CGRF SandBox®

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Creditors/Stakeholders

Resolution Applicant

Resolution / Realisation Under IBC

- Role of IRP when the CIRP admission order is stayed
- RBI Directions to Regulated Entities regarding investment in Alternative Investment Funds
- End of Colonial era Criminal Laws

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வீறெய்தி மாண்டார் வினைத்திட்பம் வேந்தன்கண்
ஊறெய்தி உள்ளப் படும்.

தமிழ் உரை:
செயல் திறனால் பெருமைபெற்று உயர்ந்தவரின் வினைத் திட்பமானது நாட்டை ஆளும் அரசனிடத்திலும் எட்டி மதிக்கப்பட்டு விளங்கும்.

Explanation:
A person who attained excellence through his/her good deeds and actions will be held in great esteem at all times, by all powers.

From the desk of the Editor

As the curtains are coming down on "2023" and the whole world is getting ready to usher in "2024", our CGRF team has immense pleasure to bring out the December 2023 Issue of SandBox, packing useful information.

Banking

Recent RBI circular dt. 19th dec. 2023 regarding restrictions in investment by regulated entities in Alternate Investment Funds is likely to create ripples in the financial market. Further it is noteworthy that fintech firms are emerging as alternate funding source for the masses. We are glad to share article on these topics from senior bankers.

Delays derail IBC

Appreciable efforts have been taken by IBBI to facilitate speedy resolution of cases referred to NCLT under the Insolvency and Bankruptcy Code. Yet, instances of delay in admission of new cases and delay in vacation of CIRP stay orders are still there in the system. The creditors are wary of getting into IBC process as they are not sure how long the process will take despite clear timelines specified in the Code.

Prepack for all Corporate Debtors?

Prepackaged Insolvency Resolution Process (PPIRP) was introduced in April 2021 for MSME corporates, with an aim to minimize the load on the judicial system and to make the insolvency resolution process informal and quicker with the consensus of the borrower and the creditors. Belying the hype and expectations, PPIRP didn't take off. Several reasons were attributed - like lack of awareness, requirement of declaration from the corporate debtor regarding avoidance transactions besides the so-called stigma of insolvency as perceived by some sections of the borrowers, continued grip by the lenders on the finances of the corporate debtor, etc.

There is a good possibility that non-MSME borrowers with potential for revival would choose to avail PPIRP rather than go through the regular CIRP wherein RP takes control of the company. A few newspaper reports hint that a proposal for extending Prepack for all corporate debtors is on the cards. If it happens, incorporating necessary changes taking into account the provisions which are the reasons for the success of the scheme globally in operations, it could probably be a game-changer.

Post Office Act, 2023 gets President assent

On 24-12-2023 the Post Office Act, 2023 received President's assent. The new Act replacing the archaic 125-year old Post Office Act, 1898 will come into force from the date the Central Government may notify in the Official Gazette. It is learnt that private courier services will be brought under its ambit for the first time. While the Act provides for interception of articles transmitted through India Post, there seems to be lack of procedural safeguards for such interception which may lead to violation of freedom of speech and expression and the right to privacy of individuals.

Telecommunications Act, 2023

The Telecommunication Bill, 2023 received presidential assent on 24th dec. 2023. The new Act replaces the Indian Telegraph Act, 1885 and the Indian Wireless Telegraphy Act, 1933. By virtue of the new provisions, the central govt can temporarily take control of telecom services in the internet of national security.

The Make-over of Criminal Laws

Close on the heels, on 25th December 2023, the President of India gave consent to the three criminal law bills which were earlier passed by the Lok Sabha and Rajya Sabha. The colonial-era enactments of Indian Evidence Act-1872, Indian Penal Code-1860 and Criminal Procedure Code have been replaced in an effort to introduce more relevant provisions, to tighten criminal law procedures and evidences and to tackle new age crimes and technological challenges. One finds it difficult even to pronounce the replacement laws – the Bharatiya Sakshya Act (Indian Evidence Act), the Bharatiya Nyaya Sanhita (IPC), the Bharatiya Nagarik Suraksha Sanhita (CrPC). Translated loosely, the replacement for CrPC means "Indian Citizens Protection Code". Well, it looks the transition process will take quite some time.

Important judgments

In this Issue, a few important decisions of NCLAT and Supreme Court have been analysed to understand their ramifications on the CIRP process.

Happy New Year 2024

CGRF Team has great pleasure wishing the esteemed readers and their families a wonderful "2024" ahead. May the Pongal – Sankaranthi - Festival closely following the New Year bring a lot of cheers and good tidings for the country as a whole. Happy reading!!

Yours truly

S. Rajendran

Fintechs to surpass Traditional Bank Lendings in India

Mr.Hargovind Sachdev
General Manager (Retd.) SBI

"Financial institutions must be able to deliver an easy-to-navigate, seamless digital platform that goes far beyond a miniaturised online banking offering."

The Reserve Bank of India's latest order on unsecured loans has hit the banking sector's growth due to banks slowing down on aggressive retail lending. The fallout of the Regulator's action will discourage the rising dependence on unsecured retail loans for subsistence and growth by the Indian middle class. A 100bps cut in growth would impact return on asset (RoA)/ return on equity (RoE) by 3-10bps/20-100bps. Banks will also lose profits by distancing from the lucrative retail loans. **The shares of retail lenders and credit card companies are falling, reflecting investors' concerns about their profitability without retail loans. The biggest beneficiary of this downscaling shall be Fintech companies.**

Having established themselves as a destination point, the Fintech companies shall take over as leaders in India's lending space within this decade. They shall outpace traditional banks in a significant shift by 2030. A report by an RBI-supported independent body, CAFRAL (Centre for Advanced Financial Research and Learning), highlights the unique and multifaceted needs of the small and middle-income segment. The report finds the enhanced disbursal of retail loans through Fintech.

The advantages and convenience of Fintech's digital platforms are a big attraction over the orthodox and traditional banking platforms. CAFRAL highlights the Fintech industry's remarkable growth, weaving around 15000 start-ups established between 2006 and 2021. Easy online accessibility and quick processing models based on digital lending have become the favourites of borrowers.

Data analytics for prompt credit assessment and seamless loan processing, followed by quick loan disbursal, enable fintechs to overtake banks. The friendly, innovative service also creates an edge over the brick-and-mortar banks, carving a paradigm shift**. Fintech lenders excel in speed, last-mile reach, and comfort of bedroom banking. Internet-based loan processing and assessment and funding within hours of the application contrasts with the red tape and bureaucratic style of conventional bank functioning.**

Fintech's 24x7 availability has a vast reach across geographies, attracting a broader spectrum of borrowers. **Discreet data analysis of Credit reports through advanced algorithms conducted by Fintech companies automatically discovers and identifies credit-worthy borrowers and funds them without the need to walk into any bank.**

The cost savings in real estate rentals and thin overheads enable fintechs to invest in efficient operations and advanced risk measurement techniques, shunning risky exposures. Effective cost control further makes fintechs competitive in offering low-interest rates. Harnessing artificial intelligence (AI), Fintech lenders create personalised financing solutions, delighting customers. **Their customised loan products cater to diverse financial needs in fast-changing financial supermarkets due to the extensive use of data.**

The book size of the Indian digital lending companies stood at $ 38.2 billion in 2021, jumped to $ 53.10 billion in 2022 and crossed $ 74.0 billion in 2023. The amount is likely to cross $ 515 billion by 2030, as per CAFRAL, recording a 33.5% CAGR growth, taking Fintech lending beyond the loan portfolio of traditional banks.

(Image source: website)

Fintechs stole a march by adopting innovative lending models like P2P lending, microfinancing, short-term credit, LC Bill discounting and invoice financing. The emergence of e-commerce companies and accessible EMI credit card offerings also increased their growth.

The fintech landscape has the eyes of multiple regulators like the Government of India, the Reserve Bank of India, the Insurance Regulatory and Development Authority of India, the Telecom Regulatory Authority of India and the Securities and Exchange Board of India, instilling confidence in the clients leading to spectacular growth.

