFESSIONAL DEVELOPMENT INTIATIVES

Insolvency Professional Agency Of Institute Of Cost Accountants Of India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ARTICLES
Insolvency Professional Agency of Institute of Cost Accountants of India

Personal Guarantors to Corporate Debtors

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Introduction

On 9th November 2023, a 3 Judge Bench of Honorable Supreme Court led by Chief Justice D Y Chandrachud along with Hon'ble' Justices J.B. Pardiwala and Manoj Misra delivered a much-awaited judgment centering round the questions of Natural Justice, Adjudicating Authority and Constitutional Validity of the process of insolvency resolution and bankruptcy of Personal Guarantors to Corporate Debtors. The detailed judgment made all attempts to address every concern of the 384 petitioners and could conclusively draw a curtain on the 5 year-long journeys into the question of law and constitutional validity of Pat III of the code as regards its applicability in the matter of Personal Guarantors. Through this article an attempt has been made to present (i) a brief overview & backdrop thru' which the cases have accumulated over the years without a resolve; (ii) the PG provisions in IBC and its procedural aspects and treatment; (iii) the litigation process & legal challenges; (iv) the road ahead and future course of action to make the journey smoother and self-reliant to yield the intended benefits envisaged by the code.

Overview & Backdrop PIRP (Personal Insolvency Resolution Process

- The provisions relating to Insolvency Resolution and Bankruptcy relating to Personal Guarantors to CDs came into force on December 1, 2019. As per the information received from the applicants, IPs, and data collected from various benches of the Hon'ble NCLT and Debt Recovery Tribunal (DRT), 2289 applications have since been filed as of September 30, 2023, for initiation of personal insolvency resolution process (PIRP) of PGs to CDs. Out of them, 284 applications have been filed by the debtors and 2005 applications by the creditors under sections 94 and 95 of the Code, respectively. Among them 50 have been filed before different benches of DRT and 2239 have been filed before different benches of the Hon'ble NCLT
- Of the 2289 applications, 88 applications have been withdrawn/ rejected/ dismissed before the appointment of the RP and RPs have been appointed in 991 cases. After the appointment of the RP, 62 cases have been withdrawn/rejected/dismissed and 282 cases have been admitted.
- Out of the 282 admitted PIRPs, 90 have been closed. Of these, 7 have been withdrawn; 62 have been closed on non-submission or rejection of the repayment plan; and 21 have yielded approval of the repayment plan. The creditors have realised Rs.91.27 Crores, which is 5.22% of their admitted claim. During the quarter July-Sep 2023, seven PIRPs have yielded approval of repayment plan with the realizable amount contributing to 24.52% of the claim amount.

Bankruptcy Process

- On the other hand, if the resolution process fails or repayment plan is not implemented, the debtor or the creditor may make an application for initiation of the bankruptcy process.
- As per the information received from the applicants, IPs and data collected from various benches of NCLT and DRT, 19 bankruptcy applications have since been filed as of September 2023.

- All the 19 applications are initiated by the creditors under Section 123 of the Code. Among them, one application has been filed before DRT, Chennai and balance 18 applications have been filed before different benches of the NCLT.

- **Key Takeaway –** When one looks at the detailed analysis of year wise data of filing of PG applications (please see Table 17 in **IBBI Journal Volume 28, July-Sep 2023 Issue** on IBBI website**)** one sees a noticeable reduction in number of applications filed since the year 2022-23 and the trend continues. This reduction in a way indicates the diminishing reliance of the lenders/creditors on the mechanism of pursuing recoveries of PG cases thru' the IBC framework and the long drawn legal challenges to various provisions of the IBC PG enactments remaining unresolved for the last many years of its promulgation. The SC decision could not have come at a better time probably to draw a curtain on these long pending issues and uncertainties once for all.

PG provisions in IBC and its procedural aspects and treatment

- By way of the Amendment in 2018, sub-sections (e), (f) and (g) were inserted in Section 2 of the Code. Section 2 provides the classification of entities upon whom the Code would apply. Section 2(e) of the Code provides that the code shall apply to Personal Guarantors and to Corporate Debtors, thereby excluding such personal guarantors from the ambit of individuals, which are provided under Section 2(g) of the Code. Section 2 of the Code is reproduced hereinbelow -

- "Section 2. Application: The provisions of this Code shall apply to--

  (a) any company incorporated under the Companies Act, 2013 (18 of 2013) or under any previous company law; (b) any other company governed by any special Act for the time being in force, except in so far as the said provisions are inconsistent with the provisions of such special Act; (c) any Limited Liability Partnership incorporated under the Limited Liability Partnership Act, 2008 (6 of 2009);(d) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; (e) personal guarantors to corporate debtors; (f) partnership firms and proprietorship firms; and (g) individuals, other than persons referred to in clause (e)]"

Armed with the above amendment in place, the Central Government as a first step in implementing Part III of the Code, notified the following [vide its notification dated 15.11.2019 ("Impugned Notification")]. The impugned notification read as:

"In exercise of the powers conferred by sub-section (3) of section I of the Insolvency and Bankruptcy Code. 2016 (31 of 2016), the Central Government hereby appoints the 1st day of December 2019 as the date on which the following provisions of the said Code only in so far as they relate to personal guarantors to corporate debtors, shall come into force:

(1) clause (e) of section 2; **(2)** section 78 (except with regard to the fresh start process) and section 79; **(3)** sections 94 to 187 (both inclusive); **(4)** clause (g) to clause (i) of sub-section (2) of section 239; **(5)** clause (m) to clause (zc) of sub-section (2) of section 239; **(6)** clause (zn) to clause (zs) of sub-section (2) of section 240; and **(7)** Section 249."

Furthermore, the Government has notified the commencement of provisions relating to insolvency and bankruptcy processes for Personal Guarantors of Corporate Debtors, with effect from 01.12.2019. It has notified:

a) The Insolvency and Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**IIRP Rules**"); and

b) The Insolvency and Bankruptcy (Application to Adjudicating Authority for Bankruptcy Process for Personal Guarantors to Corporate Debtors) Rules, 2019 ("**Bankruptcy Rules**").

The litigation process and the legal challenge

The legal challenges that were encountered in the process of implementing the enactments can be categorised broadly under three heads namely: -

1. Challenges as regards the legality of the Notification dated 15.11.2019 challenged before Hon'ble Supreme Court of India [**Lalit Kumar Jain vs. Union of India & Ors.** [2021 SCC Online SC 396
2. Challenges as regards deciding on the Adjudicating Authority for Personal Guarantors to Corporate Debtors [**State Bank of India vs. Mahendra Kumar Jajodia** [2022 SCC online NCLAT 58]
3. Challenges as regards the Constitutional validity of the provisions before the Hon'ble Supreme Court of India in **SLP(C) No. 16463 of 2021** titled as **Surendra B. Jiwrajka vs. Omkara Assets Reconstruction Pvt. Ltd.**

In this section we shall summarily deal with the above cases to cover the entire journey that finally concluded this year to give a finality to this long pending topic to pave way for execution of the pending personal guarantee cases for admission as well as enabling the filing of the cases in the corporate insolvency pipelines.