RBI has been constantly encouraging Fintechs as an alternate funding source for the masses. As an evolving superior choice, the fintech ecosystem is on a grand growth trajectory to transform the traditional lending firmament to take India to $ 5.0 trillion GDP.

Rightly said**, "The secret of change is to focus on all of your energy, not on fighting the old, but building the new."**

RBI Directions to Regulated Entities regarding investment in Alternative Investment Funds

Mr.S.Venkataraman
Chief General Manager (Retd.) SBI
Insolvency Professional

The Reserve Bank of India vide its circular dated 19th Dec 2023 tightened norms for Regulated Entities viz. Banks, NBFCs relating to making investments in units of Alternative Investment Funds (AIFs). This is mainly to address its concerns relating to possible evergreening of stressed loans. The intention of the RBI is to put an end to transactions that entail substitution of direct loan exposure of lenders to borrowers with indirect exposure through investments in units of AIFs as such transactions lead to concealment of the real status of the stressed loans in their books.

WHAT IS AN ALTERNATIVE INVESTMENT FUND

Let us first understand what is an Alternative Investment Fund (AIF). AIFs are defined in Regulation 2(1) (b) of Securities and Exchange Board of India (Alternative Investment Funds) Regulations, 2012. It refers to any privately pooled investment fund, (whether from Indian or foreign sources), in the form of a trust or a company or a body corporate or a Limited Liability Partnership (LLP). Hence, in India, AIFs are private funds which are otherwise not coming under the jurisdiction of any regulatory agency.

As per SEBI guidelines, an AIF have to seek registration under any one of the following three categories.

- Category I: These AIFs mainly invests in start-ups, SME's or any other sector which Govt. considers economically and socially viable.
- Category II: AIFs which manage private equity funds or debt funds for which no specific incentives or concessions are given by the government or any other Regulator.
- Category III: AIFs such as hedge funds or funds which trade with a view to make short term returns or such other funds which are open ended and for which no specific incentives or concessions are given by the government or any other Regulator.

The schemes launched under Category I & II by AIFs shall be close-ended, the tenure shall be determined at the time of application and shall be for minimum period of three years. Category III AIFs can be open-ended or close-ended. Extension of the tenure of the close-ended AIFs may be permitted up to two years subject to approval of two-thirds of the unit holders by value of their investment in the AIF. In the absence of consent of unit holders, the AIFs shall fully liquidate within one year following expiration of the fund tenure or extended tenure.

Units of close-ended AIF may be listed on stock exchange subject to a minimum tradable lot of one crore rupees. Such listing shall be permitted only after final close of the fund or scheme. However, listing on stock Exchanges is purely voluntary.

GUIDELINES ISSUED BY RBI ON 19TH DECEMBER 2023

As part of the regular investment operations, Banks, NBFCs which are the Regulated Entities (RE) make investments in AIFs by investing in their units. RBI has noticed that certain transactions of REs involving AIFs have raised regulatory concerns as these transactions are relating to substitution of direct loan exposure of REs to borrowers, with indirect exposure through investments in units of AIFs.

(Image source: website)

To address concerns relating to possible evergreening through this route, RBI has advised the RE's, under the new circular, as under:

(i) REs shall not make investments in any scheme of AIFs which has downstream investments either directly or indirectly in a debtor company of the RE. The debtor company of the RE, for this purpose, shall mean any company to which the RE currently has or previously had a loan or investment exposure anytime during the preceding 12 months.

(ii) If an AIF scheme, in which RE is already an investor, makes a downstream investment in any such debtor company, then the RE shall liquidate its investment in the scheme within 30 days from the date of such downstream investment by the AIF. If REs have already invested into such schemes having downstream investment in their debtor companies as on the circular date viz.19/12/2023, it has to be liquidated within 30-days period form the circular date. REs have to, therefore, advise the AIFs suitably in the matter.

(iii) In case REs are not able to liquidate their investments within the above-prescribed time limit, they shall make 100 percent provision on such investments. In addition, investment by REs in the subordinated units of any AIF scheme with a 'priority distribution model' shall be subject to full deduction from RE's capital funds.

SUMMARY

AIF is a privately pooled investment vehicle, which collects funds from investors, for investing it in accordance with a defined investment policy for the benefit of its investors. The REs cannot make investments in any scheme of AIFs, which has downstream investments either directly or indirectly in a company that has borrowed / debtor company (currently has or previously had a loan or investment exposure anytime during the preceding 12 months) from them. The current move is to curb "evergreening" of loans which has been voiced repeatedly by the RBI.

The current move of RBI will affect large banks and NBFCs which are involved in AIF investments. Consequently, the provisioning requirements of a few banks, NBFCs hitherto keen on investing in Alternative Investment Funds (AIFs) could surge. It would also impact the institutional flows into these aggressively managed pooled corpuses and hence these AIFs could face disruption risks after the RBI announcement. This move is bound to impact AIFs' ability to raise funds from such investors viz., REs. AIFs will also now see the cascading impact of these curbs on their portfolio as they now need to share the list of contributing lenders in a loan relationship with a recipient of AIF investments. Overall, this is a welcome move by RBI which curbs the investment in such AIFs aimed at preventing evergreening of doubtful corporate loans and to prevent window dressing of loan books.

Prepack for all corporates- Is it the panacea for IBC derailed by delays?

N. Nageswaran,
Insolvency Professional

After announcing the details of the National Asset Reconstruction Company Limited (NARCL) and the India Debt Resolution Company Limited (IDRCL) Mrs.Nirmala Seetharaman, Finance Minister in an interview to the press when asked about effectiveness of IBC, declared that " in practice if there are ways in which people are either gaming it (IBC) or conveniently giving an inference that is in spirit, not in line with the law, I think other ways of legal redressal are required. It is not the weakness in the IBC but in how people are gaming it." Throwing all sorts of road blocks while a resolution is attempted under IBC, delays naturally creep in derailing the Code itself. Hence, announcing eligibility of a prepack scheme for all corporates – is it "the" panacea to set right the gaming going on in implementation of IBC? Need to be discussed.

WHAT IS A PREPACK?

Globally, prepacks are not new insolvency strategy wherein the debtor is attempting a mid-course correction strategy to reduce the financial distress already crept in or avoid the same on a futuristic basis. What is new in it is to what extent the debtor can be allowed to have this foreplay and the control mechanism, if any, that need to be brought in to ensure that the debtor does not escape scot-free throwing the cost of restructuring the unit on other stakeholders after committing all types of mismanagement.

COMMITTEE ON PREPACK INSOLVENCY RESOLUTION PROCESS (PPIRP)

The report by the sub committee of the Insolvency Law Committee (ILC) headed by Dr.M.S.Sahoo on Pre Pack Insolvency Resolution Process contains the necessity for evolution of the requirement of PPIRP under IBC. To quote from the ILC sub-committee report " pre-pack is a natural step in the evolution of insolvency regimes". However, the Report, inter-alia, has also discussed whether PPIRP should be made available for all CDs (Corporate Debtors) and came to the conclusion that "making pre-pack available for all CDs, without

commensurate capacity augmentation of the AA (NCLT), could result in process delays."

Thus it is clear that without putting in place the judiciary which is low in strength compared with the cases filed and the method of its working which is also a cause for concern, opening out the PPIRP for all CDs in the present form imbibing all the rigour and discipline of CIRP under IBC will definitely be a no starter.

LIMITED CANVASS OF THE PRESENT PPIRP

While PPIRP in the present form is itself highly restrictive the fact that it has been made available only for MSMEs who corporate entities and Limited Liability Partnerships are – towing the line of CIRP as the creditors should be able to convert, if it is required, the process into a full fledged CIRP or into liquidation. Frankly speaking, the present scheme of PPIRP cannot be even termed have been floated to test the waters as it is a well known fact that almost 80 plus percentage of MSMEs are proprietary or family partnerships and the scheme has not been made available to them. Further, on the pretext of keeping PPIRP within the present ecosystem of IBC, while debtor in possession model is practised, the creditor in control is exhibited allowing very little room for evolution of a pre pack which is intended to have the restructuring done of the corporate debtor in distress.

(Image source: website)

Hence, even if the present model PPIRP is the one which is going to be rolled out for all corporate debtors, it will never be anywhere nearer to achieving the desired effects of IBC, leave alone avoiding the delays which are derailing the Code.

THE POINTS OF DELAY

Is the Code effective? Yes. Definitely, but through the causal effect and not through the implementation of the Code in full-fledged manner. How is it so?

1. Often we hear and it is in print also in the quarterly journal of IBBI for Jul-Sep 2023 that the creditors have realised Rs.3.16 lakh crores through resolution plans approved under the code. In addition, more than 26000 applications having underlying default of R.9.33 lakh crores have been withdrawn even before their admission. Whatever might have happened between the applicant and the respondent resulting in the withdrawal of so many cases, the offices of the NCLT registries would have borne the brunt of handling so many applications from filing till withdrawal. On an average, before admission every application is listed atleast four times before the tribunal involving thousands of manhours of the system. It seems that this burden on the NCLT benches seems to have gone unnoticed which should be one of the major causes of delay in NCLT.

   It is to be noted that in the initial periods the idea of using the Code for recovery purposes was very much decried by every judicial forum including the Supreme Court. But IBBI itself is stating in the above journal that the outcomes of IBC are evaluated on the basis of recovery to the creditors as a result of the resolution process.

2. Time and again the supremacy of NCLT system is put to test due to lack of co-ordination between regulators such as SEBI, IRDA, ED, PMLA, Provident Fund, public authorities such as Electricity Boards, Registrars of Immovable assets etc. In the initial periods of working of the Code, most of the cases were the ones transferred from other judicial forums such as DRTs, the documentations were in place. However, the present cases are built from scratch in the NCLT process, the stability of the procedures followed have been put to doubt. It has been almost similar to "re-invention of the wheel" resulting in delays, many a time very inordinate.

3. While the judiciary has settled upto the Appellate Authority level (NCLAT) and the day to day process stabilised, though inordinate delay is caused due to the functioning styles of the presiding officers thereat, at the NCLT levels the position obtained is far from satisfactory. The vacancies of members in the NCLT courts have just been filled and the impact is yet to be seen. But surely the delay in filling up the positions of the members caused so much of damage to the ecosystem of implementation of the Code.

4. Already demands have been raised for setting up an Indian Judicial Services cadre atleast to fill up the vacancies of tribunals like NCLT. Such a step will give a better orientation for implementation of commercially important laws like IBC and would assist in further sharpening of the provisions of the Acts and raise the standards to meet with globally best in such practices.

CONCLUSION

It will be helpful to conclude with the following remarks made by the sub-committee of ILC on PPIRP as to how

the committee perceived the scheme of prepack would help the Code in general.

"The courts usually have limited infrastructural capacity and can perform its obligations within its limits. A pre-pack has the potential to reduce litigation, due to its informal and consensual nature. It does not require involvement of the court during the informal part of the process and requires minimum role of courts during formal process. Hence, it reduces litigation cost and delays and helps to decongest the overburdened courts. It is necessary to have a functional out of court restructuring process, so that the vast majority of cases are restructured out of bankruptcy, with the NCLT acting as a court of last resort if no agreement is possible."

Of course, the report has also added the following caution to this remark:

"Private negotiation and understanding among a set of stakeholders prior to commencement of formal process, which contribute to advantages of pre-pack, is often a source of concern."

P.S. ON NARCL AND IDRCL

National Asset Reconstruction Co (NARCL)has fallen significantly short of its target to acquire bad loans, purchasing only Rs 10,387 crore of loans from three accounts in FY23, compared to its target of Rs 50,000 crore. This is an abysmal performance by NARCL against the figure of the gross non-performing assets in the Indian banking system currently standing at approximately Rs 13 lakh crore, including fully written-off accounts. It is to be noted that the news of merging the two entities – NARCL and IDRCL – is in the air and that the first Chairman of the NARCL has resigned in the month of August 23. One of the reasons for the non-performance is said to be the very low offer made by NARCL to the banks for buying the loan. This indicates that the valuation as per banks and NARCL is not on the same lines.

NARCL is a government entity that got into existence in the Union Budget of 21-22 and has been incorporated with the majority stake held by Public Sector Banks and balance by Private Banks with Canara Bank being the Sponsor Bank. It is also registered with the Reserve Bank of India as an Asset Reconstruction Company under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. Differences in the valuation of the Loan books held by the banks will be a serious matter if based on NARCL's lower valuation a resolution plan is accepted by the banks for their NPA accounts. This itself will give rise to litigation by the other stakeholders and delay the resolution process at NCLTs.

Role of IRP when the CIRP admission order is stayed

CGRF Bureau

Prelude

Adjudicating Authority (NCLT) issues orders admitting a corporate debtor into Corporate Insolvency Resolution Process (CIRP). By the same order, moratorium provisions become applicable to the Corporate Debtor, protecting it from recovery and other legal proceedings. Appointment of Interim Resolution Professional (IRP) also comes into effect by virtue of the NCLT order.

As seen in majority of the cases, where the corporate debtor is aggrieved of such insolvency resolution process initiated against it, the promoters immediately approach the Appellate Authority (NCLAT) seeking "stay" of the CIRP admission order. There are several instances where the NCLAT grants stay of the relevant NCLT order which has brought the corporate debtor into CIRP. In some cases, the NCLAT provides interim relief like "the CoC shall not be constituted by the IRP until further orders".

Effect of Stay Orders

The questions which arise immediately after the stay order are generally:

a) "What is the role of the IRP?
b) "Does the IRP continue to be in charge of the corporate debtor?"
c) "Is the IRP responsible for the day-to-day affairs of the corporate debtor?"
d) "Whether the powers of the board continue to be suspended?"
e) "Whether the management of the corporate debtor reverts to the board of directors?"
f) "Who can operate the bank accounts of the corporate debtor?"
g) "Who is responsible for the compliances of the corporate debtor?"
h) "Who will represent the corporate debtor before any court of law on proceedings initiated by or against the corporate debtor?"

Sometimes the stay orders are clear. But sadly, many a times, the stay orders leave the questions open. While the IRP gets into introspection mode, the corporate debtor is more likely to take advantage of the unclear situation.

"Stay or Quash"

A few distinctions were made out clearly by the Supreme Court in the event of stay of an order as opposed to quashing of an order. The judgment in "Shree Chanmundi Mopeds Ltd. Vs Church of South India Trust Association (1992 (3) SCC1) came to be relied upon.

Thereafter, in the case of "Ashok Kumar Tyagi Vs. UCO Bank" (NCLAT), it has been reasoned that when a CIRP proceeding is stayed, the IRP has no locus to continue his actions since the very same order which brought him into existence has been stayed. However, the powers of the board of directors having been suspended by virtue of the CIRP admission order are not restored to them automatically because the CIRP admission order has not been set aside or quashed. In this case, direction was given to the IRP /RP not to take any action in pursuance of the CIRP order while at the same time, in order to keep the company as a going concern, the CEO of the company was authorised to sign and issue cheques to enable payment of wages to workmen, etc. subject to submitting all details of expenditure on weekly basis to the IRP as well as suspended Managing Director.

However, later in a few cases, a stand would have been taken by NCLTs that when a CIRP order is stayed, the IRP should hand over the management to the promoters / board of directors.

Recent order of NCLAT

In a recent judgment dated 19th December 2023 by NCLAT, Principal Bench, New Delhi in **Mukesh Kumar Jain (RP) Vs. Navin Kumar Upadhyay & Another** along with another appeal, Hon'ble NCLAT has made a few observations which has far reaching importance. It may be relevant here to note that the litigation in this case would have reached the Hon'ble Supreme Court which gave an interim order to stay the CIRP. Based on the Supreme Court order, the NCLT -New Delhi would issue directions to the RP to handover the management of the corporate debtor to the ex-management.