(a) In **Lalit Kumar Jain vs. Union of India & Ors.** [2021 SCC online SC 396 the challenges as regards the legality of the notification centred round the following question:

- That the central government could not have selectively brought the Code into force and applied the provisions to only one sub-category of individuals i.e., PGs to CDs.
- The central government ought to have brought Section 243 into effect.
- Liability of PG post approval of Resolution Plan
- The extent of liability of Personal Guarantors to Corporate Debtor.

The Apex Court judgment brought out a few very important points like '**legislative intent to treat PGs differently**' and '**to enable Hon'ble NCLT to have holistic approach about the nature of assets available**' and again '**The Liability of the Guarantor is co-extensive with the Corporate Debtor**' while '**Personal Guarantors' liability doesn't get discharged upon approval of Resolution Plan'** made the issues raised as regards the legality of the notification clearly dealt with and the same was put to rest.

(b) Challenges as regards deciding on the Adjudicating Authority for Personal Guarantors to Corporate Debtors [**State Bank of India vs. Mahendra Kumar Jajodia** [2022 SCC online NCLAT 58]

- Correct Adjudicating Authority for Personal Guarantors
- Whether the pendency of CIRP against Corporate Debtor is a mandatory pre-requisite for initiating insolvency resolution process for Personal Guarantor?

The initial journey into litigation for PG cases as regards the right Adjudicating Authority for Personal Guarantor in fact dates back to 2018 in the case of **"State Bank of India Vs V. Ramakrishnan & Anr."** [(2018) 17 SCC 394] before the Hon'ble Supreme Court and in 2021 in the matter of **"Rohit Nath Vs. KEB Hana Bank Ltd.**" [2021 SCC online Mad 2734] before the Madras High Court. However conflicting views had emerged in the above cases and finally the challenge was put on rest after the Apex Court upheld the decision of NCLAT in the Mahendra Kumar Jajodia case which in clear terms explained the

interplay and logic of operation of Sec 60(1) and Sec 60(2) to ensure consistency and uniformity in the proceedings.

The judgment emphasised that "The substantive provision for an Adjudicating Authority is Section 60, sub-Section (1), when a particular case is not covered under Section 60(2) the Application as referred to in sub-section (1) of Section 60 can be very well filed in the NCLT having territorial jurisdiction over the place where the Registered Office of corporate Person is located."

(c) Challenges as regards the Constitutional validity of the provisions before the Hon'ble Supreme Court of India in **SLP(C) No. 16463 of 2021** titled as **Surendra B. Jiwrajka vs. Omkara Assets Reconstruction Pvt. Ltd.**:

The Hon'ble Supreme Court disposed off 384 petitions in one go that challenged PG legislature mainly on the grounds of the reported adjudicative role of RP in Individual Insolvency, the right of representation for the PG, the application of the principle of natural justice and the constitutional validity. A few takeaways from the judgment are listed below: -

- "The function of Resolution Professional under Sec. 99 is purely facilitative, and Resolution Professional does not possess an adjudicatory function in terms of the provisions of Sec. 99. "

- That apart, sub-section (4) also goes on to specify that the information or explanation may be sought in connection with the application. In other words, the nature of the information or the explanation which is sought must have a nexus with the application. We are of the view that the right to file such representation is sufficient compliance of '**audi alterum partem'** requirements. **(p75)**

- The nature of the resolution professional's role, the powers, and its nexus with the legitimate aim of the legislation also lead us to the conclusion that the impugned provisions are compliant with Article 14 of the Constitution. **(p81).**

The above judgment hence conclusively ended the long chain of litigations spanning the last few years since the promulgation of legislative rules on PG Insolvency Resolution Process and Bankruptcy for its finality for implementation.

The road ahead and future course of action

When we look at all these developments over the years, we find it encouraging in the end that the IBC Code is founded on a strong fundamental footing to meet the challenges of time to pursue its basic objectives that were laid out in the BLRC Report. It is not once that the code has faced such challenges on the legality but in the past many such challenges were overcome on such strength.

The Apex Court judgment is expected to pave ways for further bolstering the IBC mechanism in uncharted territories which earlier could not be accessed due to the legal challenges. A few direct takeaways are as under: -

- With this judgement, the banks can now pursue personal guarantors in respect of corporates with major haircuts and proceed full throttle to file applications for PIRP for those defaulting guarantors/promoters/directors.
- With the strength of the judgment, banks can now also reach out to many cases where money has left shores and money has been deployed in other ventures. In the absence of any established cross

border insolvency doctrine, the time now has come to set out innovative legal ways to work more closely with the legal and governmental agencies to book such defaulters.

- In the judgment SC has clarified that all personal guarantees issued prior to November 2019 will also be subject to these insolvency provisions of the IBC and creditors will be able to move against the personal guarantors to seek their recoveries. In essence, banks can now go after personal guarantors for their past guarantees as well.
- It was felt equally important that the Government also work on strengthening the DRT and SARFAESI framework so that insolvency does not remain the only effective tool available for creditors to recover money. To enable smooth circulation of industrial credit, it becomes essential that all three mechanisms i.e., IBC, SARFAESI & DRT work in tandem.
- The judgment if one sees is not only beneficial to the creditors for recovering their dues but also there are good takeaways for the defaulting PGs as well. Now an onus is put on the guarantors to exercise caution and prudence while extending such guarantees.

Conclusion

At the end we must appreciate that a corporate insolvency framework without an effective remedy against promoters remains a weaker bait and prone to turn ineffective during trying times of loan defaults. While IBC regime has earned a lot of points for our country to improve our ranking in EOB (Ease of Doing Business) Index globally, such weak spot would have remained a sore area in future to probably pull us down a few points in the event of non-effectiveness on this front. It is expected that this judgment will go a long way in building Investors' confidence in global map and earn many valuable points for the Nation in the process.

AUTHORISED REPRESENTATIVE UNDER INSOLVENCY AND BANKRUPTCY CODE 2016 AN IMPORTANT CONSTITUENT OF THE INSOLVENCY ECO SYSTEM-EVOLUTION & PROVISIONS AT A GLANCE.