Now, let us have a look at the observations made by Hon'ble NCLAT:

"12. The Adjudicating Authority took the view that in view of the stay of the CIRP of the corporate debtor by order dated 25.02.2022 passed by the Hon'ble Supreme Court, the Resolution Professional cannot continue and his all actions are without jurisdiction. Direction was issued to the Resolution Professional to handover the management of the corporate debtor to the CEO/Management of the corporate debtor, which has been impugned in the present appeals. The judgment of this Tribunal in Ashok Kumar Tyagi (supra) on which reliance has been placed by the Adjudicating Authority does not lay down any proposition that when order of initiating CIRP has been stayed, the result would be to handover the corporate debtor to the ex-management by the Resolution Professional."

"In Ashok Kumar Tyagi (supra), this Tribunal noticed the difference between stay of an order and quashing of an order. In Ashok Kumar Tyagi (supra) this Tribunal placed reliance on the judgment of the Hon'ble Supreme Court in Shree Chamundi Mopeds Ltd. Vs. Church of South India Trust Association…."

"The judgment of "Ashok Kumar Tyagi" (supra) of this Tribunal does not support the order of the Adjudicating Authority that in view of the stay of CIRP, Resolution Professional has to handover charge of the corporate debtor. Any such result of stay of the CIRP shall be disastrous since if the management against whom the CIRP has been initiated is handed over the charge, it is prone to misuse the assets and the assets shall be diminished, which may adversely affect the creditors of the corporate debtor. In view of the stay of the CIRP, it is true that the Resolution Professional cannot take any further steps in the CIRP of the corporate debtor and has to stay his hand from proceeding any further in the CIRP and await of the order of the Appellate Court. The direction to the Resolution Professional in the impugned order to handover the corporate debtor to the ex-management is wholly unjustified and has to be set aside."

(Image source: website)

"….It is further to be noticed that the Resolution Professional has not been discharged from the CIRP and even though Resolution Professional cannot take any steps in the CIRP, day-to-day affairs of the corporate debtor has to be looked after by the Resolution Professional, ex-management being not in place. Not allowing the Resolution Professional to look after day-to-day affairs of the corporate debtor will create a situation where all chances to revive the corporate debtor shall be diminished it being not a functioning unit."

Conclusion

In the case of CIRP stay orders where there is no clarity, the above proposition laid down by Hon'ble NCLAT in Mukesh Kumar Jain Vs. Navin Kumar Upadhyaya & Anr gives a clear picture. The continuation of the IRP in the saddle of the management would protect the interest of the stakeholders. It would also prevent the ex-management from encumbering the assets of the corporate debtor during the stay period. This decision of NCLAT is expected to put the matters to rest and clear the haze around the role of the IRP in situations of stay imposed on the CIRP order.

Court Orders

CGRF Legal Interns

Sanjay Pandurang Kalate
Vs
Vistra ITCL (India) Ltd. and Ors
Supreme Court | 4th December 2023

"The pronouncement of the order is necessary and cannot be dispensed with | In cases where the matter has been heard on a particular day but the order is pronounced on a later date, the NCLT must refrain from affixing the date of hearing on the order"

Facts of the Case

An application was filed by Vistra ITCL (India) Limited (Financial creditor) against **Evirant Developers Private Limited** (Corporate Debtor, CD) under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), to initiate Corporate Insolvency Resolution Process (CIRP). The application was allowed by National Company Law Tribunal (NCLT), Mumbai on 19th May 2023. Subsequently, an Interlocutory Application was filed by the Former Director (Appellant) of the CD, before the NCLT alleging inter alia that the reply to the Section 7 application on behalf of the Corporate Debtor was filed by other two former directors of the CD without authorization of the Board of Directors or intimation to the appellant. The application was heard on 17th May 2023 and the order of the NCLT was not pronounced and no substantive order was passed on 17th May 2023. Though the order carries the date of 17th May 2023, the order was uploaded by the Registry of the NCLT on 30th May 2023 in which the NCLT dismissed the appellant's application on the grounds that the application was filed without authorization from the Board of Directors of the Corporate Debtor and was prima facie frivolous, to delay the proceedings in the Section 7 application. The appellant applied for a certified copy on 30th May 2023, which was received on 1st June 2023.

Decision of Appellate Tribunal

An appeal under section 61 was filed against the order dated 30th May 2023 and the same was e-filed before the National Company Law Appellate Tribunal (NCLAT), New Delhi on 10th July 2023. The appellant filed an application for condonation of delay along with the appeal in which he contended that he became aware of the contents of the order only on 30th May 2023 and the limitation period should run from this date and further the NCLAT was closed for summer vacations between 05th June 2023 to 02nd July 2023 and this period should be excluded from the calculation of limitation.

The NCLAT relied on the Hon'ble Supreme court judgement **V Nagarajan v. SKS Ispat** Civil Appeal 3327 of 2020 and rejected the appeal contention that the time should begin to run from 30th May 2023 the date of upload. As the limitation period was found to have begun on 17th May 2023, the filing of the appeal on 10th July 2023 was held to be beyond the outer limit of 45 days prescribed under the IBC. Further, the NCLAT rejected the contention that the annual summer vacations from 05th June 2023 to 02nd July 2023 should be excluded as the NCLAT had issued a notification stating that the registry would remain open and filing of appeals was permissible during the vacation. Hence, the NCLAT dismissed the appeal on 14th September 2023 as it was barred by limitation on the ground that it was instituted beyond the outer limit of 45 days permissible under Section 61 of the IBC.

Decision of the Supreme Court

The appellant preferred an appeal before Hon'ble Supreme Court under Section 62 of the Insolvency and Bankruptcy Code 2016, against the judgement dated 14th September 2023 as the NCLAT, Delhi dismissed the appeal against the order of the NCLT, Mumbai on the ground of limitation. In this case the cause list for 17th May 2023 indicated that the case was listed for admission and not for pronouncement. Further, no substantive order was passed on 17th May 2023 by the NCLT. In these circumstances the limitation would not begin to run on 17th May 2023 which was the date on which hearings concluded. As no order was passed before 30th May 2023, there was no occasion for the appellant to lodge an application for a certified copy on 17th May 2023. Time for filing an appeal would commence only when the order appealed against was uploaded since prior to that date no order was pronounced.

In the Supreme Court Judgement **V Nagarajan** (supra), there was an unequivocal pronouncement of the order before the upload of the order and thus, the decision was not applicable to the facts of the case. But in the facts of the present case, the date of upload of the order is the same as the date of pronouncement. So, in this case the period of limitation began to run on 30th May 2023. The 30 days limitation period provided in Section 61(2) of the IBC completed on 29th June 2023. Though the appeal was filed beyond the period of thirty days, it was within the condonable period of fifteen days.

Hence, the appeal was disposed of stating that the appeal should be restored to the NCLAT for reconsidering whether the appellant has shown sufficient cause for condoning the delay beyond thirty days. And the impugned order dated 14th September 2023 of the NCLAT declining to condone the delay was set aside and the proceedings are restored to the file of the NCLAT, Delhi.

IN THE SUPREME COURT OF INDIA
Hari Babu Thota| 29-NOV-2023

"If MSME certificate is obtained prior to date of submission of Resolution Plan, ineligibility under Section 29A of IBC would not be incurred and benefit of Section 240A of IBC would be available to promoter of MSME Corporate Debtor".

Facts of the case

A Section 7 Application was filed by Shree Aashraya Souhard Credit Society Limited for initiation of CIRP and the same was admitted on April 6, 2021. The first meeting of the Committee of Creditors (CoC) was held on August 13, 2021. In the meantime, on the advice of the RP to obtain MSME certificate to keep the Corporate Debtor as a going concern, the Corporate Debtor was registered under the Micro, Small and Medium Enterprises Development Act, 2006, (MSME Act) as an MSME entity. The Expression of Interest (EoI) was reissued in `Form – G'. Upon receipt of the Resolution Plan and Affidavit, the Resolution Professional placed the same before the CoC for approval. The COC approved the Resolution Plan, but it was rejected by Adjudicating Authority vide the Impugned Order. Dissatisfied by the Impugned Order passed by the Adjudicating Authority, (National Company Law Tribunal, Bengaluru Bench, Bengaluru), the RP preferred an Appeal under Section 61 of the Insolvency and Bankruptcy Code 2016, before the Hon'ble NCLAT Chennai.