CS ARVINDER SINGH KINDRA
INSOLVENCY PROFESSIONAL

Synopsis:

The concept and provisions of Authorized Representative (AR) was introduced by The Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 published in the Gazette of India received the assent of President of India dated 17th August 2018 deemed to have come into force on the 6th day of June, 2018 and amendments were made in section 6 of the Principal Act and after sub-section (6), sub-sections 6A was inserted with representation of class of creditors by authorised representative and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share and Regulation 16 A was Inserted by Notification No. IBBI/2018-19/ GN/ REG031, dated 3rd July, 2018 (w.e.f. 04.07.2018) and thereafter as the IBC 2016 evolved the role , duties & responsibilities of AR in the IBC ECO system has been expanded from time to time by way of clarifications and notifications issued by The Insolvency and Bankruptcy Board of India and recently IBBI has issued Notification No. IBBI/2023-24/GN/REG106 dated 18th September 2023 Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 with insertion of sub regulation 3A, 3B, 3C of Regulation 16 A on replacement of Authorised Representative, substitution of 16 A (8) on fees, insertion of sub regulation 10 on enhanced roles and responsibilities of the AR. This has strengthened the Role, Duties & Responsibilities of AR.

Introduction:

The Insolvency and Bankruptcy Code of India 2016 ("IBC") and the IBBI (Insolvency Process for Corporate Persons) Regulations of 2016 ("CIRP Regulations") have made provisions for authorized representatives (AR) who play an essential role in the Corporate Insolvency Resolution process ("CIRP"). The IBC and regulations made thereunder clarify that the AR is a person who represents the financial creditors in the Committee of Creditors (CoC). According to the Regulations the interim resolution professional ("IRP") is responsible for selecting the insolvency professional who has been chosen by the highest number of financial creditors in a given class to act as the authorized representative of the creditors of that class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorized representative of the creditors of the respective class.

However, the IBC and the CIRP regulations made thereunder do not provide a specific definition of an authorized representative under the "definitions" section. The AR is described in various provisions and guidelines in the IBC and CIRP Regulations made thereunder, highlighting their crucial role in the decision-making process of the Committee of Creditors (CoC). The AR represents the interests of financial creditors in the CoC, which is responsible for approving the resolution plan and other related matters in the insolvency resolution process.

Evolution:

Class of Creditors: As per Notification No. IBBI/2018-19/GN/REG031, dated 3rd July, 2018 (w.e.f. 04-07-2018) an amendment was made in Regulation 2 Definitions of Insolvency and Bankruptcy Board of India (insolvency resolution process for corporate persons) regulations, 2016 by inserting clause 1 (aa) "class

of creditors" means a class with at least ten financial creditors under clause (b) of sub-section (6A) of section 21 and the expression, "creditors in a class" shall be construed accordingly.

Circular dated 13th July 2018 : In order to represent the financial creditors in a simplified manner, the IBBI issued a clarification vide circular dated 13th July 2018 - Appointment of Authorised Representative for Classes of Creditors under section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 that an Authorized Representative (AR) may be appointed to represent their concerns to the committee of creditors for the insolvency resolution under the provisions of Section 21 (6A) (b) of IBC & Regulation 16A (1) of the Regulations.

The class of creditors does not mean but includes homebuyers or real estate buyers or deposit holders. A class of creditors is a group of 10 or more financial creditors other than banks and financial institutions or trustees in financial securities or deposits.

Types of class of creditors: Real estate allottees, Deposit Holders, Debenture Holder etc.

IBBI Circular- No. IBBI/CIRP/015/2018 dated. 13.07.2018, clarified as under:

1. Section 21 (6A) (b) of the Insolvency and Bankruptcy Code, 2016 (Code) read with regulation 16A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) provide that where the corporate debtor has at least ten financial creditors in a class, the interim resolution professional shall offer a choice of three insolvency professionals and a creditor in the class may indicate its choice of an insolvency professional, from amongst the three, to act as its authorised representative. The insolvency professional, who is the choice of the highest number of creditors in the class, is appointed as the authorised representative of the creditors of the respective class. The authorised representative collects voting instructions from the respective class of creditors, attends the meetings of the committee of creditors (CoC) and casts vote in respect of the said class in accordance with the instructions he receives from the creditors.

2. Section 21 (6A) (b) of the Code read with regulation 16A of the Regulations provide for a simplified mechanism of representation of financial creditors through authorised representatives, as detailed in Para 1 above, and are, therefore, matters of procedure. It is necessary that an ongoing corporate insolvency resolution process, where creditors belonging to a class are otherwise not represented in the CoC, uses this simplified mechanism, irrespective of the stage of the process. The resolution professional, who exercises the powers and performs the duties as vested or conferred on the interim resolution professional under section 23 (2) of the Code, shall facilitate representation through authorised representative(s).

3. It is, accordingly, clarified that wherever the approval of resolution plan under regulation 39 (3) of the Regulations is at least 15 days away, the resolution professional shall expeditiously obtain, by electronic means, the choice of the insolvency professional from creditors in a class to act as the authorised representative of the class and proceed further in the manner as specified in regulation 16A of the Regulations.

   The role of an AR was further strengthened in the Supreme Court judgment in August 2019 in the matter of Pioneer Urban Land & Infrastructure Vs. Union of India which upheld the amendment in the IBC and conferred the homebuyers the status of financial creditors.

   As a consequence, the homebuyers are treated at par with banks and financial institutions and form a part of the Committee of Creditors (CoC). The homebuyers, as a class of creditors, are entitled to be represented in the CoC through their ARs.

Choice of AR:

IBBI through a notification dated July 03, 2018, inserted a Regulation 4 A in the regulation 4 which was further amended through notifications dated August 07, 2020, and July 14, 2021.

Regulation 4 (A) Choice of authorised representative:

(1) On an examination of books of account and other relevant records of the corporate debtor, the interim resolution professional shall as certain class(s) of creditors, if any.
(2) For representation of creditors in a class ascertained under sub-regulation (1) in the committee, the IRP shall identify three IPs who are: (a) Not his relatives or related parties, [(aa) having their addresses, as registered with the Board, in the State or Union Territory, as the case may be, which has the highest number of creditors in the class as per their addresses in the records of the corporate debtor:
Provided that where such State or Union Territory does not have adequate number of insolvency professionals, the insolvency professionals having addresses in a nearby State or Union Territory, as the case may be, shall be considered;] (b) eligible to be [resolution professional] under regulation 3; and c) willing to act as authorized representative of creditors in the class.
(3) IRP shall obtain the consent of each IP identified under sub-regulation (2) to act as the AR of the creditors in the class in Form AB of the Schedule.

1. **Regulation 6 o**f CIRP Regulations an IRP has to make a Public Announcement ("PA") immediately on his appointment as IRP. Immediately means not later than three days from the date of his appointment. The PA shall be in **FORM A** of the Schedule.

2. **Regulation 6 (2) (bb)** offers a choice of three insolvency professionals identified under regulation 4A to act as the authorised representative of creditors in each class.

3. **Regulation 8A (3)** - A creditor in a class may indicate its choice of an insolvency professional, from amongst the three choices provided by the interim resolution professional in the public announcement, to act as its authorised representative.

4. **Regulation 9(2)** - where there are dues to numerous workmen or employees of the corporate debtor, an authorised representative may submit one claim with proof for all such dues on their behalf in Form E of the Schedule.

In order to take an informed decision by the creditors, it is necessary and important to give a brief profile of the IPs chosen by the IRP to facilitate those who want to understand the background.

IBBI Notification dated 18th September 2023 –

It is important to take note that to further streamline the Insolvency resolution process, The Insolvency and Bankruptcy Board of India (IBBI), has, vide notification dated 18th September, 2023 introduced the IBBI (Insolvency Resolution Process for Corporate Persons) (Second Amendment) Regulations, 2023 ('CIRP Amendment Regulations) effective from 18th September, 2023, **which apart from other amendments has also made amendments in the CIRP regulations relating to Authorised Representatives -** To facilitate the class of creditors specially home buyers, the amendments provide enhanced role and responsibilities of the authorised representative (AR). Some of the important duties of the AR are (i) to review the contents of minutes prepared by the RP to ensure correctness and completeness, (ii) to provide assistance to the creditors in evaluating resolution plan, (iii) to regularly update the creditors in a class on the progress of the CIRP, (iv) to assist in modifications of the resolution plan on behalf of class of creditors represented by him, etc. Fees of the AR have also been enhanced in line with the increased role. A procedure for replacement of AR has also been introduced.

Regulation 16 A as enumerated below includes the amended regulations insertion of 3A, 3B, 3C on replacement of Authorised Representative, substitution of 16 A (8) on fees, insertion of sub regulation 10 on enhanced roles and responsibilities of the AR.

Selection, Appointment and fees of AR:

Regulation 16A Authorised representative, enumerates on the selection, appointment and fees of AR:

1. The interim resolution professional shall select the insolvency professional, who is the choice of the highest number of financial creditors in the class in Form CA received under sub-regulation (1) of regulation 12, to act as the authorised representative of the creditors of the respective class:
Provided that the choice for an insolvency professional to act as authorised representative in Form CA received under sub-regulation (2) of regulation 12 shall not be considered.

2. The interim resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representatives selected under sub-regulation (1) within two days of the verification of claims received under sub-regulation (1) of regulation 12.\

3. Any delay in the appointment of the authorised representative for any class of creditors shall not affect the validity of any decision taken by the committee.

(3A) * The financial creditors in the class, representing not less than ten per cent voting share may seek replacement of the authorised representative with an insolvency professional of their choice by making a request to the interim resolution professional or resolution professional who shall circulate such request to the creditors in that class and announce a voting window open for at least twenty-four hours.

(3B) Subject to clauses (a) and (b) of sub-regulation (2) of regulation 4A, the interim resolution professional or resolution professional, as the case may be, shall offer choice of at least three insolvency professionals to the financial creditors in the class including such insolvency professional(s) proposed under sub-regulation (3A) along with the existing authorised representative.

(3C) The resolution professional shall apply to the Adjudicating Authority for appointment of the authorised representative who receives the highest percentage of voting share of financial creditors in that class.

4. The interim resolution professional shall provide the list of creditors in each class to the respective authorised representative appointed by the Adjudicating Authority.

5. The interim resolution professional or the resolution professional, as the case may be, shall provide an updated list of creditors in each class to the respective authorised representative as and when the list is updated.

Clarification: The authorised representative shall have no role in receipt or verification of claims of creditors of the class he represents.

6. The interim resolution professional or the resolution professional, as the case may be, shall provide electronic means of communication between the authorised representative and the creditors in the class.

7. The voting share of a creditor in a class shall be in proportion to the financial debt which includes an interest at the rate of eight per cent per annum unless a different rate has been agreed to between the parties.

8. (a) The authorised representative of creditors in a class shall be entitled to receive fee for every meeting of the committee attended by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of the committee (Rs.)
10-100	30,000
101-1000	40,000
More than 1000	50,000

(b) The authorised representative shall be entitled to receive fee for every meeting of the class of creditors convened by him in the following manner, namely: -

Number of creditors in the class	Fee per meeting of creditors in class with authorised representative (Rs.)
10-100	10,000
101-1000	12,000
More than 1000	15,000

(c) The payment of the fee to the authorised representative shall be part of the insolvency resolution process cost in respect of two meetings with the creditors he represents corresponding to a meeting of the committee of creditors.

(d) The fee for any additional meeting beyond two meetings corresponding to a meeting of the committee of creditors shall be part of the insolvency resolution process cost subject to approval of committee of creditors.

Notes: *Sub section 3A, 3B, 3C on replacement of the authorised representative inserted by Notification No. No. IBBI/2023-24/GN/REG106, dated 18th September 2023 (w.e.f 18-09-2023)
The insertion will allow the creditors to seek an alternate AR to represent them and to deal with their issues and grievances.

Sub section 8 also stands substituted by same notification. This amendment provides for revision in the **compensation to the ARs** and that fees of ARs up to 2 meetings of CoC shall form part of IRPCP Cost and for additional meetings, the same shall be subject to decision of CoC.

9. The authorised representative shall circulate the agenda to creditors in a class, and may seek their preliminary views on any item in the agenda to enable him to effectively participate in the meeting of the committee:
Provided that creditors shall have a time window of at least twelve hours to submit their preliminary views, and the said window opens at least twenty-four hours after the authorised representative seeks preliminary views:
Provided further that such preliminary views shall not be considered as voting instructions by the creditors.

Notification of 18th September 2023 also includes enhanced roles and responsibilities of the AR by insertion of new sub regulation 10.

10. The authorised representative shall: -

- assist the creditors in a class he represents in understanding the discussions and considerations of the committee meetings and facilitate informed decision-making.
- review the contents of minutes prepared by the resolution professional and provide his comments to the resolution professional, if any.
- help the creditors in a class he represents during the consultations made by the resolution professional to prepare a strategy for marketing of the assets of the corporate debtor in terms of sub-regulation (1) of regulation 36C.
- work in collaboration with the creditors in a class he represents to enhance the marketability of the assets of the corporate debtor in terms of sub-regulation (3) of regulation 36C.
- assist the creditors in a class he represents in evaluating the resolution plans submitted by resolution applicants.
- ensure that the creditors in a class he represents have access to any information or documents required to form an opinion on issues discussed in the committee meetings.
- update regularly the creditors in a class he represents on the progress of the corporate insolvency resolution process.
- make suggestions for modifications of the resolution plan as may be required by the creditors in class he represents.
- record proceedings and prepare the minutes of the meeting with the creditors in a class he represents; and
- act as a representative for the creditors in a class he represents in representations before the Adjudicating Authority, National Company Law Appellate Tribunal, and other regulatory authorities.

11. The provisions regarding minutes of meetings in this regulation shall apply mutatis mutandis for clause (i) of sub-regulation (10).