Adjudicating Authority observed as follows-

The Corporate Debtor was incorporated in the year 1995, it never sought registration as an MSME. It was also noted that there were pending Avoidance Applications redundant against the promoters though not decided one way or the other, which leads to disqualification under Section 29A(g). Therefore, the NCLT, had rejected the eligibility under Section 29A read with Section 240A of IBC based on such MSME certificate that was obtained subsequent to the initiation of CIRP. Hence the Adjudicating authority rejected the application and held that Resolution Applicant (Promoter) was ineligible to take the benefit of Section 240A; and" therefore, was not qualified under Section 29A".

OBSERVATION OF NCLAT

The Appellant (RP) submitted that the Resolution Applicant (Promoter) does not disqualify under the primary conditions as specified in Section 29A of the Code and, therefore, even if the MSME status provided to the Corporate Debtor is not valid, the Resolution Applicants are not barred under any provisions of the Section 29A. The Appellant/RP observed that there were some preferential transactions made by the `Corporate Debtor' and the Application is still pending before the AA. The AA had observed that instead of the Resolution Applicant giving an Affidavit as required under Regulation 39(1)(a), it was the RP who had given Affidavit that none of the Resolution Applicants are ineligible under the provisions of Section 29A of the Code. It was seen from the documentary evidence that the Corporate Debtor was not registered as an MSME prior to the initiation of CIRP and the certificate was obtained subsequently by the related party of the Corporate Debtor. It is significant to mention that this was not brought to the notice of the CoC during the various CoC Meetings conducted. Therefore, the NCLAT stated that, it did not see any grounds to interfere with the well-reasoned Order of the AA. Hence the Appeal was dismissed.

Decision of the Supreme Court

Aggrieved by the above NCLAT order, the appellant (RP) preferred an appeal before the Hon'ble Supreme Court. There were two aspects to be examined out of the contours of the submissions:

1. Whether the resolution applicant was disqualified under the primary conditions as specified under Section 29A of the Code?
2. Whether the corporate debtor not having an MSME status at the time of commencement of CIRP proceedings would disqualify the Resolution applicant under Section 29A of the Code as benefit of Section 240A would not be available?

Section 29A of IBC was added as an amendment by Act 8 of 2018 with effect from November 23, 2017. The objective was to cure the mischiefs of the persons who may be responsible for the financial situation of the company against trying to submit a plan and take over the company again. If the Clause (c) of sec 29A is closely observed, it provides a time frame i.e. a period of one year should elapse from the date of classification as a nonperforming asset (NPA). Section 240A of IBC also was introduced to provide immunity/exemption from clause (c) & (h) of sec 29A which applies to the promoter to submit Resolution Plan for an MSME enterprise. The objective was due to the nature of business carried out by such entities, the promoters may be better suited to revive the MSME Corporate Debtor.

To support the present case, the decision of Hon'ble Supreme Court judgment in the **"Swiss Ribbons Private Limited and Anr. v. Union of India & Ors. AIR (2019) 4 SCC 17"** was relied upon along with the decision of **Digamber Anandrao 2001 (6) ALD 696, 2001 (6) ALT 22.** Accordingly, it was observed that plan in question would not incur the disqualification. The apex court pointed out that even if it was an NPA, the defect can be cured as set out in proviso (1) of Sec 29A, before submission of the plan. Thus, impugned orders of NCLT and NCLAT were set aside.

RAMKRISHNA FORGINGS LIMITED
V.
RAVINDRA LOONKAR, R.P. OF ACIL LIMITED & ANR
SUPREME COURT OF INDIA | 21-11-2023

"After repeated negotiations, a Resolution Plan is submitted by Resolution Applicant, including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with."

FACTS OF THE CASE

The Corporate Insolvency Resolution Process ('CIRP') was initiated against ACIL Limited ('Corporate Debtor') on 08.08.2018 on an application filed by IDBI Bank Ltd. ('Financial Creditor') under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') and Mr. Ravindra Loonkar was appointed as the Interim Resolution Professional and subsequently confirmed as the Resolution Professional (RP) by NCLT, New Delhi-Principal Bench. The Resolution Applicant submitted its first resolution plan on 11.04.2019 providing to pay Rs. 74 crores to all the stakeholders including Rs. 63.50 crores to Financial Creditors (FC's).

After a series of negotiations and 11 revisions, the resolution applicant submitted a revised final resolution plan on 05.08.2019, in which the financial proposal/total pay-out was increased to Rs.129.5 crores and FCs were to get upfront payment of Rs. 80.44 crores and it was approximately 48% higher value as compared to first resolution plan submitted by him. The final plan was approved by the CoC on 14.08.2019 by a majority of 88.56% votes. Further, RP filed an application under Sections 30(6) and 31 of the IBC, 2016 seeking approval of the resolution plan before the Adjudicating Authority (AA) on 16.08.2019.

NCLAT JUDGMENT

The AA directed approval of resolution plan be kept in abeyance and directed the Official Liquidator ("OL") to provide exact figures / value of the asset and exact valuation details 3 weeks from receipt of order and directing RP to file the two valuations reports before 05.10.2021. Since the AA didn't receive any report on 05.10.2021, the AA directed the RP to submit all the particulars pertaining to intangible/tangible assets of the company to the OL and also permitted the OL to proceed with the valuation to get the right information and valuation of the property.

The Resolution Applicant filed an appeal under Section 61 of the IBC, 2016 before the Hon'ble NCLAT against the decision of NCLT vide orders dated 01.09.2021 & 05.10.2021. On 19.01.2022, NCLAT upheld NCLT order and observed that *"No doubt, it is a settled law that commercial wisdom of the 'Committee of Creditors' (CoC) is 'supreme' and cannot be interfered in a normal circumstance but when 'figures of crore' are emerging stagewise then there is no harm to look at the Expert opinion which the Adjudicating Authority in this case has asked for."*

HON'BLE SUPREME COURT OBSERVATIONS

The Resolution Applicant filed an appeal under Section 62 of the IBC, 2016 against the decision of NCLAT dated 19.01.2022 before the Hon'ble Supreme Court of India.

Resolution Applicant submitted that there were 11 revisions in respect of the resolution plan made by him before the final version was approved by the CoC. The final resolution plan was approximately 48% higher as compared to the pay-out under the initial resolution plan submitted by him. After completing all the statutory procedural requirements and proper examination of the materials on record, CoC approved the resolution plan which was put up before the Adjudicating Authority for approval, but the Adjudicating Authority exceeded its jurisdiction and without ascertaining any reason passed the direction for revaluation.

The Hon'ble Supreme Court observed that the CoC has the supremacy, but the Adjudicating Authority had limited power of judicial review under the IBC, 2016. There is no such residuary or equity-based jurisdiction available under Section 30(2) of the IBC, 2016 by interfering with the CoC's decision without pointing out any non-conformity with the provisions of the IBC, 2016. Regulation 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the RP shall appoint two registered valuers to determine the fair value and liquidation value of the CD whereas Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 states that the two valuers shall submit the fair value and liquidation value to the RP after physical verification of the inventory and fixed assets of

the CD and further provides that if the estimates shown by the two valuers are significantly different, or upon a proposal from the CoC, the RP may appoint a third registered valuer for valuation of the assets of the Corporate Debtor.

The Resolution Applicant relied upon the decision in ***"Ebix Singapore (P) Ltd. v Committee of Creditors of Educomp Solutions Limited, 2021"*** wherein Supreme Court observed that *"holding that the Adjudicating Authority under Section 31(2) of the Code can only examine the validity of the Resolution Plan on the anvil of the stipulation in Section 30(2) of the Code and either approve or reject the Resolution Plan but cannot compel the CoC to negotiate further with a successful Resolution Applicant and also that the Adjudicating Authority is duty bound to ensure the completion of CIRP within the prescribed timeline of 330 days under the Code."*

The Hon'ble Supreme Court had requested the Solicitor General and the Additional Solicitor General for its assistance by an interim order dated 05.05.2022. They stated that "The final stand is that the Adjudicating Authority-NCLT would have no jurisdiction or power to sit in appeal over the commercial wisdom of the CoC and interference would be warranted only when the NCLT or the Appellate Authority (viz. NCLAT) finds the decision of the CoC to be wholly capricious, arbitrary, irrational and dehors the provisions in the Code or the Regulations."

DECISION OF HON'BLE SUPREME COURT

The Hon'ble Supreme Court did not uphold the decisions rendered by the NCLT and the NCLAT. The Hon'ble Apex Court recorded that *"if after repeated negotiations, a Resolution Plan is submitted, as was done by the Resolution Applicant, including the financial component which includes the actual and minimum upfront payments, and has been approved by the CoC with a majority vote of 88.56%, such commercial wisdom was not required to be called into question or casually interfered with." "From the assistance rendered and the judicial precedents brought to notice, it is clear that the order dated 01.09.2021 by the NCLT cannot withstand judicial scrutiny, either on facts or in law."*

The appeal was allowed. The impugned order dated 01.09.2021 passed by NCLT and the impugned Judgment dated 19.01.2022 of the NCLAT were set aside.

IDBI Bank Ltd. and Ors.
v.
Mr. Sumit Binani, RP
NCLAT Chennai | 21-Dec-2023

"Under Section 25(1) of IBC, Resolution Professional is empowered to reject CoC proposal for renewal of Bank Guarantees provided by Corporate Debtor".

Facts of the case

KSK Mahanadi Power Company Ltd (KMPCL/Corporate Debtor) was involved in importing goods from China for utilising in the construction of KMPCL's Power Plant. The Customs Bank Guarantees were issued by 5 Banks (Appellants/Banks) prior to the CIRP of KMPCL, with a condition that the said Bank Guarantee shall be kept alive until Unit Nos. 2 & 5 achieve confirmed Mega Power Plant (MPP) status. Upon expiry of the Customs Bank Guarantees during CIRP, the Banks requested for renewal of the same pending the grant of MPP status of Unit Nos. 2 & 5. The View of the Resolution Professional was that since there were no goods being imported by KMPCL or its contractor for the operationalisation of the units of KMPCL, there is no exemption that KMPCL can claim for customs duty liability. Therefore, the Resolution Professional had intimated to the CoC that these renewals are not necessary for the 'Going Concern' nature of KMPCL. A perusal of the Minutes of the Meetings of the CoC evidenced that the Resolution Professional had informed the Banks that the renewal of the Customs Bank Guarantees would only increase the financial burden of KMPCL which would have to bear the commission charges and renewal charges which are exorbitant amounts. IDBI Bank preferred an IA which was dismissed by the Adjudicating Authority. Hence, the Bank preferred an appeal before the Hon'ble NCLAT Chennai.

NCLT OBSERVATION

In the present case, it was evident that the Applicant's primary concern was not centred around safeguarding the Corporate Debtor's property value, but rather revolved around the commission they would lose if the Bank Guarantees are not renewed or extended. Moreover, the 'commercial wisdom' of the CoC concerning the Corporate Debtor's welfare was not discernible in this context, as the extension or renewal of Bank Guarantees does not inherently contribute to the ongoing operations of the Corporate Debtor. The Applicants had failed to present any evidence indicating that discontinuing the Bank Guarantees would impede the Corporate Debtor's ability to continue functioning. At most, this scenario could affect the Customs Department's capacity to enforce their claim against the Corporate Debtor, potentially requiring them to pursue their claim through the CIRP process, which they have already undertaken.

The Members of the CoC in their commercial wisdom proposed renewal of the Bank Guarantees in favour of the Customs Department, but the RP did not take this into consideration. It was contended that the RP is duty bound to make every endeavour to protect and preserve the value of the property of the Corporate Debtor as a 'Going Concern' and this aspect was ignored by the RP. However, the NCLT concluded that, under section 25(1) of IBC, the Resolution Professional can reject the CoC's proposal for renewal of Bank Guarantees provided by the Corporate Debtor prior to the initiation of CIRP proceedings, as renewing these do not in any way protect and preserve the assets of the Corporate Debtor or support its operations as a going concern.

NCLAT Held as follows

Aggrieved by the NCLT Order, IDBI Bank Ltd filed an appeal before NCLAT Chennai. As per Sections 25(1), 20(1) and 23(2) of the Code, the RP is duty bound to make every effort to preserve the assets and value of the property of the Corporate Debtor Company and manage it effectively as a 'Going Concern'. Section 5(13) of the Code provides that any costs incurred by the RP in running the business of the Corporate Debtor as a 'Going Concern' forms part of the CIRP costs. NCLAT observed that when there is no guarantee with respect to the Mega Power Plant (MPP) status of the Non-Operational Units and since there are no goods being imported by the Corporate Debtor Company as it is undergoing CIRP, there is no exemption that the Company can claim for Customs Duty liability and the Corporate Debtor need not be burdened with the Commission and renewal charges approximately amounting to Rs. 70 Crores which would only increase the financial burden of the Corporate Debtor with no positive benefits accruing. Under Section 25(1), the RP is empowered to reject the CoC proposal for renewal of the Bank Guarantees provided by the Corporate Debtor Company, prior to the initiation of the CIRP, as renewing those would not consequently lead to any advantage or any valuable gains. The NCLAT concluded that it did not see any substantial grounds to interfere with the well-considered order of the Adjudicating Authority. Hence, the Appeal was dismissed.

MEHUL PAREKH & ORS.
V.
UNIMARK REMEDIES AND ORS.
NCLAT NEW DELHI | 19-12-2023

"The determination & payment of CIRP cost is an independent process from any recovery under avoidance applications | After approval of Resolution Plan, Adjudicating Authority was fully empowered to any direction CoC to pursue avoidance applications under Sec. 43, 45, 49 & 66 of the Code".

FACTS OF THE CASE

The Corporate Insolvency Resolution Process (CIRP) was initiated against Unimark Remedies Ltd. (Corporate Debtor) vide order dated 03.04.2018 on an application filed by ICICI Bank under Section 7 of the Insolvency and Bankruptcy Code (IBC), 2016. On the basis of e-voting held between 24-12-2018 and 26-12-2018, resolution plan submitted by consortium of Asset Recovery Company India Ltd., Intas Pharmaceuticals Ltd. and Shamrock Pharmachemi P Ltd. was approved by Committee of Creditors ('CoC') with 72.25% voting share and the same was approved by Adjudicating Authority ('AA') on 17.04.2023.

This Appeal was filed by the Suspended Directors ('Appellants') of the CD challenging the order dated 17.04.2023 passed by the National Company Law Tribunal ('NCLT'), Mumbai Bench-IV for approving the Resolution Plan submitted by Successful Resolution Applicant (SRA).

The Appellants submitted that AA committed error in issuing direction to CoC to redetermine CIRP cost after approval of resolution plan, which was not sustainable in law. The resolution plan having been approved, the determination of CIRP cost was to be done by the Resolution Professional (RP), which has already been determined by the RP, there was no occasion to issue a direction to the CoC to redetermine the CIRP Cost. It is contended that CoC under the garb of redetermination of CIRP cost cannot reverse its own decision for its unfair gain. The expenses incurred by the RP for running the business of Corporate Debtor as a going concern being CIRP cost within the meaning of Section 5(13)(c) of the IBC, 2016 has to be paid first before any payment made to any other creditor. The RP shall ensure that no claim in relation to avoidance transaction, where any of the promoters/ KMPs falling under employee category, was pending for adjudication before the AA before releasing the amount payable to such promoters/ Key Managerial Personnels (KMPs) under the Plan. The Appellant further submitted that the AA had directed that CoC to pursue the avoidance application after approving of the Resolution Plan, which is legally unsustainable. It was submitted that while issuing above directions the AA did not give any cogent reason. Hence, the order of the AA was untenable.

The RP submitted that no workmen claim has been received by the Resolution Professional and the liquidation value payable to the employees was 'NIL' and further submitted that an amount which was proposed for payment to the employees of the Resolution Plan, does not violate any provision of law. The liquidation value of the employees being 'NIL', no objection can be taken to

the amount proposed in the Resolution Plan to the employees, which was maximum of INR 5 crores as earmarked in the Plan. It was submitted that Appellants were not merely Operational Creditors (OC's), but also 'related party' to the CD. Hence, the resolution plan can provide for a differential treatment as against other OC's (employees and workmen).