12. The creditors in a class may propose any additional responsibility upon the authorised representative in relation to the representation of their interest in the committee.

Regulation 16B. Committee with only creditors in a class.

Where the corporate debtor has only creditors in a class and no other financial creditor eligible to join the committee, the committee shall consist of only the authorised representative(s).

Provisions related to AR at a Glance:

Apart from the provisions as stated hereinabove, IBC 2016 and CIRP Regulations provide, comprehensive provisions on Authorised Representatives underlying his importance, role and responsibilities as enumerated below:

Section 21(2): The committee of creditors shall comprise all financial creditors of the corporate debtor, Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors:

Section 21 (6A) : Where a financial debt— (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors; (b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to

the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors; (c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors, and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

Section 24 (3): The resolution professional shall give notice of each meeting of the committee of creditors to- (a) members of [committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (*5)*
(c) Operational creditors or their representatives if the amount of their aggregate dues is not less than ten per cent. of the debt.

Section 25A: Rights and duties of authorised representative of financial creditors.

1. The authorized representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the **right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents** in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

2. It shall be the **duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents**.

3. The authorized representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

    - Provided that if the authorized representative represents several financial creditors, then he shall casthis vote in respect of each financial creditor in accordance with instructions received from each financial creditor to the extent of his voting share:

    - Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

    - (3A) notwithstanding anything to the contrary contained in sub-section (3), the authorized representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote.

    Provided that for a vote to be cast in respect of an application under section 12A, the authorized representative shall cast his vote in accordance with the provisions of subsection (3)

4. **The authorized representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith,** to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

    Explanation. - For the purposes of this section, the “electronic means” shall be such as may be specified.

Regulation 21(2) Contents of the notice for meeting. The notice of the meeting shall provide that a participant may attend and vote in the meeting either in person or through an authorized representative:
Provided that such participant shall inform the resolution professional, in advance of the meeting, of the identity of the authorized representative who will attend and vote at the meeting on its behalf.

Regulation 25(5) & (6) Voting by the committee. The resolution professional shall- (a) circulate the minutes of the meeting by electronic means to all members of the committee and the authorised representative, if any, within forty-eight hours of the conclusion of the meeting; and (b) seek a vote of the members who did not vote at the meeting on the matters listed for voting, by electronic voting system in accordance with regulation 26 where the voting shall be kept open for at least twenty-four hours from the circulation of the minutes.

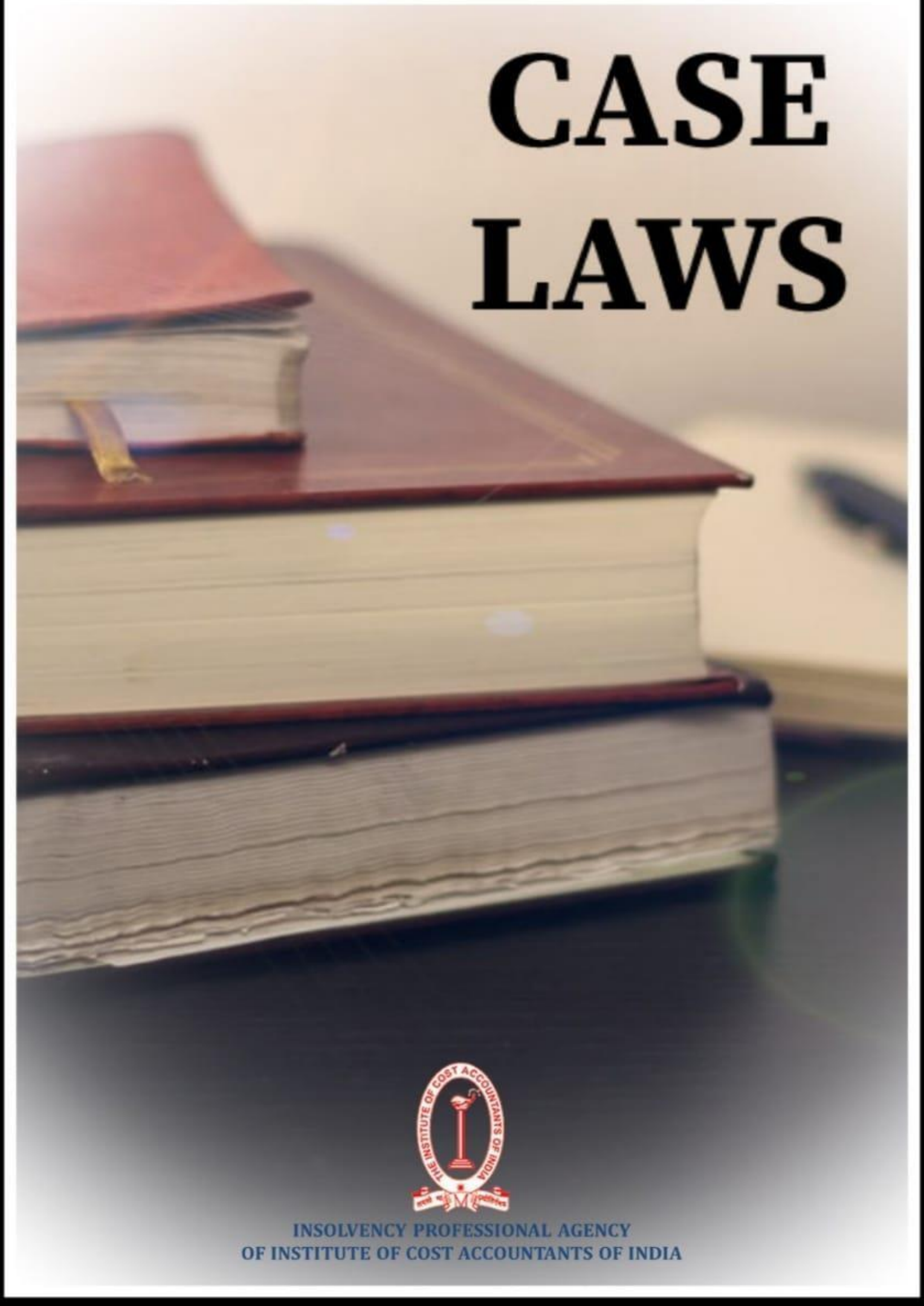
(6) The authorised representative shall **circulate the minutes of the meeting** received under sub-regulation (5) to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours

Regulation 25A.**Voting by Authorised Representative.** The authorised representative shall cast his vote in respect of each financial creditor or on behalf of all financial creditors he represents in accordance with the provisions of sub-section (3) or sub-section (3A) of section 25A, as the case may be.