The Appellants belong to a class distinct from other employees. The contention of the Appellants claiming parity in treatment with the employees and workmen was misconceived and legally untenable. The Appellants were the employees of the CD and were assisting in the operations of the CD during the CIRP period. The CoC has already approved the dues of the Appellants during the CIRP period in the first CoC Meeting held on 03.05.2018. RP has already filed an application for avoidance of fraudulent transactions against the Promoters/ Key Managerial Personnel (KMPs), which was pending adjudication before NCLT. The dues of Promoters/ KMPs were liable to be set-off against the amounts recoverable from them under the avoidance applications.

The Counsel for the CoC and FC's supported the order of NCLT and submitted that order passed by the AA was neither discriminatory, nor in conflict with provisions of the IBC, 2016. The salaries allegedly payable to the Appellants were not incurred in order to keep the CD running as a going concern. Hence, they are not required to be paid as CIRP cost under the IBC, 2016.

DECISION OF NCLAT

The NCLAT observed that it was not the case of the Appellant that amount proposed to the OC in the category of employees was less than the amount which they would have received in the event of liquidation of the Corporate Debtor. Hence, there was no error in the distinction of payment in the resolution plan. NCLAT observed that the distribution to the employees, whose liquidation value was 'NIL' falls within the commercial wisdom of the CoC and the said clause of resolution plan cannot be impugned on the said ground, nor the said proposal for payment was violative of Section 30(2)(b) of the IBC, 2016. As per Section 5(13)(c), costs incurred by the RP in running the business of the CD as a going concern was part of the CIRP cost. Under Section 28 of the IBC, 2016 RP was required to obtain 'Approval of the Committee of Creditors for certain actions.' It has not been shown that CIRP cost, which has been determined by the RP for running the business of the CD required approval of CoC under Section 28 of the IBC, 2016. When the plan has been approved by the CoC, which included payment of the CIRP cost and it was not shown that CIRP cost determined by the RP required any approval under Section 28, hence there was no reason for redetermination of the CIRP cost by the CoC. The direction to CoC to redetermine the CIRP cost after approval of the Resolution Plan by the CoC was unsustainable and deserves to be set aside. Hence, no further approval of the CoC was required for payment of CIRP Cost, after the approval of the resolution plan. However, the AA was fully empowered to issue any direction, as to how the avoidance applications have to be pursued and the directions to pursue the avoidance applications by the CoC as issued therein was fully justifiable.

Ms. Amita Saurabh Bihani and Ors.
Vs
E&G Global Estates Ltd. and Ors.
NCLAT New Delhi | 05-12-2023

"Onerous responsibility of pursuing avoidance applications on Resolution Professional | CIRP and avoidance applications are a separate set of proceedings | Avoidance applications can continue even after completion of CIRP and approval of the resolution plan does not need to be put on hold."

Facts of the Case

An application was filed by **Small Industrial Development Bank of India, SIDBI (Financial creditor) against E&G Global Estates Ltd (Corporate Debtor, CD)** under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC), to initiate Corporate Insolvency Resolution Process (CIRP). The application was allowed by National Company Law Tribunal (NCLT), Mumbai on 24.06.2020. The Interim Resolution Professional, **Mr. Gajesh Labhchand Jain** was confirmed as Resolution Professional ("RP") in the 2nd CoC meeting held on 01.09.2020. In the same meeting Forensic Auditor was also appointed to undertake forensic audit of the books of account of the Corporate Debtor. The RP constituted the CoC with SIDBI having 20.40% voting share and Home Buyers as class of creditors with 79.60% voting share. The Home Buyers appointed an Authorized Representative to represent their interests in the CoC. Subsequently, an application was filed by **Ms. Amita Saurabh Bihani (1st Appellant)** in respect of fraudulent transactions entered between certain set of suspect/fraudulent home buyers and suspended Director of the Corporate Debtor to quash the CoC and its reconstitution and the application was disposed of on 16.09.2020 by the Adjudicating Authority stating that the outcome of the forensic audit which had been sought by the CoC would provide the way forward.

The Forensic Auditor submitted the Forensic Audit Report (FAR) on 14.01.2021. Based on the FAR, the RP filed an Interlocutory Application (IA) under Section 66 of the IBC on the fraudulent and circuitous transactions by certain home buyers with the suspended directors of the Corporate Debtor. The RP had sought cancellation of

their voting rights as they were not Financial Creditors and for having filed fraudulent claims. Further, relief was sought against the suspended directors to return the money back to the Corporate Debtor which had been siphoned off through circular transactions. While the IA was being heard, the Adjudicating Authority directed the RP to remove certain home buyers from the CoC and reconstitute the CoC vide order dated 17.11.2021. This order of NCLT was challenged before National Company law Appellate Tribunal, New Delhi (NCLAT) by the homebuyers who had been removed from the CoC. However, this matter was remanded back to the NCLT for reconsideration without entering into the merits on 08.03.2022 by NCLAT. In addition to the earlier Section 66 IA pending before NCLT, the RP also filed another application under Sections 43 to 45 of the IBC for preferential transactions to bring back the amount siphoned through fraudulent/circuitous transactions and it is pending before NCLT.

After the publication of Form G, the CoC received resolution plans from 3 prospective resolution applicants namely, **G.S. Constructions (sole proprietorship of Mr. Sushil Uttarwar) (2nd Appellant);** Mrs. Archana Sanap and Mrs. Asha Sanap (SRA). In the 8th CoC meeting held on 20.04.2021, the CoC approved the resolution plan submitted by **Mrs. Asha Sanap (Successful Resolution Applicant, "SRA")** with 79.60% voting share and the Adjudicating Authority approved the resolution plan on 11.08.2023.

Decisions of NCLT

1. While the IA filed by the RP was pending before the Adjudicating Authority, the 1st appellant filed another IA before NCLT, praying for removal of alleged illegitimate home buyers from the CoC and to disregard the votes cast by them during 8th CoC meeting and reconstitute the CoC with genuine home buyers and conduct forensic audit of the accounts of related parties of the Corporate Debtor and to approve the resolution plan submitted by M/s. G.S. Constructions ('GSC') on grounds of being a superior and commercially viable plan than that of the SRA. Hearing that IA the Adjudicating Authority observed that the individual homebuyers who have been sought to be removed from the list of home buyer/ Committee of Creditors constitute just about 12% voting share in the COC. Therefore, assuming even if their names were excluded from CoC that would not alter the final outcome and the Resolution plan of Mrs. Asha Sanap, SRA would still fetch more than 66% of voting share. Even otherwise, the applicants as Home Buyers do not have any locus to agitate as to which plan should be approved especially when the home buyers as a class having 79.60% voting share have voted in favour of the Resolution Plan submitted by Mrs. Asha Sanap (SRA). Hence, the application was dismissed by the Adjudicating Authority vide **first impugned order on 11.08.2023.**
2. Order passed by NCLT on 11.08.2023 approving the resolution plan submitted by Mrs. Asha Sanap (Successful Resolution Applicant) in **second impugned order.**
3. Further, G.S. Construction **(2nd Appellant)** filed an application praying for removal of alleged illegitimate home buyers from the CoC and reconstitute the CoC and call for fresh voting besides rejection of resolution plan by SRA. It was also rejected by Adjudicating Authority vide **third impugned order on 11.08.2023.**

Appeals before Appellate Tribunal

Aggrieved by the first, second and the third impugned orders, passed by NCLT, the following appeals were preferred before NCLAT under Section 61 of IBC.