Conclusion:

The AR is appointed to communicate the decision taken by the majority of creditors on the agenda items proposed for resolution at the CoC. The role of AR in the insolvency resolution process under IBC is found to be of paramount importance in the case of real estate matters where homebuyers constitute a class of creditors. There are AR appointments for debenture holders and fixed depositors etc., as well but the numbers and complexities are perceived to be higher in the case of real estate matters. ARs enable the different classes of creditors to put forward their mandates and participate more effectively in the CIRP. The provisions relating to AR & with enhanced roles and responsibilities of the AR as mandated vide notification of 18th September 2023 also aims to enhance the inclusivity and transparency of the CIRP by allowing the ARs to represent the interests of their respective creditor classes at the Committee of Creditors (CoC) meetings. AR acts as a Catalyst in removing the difficulties faced by Class of Creditors in the matters related to CoC and their representation before various judicial forums.

CASE LAWS



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

SECTION 62 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - SUPREME COURT, APPEAL TO

Sanjay Kumar Agarwal v. State Tax Officer [2023] 156 taxmann.com 69 (SC)/[2023] 241 COMP CASE 283 (SC)

Where against order of NCLT wherein it was held that respondent sales tax department being operational creditor could not claim first charge over property of a company under liquidation, respondent filed an appeal which was dismissed by NCLAT which was subsequently, allowed by Supreme Court by an impugned order, in view of fact that liquidator of company in liquidation had failed to make out any mistake or error apparent on face of record in impugned judgment, instant review petition could not be entertained and same was to be dismissed.

In liquidation proceeding of the corporate debtor respondent-Sales Tax Officer prayed for payment of total dues towards value added tax/central sales tax on ground that the sales tax department was a secured creditor in terms of section 48 of Gujarat Value Added Tax, 2003, which created a first charge over liquidation property of the corporate debtor. Said application was rejected by the NCLT on ground that the respondent could not claim first charge over property of the corporate debtor, as section 48 of the Gujarat Value Added Tax 2003 did not prevail over any provisions of IBC. The NCLAT upheld NCLT's order. The Supreme Court by impugned order allowed appeal against the NCLT and the NCLAT's order. The petitioner-liquidator of the corporate debtor filed an instant petition seeking review of impugned order. It was noted that in the instant case a well-considered judgment was sought to be reviewed and the petitioner had failed to make out any mistake or error apparent on face of record in impugned judgment and had failed to bring case within parameters laid down by the Supreme Court in various decisions for reviewing impugned judgment.

Held that power to review its judgments has been conferred on the Supreme Court by article 137 of Constitution of India, which of course, is subject to provisions of any law made by the Parliament or Rules made under article 145. Since Order XLVII of Part IV deals with provisions of Review, in a Civil Proceeding, an application for review is entertained only on grounds mentioned in Order XLVII Rule 1 of the Code of Civil Procedure and in a Criminal Proceeding on ground of an error apparent on face of record. Even a third party to proceedings, if he considers himself to be an aggrieved person, may take recourse to remedy of review petition, therefore, instant review petition could not be entertained and same was to be dismissed.

SECTION 208 - INSOLVENCY PROFESSIONAL - FUNCTIONS AND OBLIGATIONS OF

Partha Sarathy Sarkar v. Insolvency & Bankruptcy Board of India (IBBI) [2023] 156 taxmann.com 87 (Bombay)

Where petitioner-insolvency professional submitted that an inspection order issued to him had been issued by a person who had not been duly authorized by IBBI to issue inspection orders, since IBBI-respondent submitted that there was a complete answer to this argument and same was to be explained to court by filing an affidavit-in-reply on or before 31-10-23, IBBI was ordered to file their reply and impugned order suspending registration of petitioner was to be stayed.

An inspection order was issued against the petitioner-insolvency professional, and a show cause notice was issued to the petitioner under section 219. Consequently, the impugned order suspended registration of the petitioner. As per section 218, before any show cause notice is issued, an investigation authority has to be appointed by the IBBI. Thereafter, any report of inspection order could be submitted by the investigating authority. The petitioner submitted that in instant case, investigation authority had not been appointed by a person who was duly authorized for issuing inspection order.

The petitioner submitted that in any inspection order, any action, inspection or ordering investigation had to be issued by the executive director of the IBBI, whereas in the instant case it was issued by Assistant General Manager and not executive director. Respondent-IBBI submitted that there was a complete answer to this argument and same was to be explained to court by filing an affidavit-in-reply on or before 31-10-23.

Held that IBBI was to be ordered to file their affidavit-in-reply on or before 31-10-23 and meanwhile, impugned order was to be stayed.

SECTION 29A - CORPORATE INSOLVENCY RESOLUTION PROCESS - RESOLUTION APPLICANT - PERSONS NOT ELIGIBLE TO BE

Hari Babu Thota, Resolution Professional of Shree Aashraya Infracon Ltd., In re [2023] 156 taxmann.com 115 (NCLAT - Chennai)

Where RP sought approval of resolution plan submitted by promoters of corporate debtor (MSME company), since resolution applicants had obtained MSME certificate subsequent to initiation of CIRP, resolution applicants i.e., promoters of corporate debtor were ineligible to submit resolution plan as per section 29A, read with section 240A.

CIRP was initiated against the corporate debtor and the appellant was appointed RP. Resolution plan for revival of the corporate debtor was submitted by promoters of the corporate debtor. CoC authorized RP to submit said resolution plan to NCLT. Accordingly, NCLT directed the appellant to file a copy of MSME registration certificate of the corporate debtor on the basis of which promoters of MSME had claimed their eligibility to submit resolution plan as per section 29A, read with section 240A. NCLT rejected resolution plan approved by CoC on ground that resolution applicants were not eligible under section 29A, read with section 240A. The appellant submitted that resolution applicant was not disqualified as per primary conditions specified under section 29A. It was noted that MSME certificate was obtained subsequent to initiation of CIRP and, thus, such certificate was required to be ignored and resolution applicants were not eligible under 29A, read with section 240A.

Held that such unauthorized certificate application could not be considered, NCLT had rightly rejected resolution plan.

Case Review: Hari Babu Thota, Resolution Professional for Shree Aashraya Infra-Con. Ltd., In re [2023] 156 taxmann.com 114 (NCLT. Bang.) affirmed.

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

Ashique Ponnamparambath v. BMW India Financial Services (P.) Ltd. [2023] 156 taxmann.com 117 (NCLAT - Chennai)

Where corporate debtor had itself joined hands with borrower and had taken all rights and liabilities along with co-borrower in respect of facilities extended by financial creditor, there was no error in order passed by NCLT in admitting CIRP application under section 7 against corporate debtor as a co-borrower.

The respondent-financial creditor granted financial facilities to the corporate debtor as a co-borrower. Since the corporate debtor defaulted in making repayment of loan amount, the respondent filed an application under section 7 against the corporate debtor.

The NCLT by impugned order admitted said application and imposed moratorium on the corporate debtor. Appellant-suspended director of the corporate debtor challenged NCLT's order on ground that the corporate debtor was added as a co-borrower with respect to the loan facilities created in favour of 'P' and no amount had been disbursed to the corporate debtor and, therefore, it did not fall under definition of section 5(8) and 5(7). Respondent contended that board of directors of the corporate debtor passed a resolution in its meeting consenting for the corporate debtor to be a co-borrower along with 'P' in financial facilities secured by 'P' from the respondent. It was noted that the appellant had itself chosen to join hands with the borrower and made a joint request to add itself as a co-borrower to said facilities. It was further noted that addendum agreement was executed, wherein appellant had taken over all rights and liabilities along with borrower in respect of facilities extended by the financial creditor and the corporate debtor passed a board resolution consenting to assume liability would cumulatively prove that appellant was a co-borrower against whom application under section 7 was maintainable.

Held that no error was found in order passed by the NCLT in admitting application under section 7 against the appellant as a co-borrower.

Case Review: BMW India Financial Services (P.) Ltd. v. Koyenco Autos (P.) Ltd. [2023] 156 taxmann.com 116 (NCLT - Kochi), affirmed.

REGULATION 3 OF THE IBBI (GRIEVANCE AND COMPLAINT HANDLING PROCEDURE) REGULATIONS, 2017 - FILING OF GRIEVANCE AND COMPLAINT

Renu Anand v. Insolvency and Bankruptcy Board of India [2023] 156 taxmann.com 120 (Delhi)

Where complaint filed against IBBI was disposed of by IBBI on ground that petitioners did not adhere to format prescribed by IBBI, petitioners were permitted to file a fresh complaint in format prescribed under IBBI (Grievance and Complaint Handling Procedure) Regulations, 2017.

The petitioner filed an instant petition before the High Court on the grounds that a complaint had been filed against Interim Resolution Professional (IRP) however, they were not aware of the outcome of their complaint. IBBI submitted that Insolvency and Bankruptcy Board of India (Grievance and Complaint Handling Procedure) Regulations, 2017 and more particularly Form-A appended with Regulations, provides a format in which a complaint has to be filed however, complaint filed by petitioners did not adhere to format prescribed by the IBBI and, therefore, said complaint had been disposed of by the Board.

Held that petitioners were to be permitted to file a fresh complaint in format prescribed under Regulations within a period of 14 days and the IBBI was directed to consider complaint in accordance with law de hors fact that earlier complaint had been disposed of.

SECTION 196 - BOARD - POWERS AND FUNCTIONS OF

ABBA Consultants (P.) Ltd. v. Insolvency and Bankruptcy Board of India [2023] 156 taxmann.com 135 (Delhi)

IBBI is an authority to regulate functioning of insolvency professionals and it comprises of experts who have been appointed by Central Government to carry out functions specified under Part IV of IBC; Courts do not sit as an Appellate Authority over decision taken by experts.

The NCLT initiated CIRP against the corporate debtor and R2 was appointed as IRP. The petitioner claiming to be an operational creditor had alleged that right from the beginning IRP had not been performing his duty diligently and in accordance with the Code. The petitioner, thus, filed a complaint against IRP with the Board highlighting irregularities committed by the IRP during CIRP of the corporate debtor. According to the petitioner no action had been taken by the Board against the IRP. Petitioner, thus, filed instant writ seeking direction to Board to take action against IRP. However, no material had been furnished by the petitioner to substantiate that the Board had acted in a manner to favour IRP or to shield misdeeds of IRP. Further, the inspection report submitted by the Board revealed that it had thoroughly examined complaints by recording factual position on each aspect, legal provisions applicable and submissions made by IRP. In fact, the report recorded certain irregularities committed by IRP which would be taken care of by the Board before appointing him in further cases as IRP.

Held that the IBBI (Board) is an authority to regulate the functioning of insolvency professionals and the Board comprises of experts in field, who have been appointed by the Central Government to carry out functions specified under Part IV of IBC. Courts do not sit as an Appellate Authority over decisions taken by experts. On facts, decision making process adopted by the Board was not perverse or was contrary to law or against public interest, which would warrant interference under Article 226 of Constitution of India, accordingly, instant writ was to be dismissed.

SECTION 10A - CORPORATE INSOLVENCY RESOLUTION PROCESS - SUSPENSION OF INITIATION OF

Pooja Ramesh Singh v. State Bank of India [2023] 156 taxmann.com 159 (NCLAT- New Delhi)

Where on default in repayment of loan by principal borrower financial creditor invoked a guarantee vide notice dated 1-10-2020, demand on part of guarantor arose only after notice was sent and, thus, there could not be default on part of guarantor on any earlier date and application filed by financial creditor under section 7 was barred by section 10A.

The respondent no. 1-financial creditor granted term loan facilities and working capital facilities to the principal borrower, which were secured by the corporate guarantees issued by the respondent No. 2/the corporate debtor. However, the principal borrower started defaulting in making payments to the financial creditor and its account was declared as NPA on 5-12-2019. A demand notice dated 1-10-2020 was issued by the financial creditor to the principal borrower and the corporate debtor, however, the principal borrower and the corporate debtor failed to cure default. The financial creditor filed an application under section 7 to initiate CIRP against the principal borrower which was admitted. An application under section 7 was also filed against the corporate debtor.

The corporate debtor submitted that guarantee against the corporate debtor was invoked on 1-10-2020 and, therefore, date of default was 1-10-2020, which was covered within period provided under section 10A and, thus, application was not maintainable. NCLT by impugned order admitted said application on ground that account of principle borrower became NPA on 5-12-2019 and, hence, notice dated 1-10-2020 would not change date of default, which was 5-9-2019.

Held that when the financial creditor had invoked a guarantee vide notice dated 1-10-2020, demand on part of the guarantor should only arise subsequent to notice dated 1-10-2020 and, thus, there could not be default on part of the guarantor on any earlier date. Since the date of default on part of the Guarantor subsequent to 1-10-2020 when guarantee was invoked, the application filed by the financial creditor under section 7 was barred by section 10A and, therefore, impugned order was to be set aside.

SECTION 19 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - PERSONNEL TO EXTEND CO-OPERATION

Mukesh Kumar Jain, Liquidator Trans Gulf Frozen Food Containers (P.) Ltd. v. Divyanshu Walia [2023] 156 taxmann.com 228 (NCLAT- New Delhi)

Where new Liquidator filed an application before NCLT against son of deceased ex-Liquidator seeking direction to hand over all documents/records pertaining to the corporate debtor, since it was always open for new liquidator to approach ex-management of the corporate debtor for any documents as required and not received by liquidator, application filed by new Liquidator was wholly misconceived.

The appellant-new liquidator replaced ex-liquidator due to death of ex-liquidator. New liquidator filed an application before NCLT against son of deceased Liquidator seeking direction to hand over all documents/records pertaining to the corporate debtor. Since the son of ex-Liquidator had handed over all document to new Liquidator, the NCLT disposed of said application. The appellant filed an instant appeal. It was noted that whatever documents were there with the son of deceased Liquidator had already been submitted.

Held that there was no personal liability of the son of deceased Liquidator to supply documents, as was claimed by new Liquidator, which could not be located in papers. It was always open for new Liquidator to approach ex-management of the corporate debtor for any documents as required and not received by Liquidator. There was no fault in NCLT's order disposing of application and, therefore, the application filed by new Liquidator was wholly misconceived.

SECTION 3(17) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL SERVICE PROVIDER

Nitin Pannalal Shahv. Vipul H Raja [2023] 156 taxmann.com 231 (NCLAT- New Delhi)

Where corporate debtor was a financial service provider within meaning of section 3(17), no proceeding under section 7 could have been initiated, against a financial service provider and, therefore, impugned order passed by NCLT admitting section 7 application against corporate debtor was to be set aside.

The corporate debtor i.e., 'S' was a stockbrokering company registered with Securities and Exchange Board of India (SEBI) and was a stock trading member with National Stock Exchange of India Limited (NSE). The financial creditor/R1 opened a trading account with the corporate debtor for segment trading. R1 filed a complaint against the corporate debtor before investor grievance resolution panel on non-receipt of documents and securities, claiming an amount from the corporate debtor but complaint was rejected. Thereafter, R1 filed a section 7 application, raising the same claim against the corporate debtor and the NCLT admitted said application vide impugned order.

The appellant, suspended director of the corporate debtor, being aggrieved by said order filed instant appeal. In instant appeal, an intervening application was filed by NSE praying for clarification that a trading member registered as a stockbroker with SEBI being a Financial Service Provider (FSP) was not a 'corporate person' and was not amenable to proceedings under Code and said application for intervention was allowed. It was noted that SEBI and NSE have their own mechanism for disposal of complaints by investors.

Held that the corporate debtor was a registered stockbroker providing financial services within meaning of definition of section 3(16) and no proceeding under section 7 could had been initiated against a financial service provider, thus, section 7 application filed by R1 was not maintainable and therefore, impugned order was to be set aside and instant appeal was to be allowed.

Case Review: Vipul Harshad Raja v. Simandhar/ Broking Ltd. [2023] 156 taxmann.com 230 (NCLT - Ahd.) and Hemant Kumar Gupta v. Astitva Capital Market (P.) Ltd. [2023] 156 taxmann.com 229 (NCLT - New Delhi), reversed.

SECTION 60 - CORPORATE PERSON'S ADJUDICATING AUTHORITES - ADJUDICATING AUTHORITY

Adinath Jewellery Exports v. Brijendra Kumar Mishra, Liquidator of Shrenuj & Co. Ltd. [2023] 156 taxmann.com 320 (NCLAT- New Delhi)

Where appellant/tenant of corporate debtor did not sign any tenancy agreement with corporate debtor and leave and license agreement had also expired, NCLT had jurisdiction to consider liquidator's application for vacation of premises and was correct in passing impugned order directing liquidator to put lock and seal on said premises.

The appellant/tenant entered into a leave and license agreement with the corporate debtor for taking premises for a period of three years commencing from 3-8-2016 to 2-8-2019. Thereafter, a liquidation order was passed against the corporate debtor and liquidator was appointed. E-auction was done and said premises had been auctioned regarding which liquidator had intimated appellant and called upon the appellant to vacate said premises and handover peaceful and vacant possession on or before 22-5-2022 to liquidator. Thereafter, liquidator filed an application before NCLT seeking permission to affix a lock and seal at premises. The NCLT by impugned order had directed to put lock and seal on said premises. On appeal, the appellant contended that the NCLT did not possess necessary jurisdiction to pass impugned order and vacation/eviction from said premises could have been done by Small Causes Court, which possessed jurisdiction under Maharashtra Rent Control Act, 1999. It was noted that the appellant claimed to be a 'tenant' covered under Maharashtra Rent Control Act, 1999 however, the appellant did not sign any tenancy agreement with the corporate debtor and further leave and license agreement had also expired on 2-7-2020. It was noted that the appellant had obtained a status quo order from the Small Causes Court by suppressing facts and without making liquidator as a necessary party.

Held that the NCLT had jurisdiction in considering an application for vacation of premises in question. The NCLT was correct in passing impugned order and, thus, impugned order did not need any intervention.

Case Review: Dy. CIT v. Shrenuj & Co. Ltd. [2023] 156 taxmann.com 319 (NCLT - Mum.), affirmed.

SECTION 208 - INSOLVENCY PROFESSIONAL - FUNCTIONS AND OBLIGATIONS OF

Partha Sarathy Sarkar v. Insolvency & Bankruptcy Board of India (IBBI) [2023] 156 taxmann.com 387 (Bombay)

Where order passed by Disciplinary Committee suspending registration of petitioner-insolvency professional was found in violation of principles of natural justice and non-application of mind on part of committee, same was to be set aside and committee was to give fresh hearing opportunity to petitioner.

The Disciplinary Committee passed an order suspending registration of the petitioner-insolvency professional. The petitioner filed an instant petition challenging the said suspension order. The petitioner submitted that there was violation of principles of natural justice as well as complete non-application of mind on part of Disciplinary Committee in passing impugned order. He claimed that the Committee had held him guilty in one line even without dealing with his arguments. On dealing with impugned order and petitioner's submissions, it was noted that there was much substance in petitioner's contentions.

Held that the IBBI-Respondent was to be directed that Disciplinary Committee appointed by IBBI was to give fresh hearing to petitioner after adequate notice and pass a fresh order.

GUIDELINES FOR ARTICLES

The articles sent for publication in the journal "The Insolvency Professional" should conform to the following parameters, which are crucial in selection of the article for publication:

✓ The article should be original, i.e., not published/broadcasted/hosted elsewhere including any website. A declaration in this regard should be submitted to IPA ICAI in writing at the time of submission of article.

✓ The article should be topical and should discuss a matter of current interest to the professionals/readers.

✓ It should preferably expose the readers to new knowledge area and discuss a new or innovative idea that the professionals/readers should be aware of.

✓ The length of the article should be 2500-3000 words.

✓ The article should also have an executive summary of around 100 words.

✓ The article should contain headings, which should be clear, short, catchy, and interesting.

✓ The authors must provide the list of references if any at the end of article.

✓ A brief profile of the author, e-mail ID, postal address and contact numbers and declaration regarding the originality of the article as mentioned above should be enclosed along with the article.

✓ In case the article is found not suitable for publication, the same shall not be published.

✓ The articles should be mailed to "publication@ipaicmai.in".

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