1. Appeal by Home buyers (1st Appellant) to:
   a) Dismiss / Set aside the resolution plan approved by NCLT - Second impugned order.
   b) Disregard the votes cast earlier & reconstitute CoC and approve Resolution Plan of M/s. G.S. Constructions on grounds of being a superior and commercially viable plan than that of the SRA - First impugned order.
2. Appeal by G.S Construction (2nd Appellant) to:
   a) Dismiss/ Set aside the resolution plan approved by NCLT - **Second impugned order.**
   b) Reconstitute the CoC and call for fresh voting besides rejection of resolution plan by SRA - **Third impugned order.**

Both the Appellants filed an appeal stating that the RP admitted the claims of these illegitimate home owners who had committed irregularities by way of fraudulent transactions and gave them access to the CoC. Further the appellant accused that RP not only allowed their entry into the CoC but also allowed these illegitimate home buyers to discuss and approve the resolution plan. If the votes of the illegitimate home owners have been excluded, the results of the voting on the resolution plan of SRA would have been different. Therefore, it was contended that when the composition of the CoC itself was under cloud and the question of reconstitution of CoC was still pending before NCLT in IA under Sec 66 approving of resolution plan by NCLT was against the fundamental tenets of IBC. The Appellants had relied on the judgment of NCLAT in **Jayanta Banerjee v. Shashi Agarwal and Anr.** in CA (AT) (Ins.) No. 348 of 2020 ('Jayanta') which has held that if the constitution of CoC is a nullity in the eye of law, the entire CIRP process is vitiated.

Further, the statutory construct of IBC puts the onerous responsibility of pursuing avoidance applications on the RP. In terms of Section 25(2)(j) of the IBC, it is the duty of the RP to file appropriate applications for avoidance of transactions which fall under the ambit of preferential, fraudulent, undervalued or extortionate transactions. When the statutory scheme clearly states that it is the duty of Resolution Professional to determine the nature of such transactions and file an appropriate application before the Adjudicating Authority, neither the Appellants-1 being home buyers themselves nor the GS Constructions being an unsuccessful resolution applicant are entitled on their own to file applications seeking avoidance of transactions.

The NCLAT held that avoidance applications are not statutorily bound by time as is the resolution process. Section 26 of IBC further provides that application for avoidance of transactions is not to affect CIRP proceedings and therefore such applications can continue even after completion of the CIRP and Section 26 of the IBC clearly stipulates that the pendency of any avoidance application shall not come in the way of the approval of the resolution plan. Therefore, CIRP and avoidance applications are, a separate set of proceedings by their nature. The former is time bound whereas the latter requires a proper discovery of suspect transactions that are time consuming. The scheme of the IBC reinforces this difference and thus adjudication of an avoidance application is independent of the resolution of the corporate debtor and can survive CIRP.

Recently, a division bench of the Delhi High Court in **Tata Steel BSL Limited v. Venus Recruiter Private Limited and Others** dated 13th January 2023 held that avoidance applications which were initiated by the RP shall continue irrespective of the finalisation of the Resolution Plan and the conclusion of the CIRP.

Therefore, the NCLAT affirmed the approval of resolution plan by NCLT stating that simply because the appellants have raised the issue of avoidance application, it does not stand to reason that the approval of the resolution plan needs to be put on hold or kept in abeyance. It was also found that the present resolution plan provides that recovery under Section 43, 45, 50 and 66 of the IBC would be the exclusive rights of the CoC of the Corporate Debtor.

Hence, both the appeals were dismissed as no cogent grounds had been raised in either of the two appeals which would warrant any interference with the impugned orders passed by the Adjudicating Authority.

(Image source: website)

VASATHI ANANDI OWNERS WELFARE ASSOCIATION
VS
VASATHI HOUSING LIMITED
NCLT HYDERABAD | 24-11-2023

"Amount deposited by Homebuyers in Corpus Fund towards maintenance of constructed apartments does not qualify as Financial Debt within the meaning of Section 5(8)(f) of IBC".

FACT OF THE CASE

An application was filed by Vasathi Anandi Owners Welfare Association (VAOWA) (Financial Creditor) represented by its President under Section 7 of Insolvency and Bankruptcy Code, 2016 (IBC) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Vasathi Housing Ltd (Corporate Debtor). The Corporate Debtor (CD) had developed a residential project named 'ANANDI PROJECT' and the Financial Creditor (FC) was a society formed by the homebuyers of that Project.

It was submitted by the applicant that 483 apartments were built in this project, where each buyer had paid Rs. 100/sq.ft of the apartment towards Corpus Fund under the agreement of sale entered between homebuyers and CD. The interest accrued on Corpus Fund was meant to be utilized for maintenance of "ANANDI PROJECT" and the Corpus Fund was meant to be held by CD till 31.12.2013. It was also submitted that under terms of agreement of sale it was explicitly stated that collected Corpus Fund along with accrued interest shall be transferred to society. The CD delivered the possession of apartments to the homebuyers but many of the amenities such as swimming pool, tennis court, shuttle services, promised under agreement of sale pertinent to 'ANANDI PROJECT' were still pending to be developed.

It was contended by the FC that the CD had paid an amount of Rs. 2 crores Corpus fund collected from members of FC out of Rs. 4,76,35,700/- and the remaining fund with interest was not paid.

SUBMISSIONS OF THE CORPORATE DEBTOR

The Applicant is a Society registered under the Telangana Societies Registration Act, 2001 bearing Certificate of Registration No. 1490 of 2017 dated 03.11.2017. The registration of the FC as Society was not valid under Section 3(1) of the Telangana Societies Registration Act, 2001.

The CD admitted that it had received an amount of Rs. 4,76,33,900/- from various Flat Buyers towards Corpus Fund. Out of this amount, a sum of Rs. 2,07,20,000/- was repaid to Home buyers on January 22, 2018, which receipt was admitted and acknowledged by the FC. The CD also admitted to have collected Maintenance Fees of Rs. 1,12,85,148/- for the period from 10.05.2015 to 03.05. 2018, as per the counter affidavit, besides collecting One Year Advance Maintenance Fees of Rs. 1,02,66,355/- from all the Flat Owners.

The CD had utilized the Corpus Fund exclusively for the purpose of maintenance of Common Areas of the Vasathi Anandi since there was inordinate delay in forming the Society. It was argued that the FC had not lent any Financial Debt as defined under section 5(8) of the IBC and therefore the FC Association cannot be called as a Financial Creditor under section 5(7) of the IBC. It was further argued that there was no agreement between the Petitioner and the CD and therefore it cannot be called as a Financial Creditor.

SUBMISSION OF THE FINANCIAL CREDITOR

The FC argued that a sum of Rs.4.84 Crores allegedly claimed by the CD towards the maintenance expenses for the period of 2014-2018 is neither liable to be adjusted nor setoff from the refundable amounts of "Maintenance fee, Advance Maintenance Fee and the Corpus Fund". It was submitted that the CD has committed default in terms of Section 3(11) and 3(12) of IBC for the debt that became due and payable to FC on 01.04.2018 when the maintenance responsibilities of the Anandi Vasathi Apartments are entrusted by CD.

The FC submitted that the objects mentioned in Section 3(1) of the Telangana Societies Registration Act are not exhaustive, rather they are illustrative in nature and therefore the object of FC Association, as mentioned in its Memorandum and Bye-laws, as required under Section 4(1) of the Telangana Societies Registration Act, 2001 are valid and enforceable in the eye of law including the maintenance of the present petition for initiation of CIRP against the CD as provided in Sec. 18 of the Telangana Societies Registration Act, 2001. It provides that the Registered Society under the Act shall be a body corporate and shall have perpetual succession and a common seal and therefore the Society was entitled to enter into any contract.

It was further submitted that CD was a chronic defaulter to its creditors and was an absolute insolvent company as the CD had not filed its balance sheet after financial year ended on 31.03.2019 based on the data available in MCA website and also the CD was earlier admitted in CIRP by order of NCLT dated 06.05.2022 of this tribunal, however the same was withdrawn as result of settlement in accordance with Section 12A of IBC.

DECISION OF ADJUDICATING AUTHORITY

It was observed that in matters of real estate projects, not every amount raised would be considered as 'financial debt'. The amount raised should be from an 'allottee' and in relation to a 'real estate project'. For both these terms, reference has been made Section 2 clauses (d) and (zn) of RERA 2016. The 'Corpus Fund' was collected under the agreement of sale of apartments built under 'ANANDI PROJECT', and only for the purpose of ensuring maintenance of the apartments out of the interest accruing thereon and not for any development of land into apartments or plots. Clause 12 of the Agreement of Sale dated 07.02.2013 read as follows:

"The interest free corpus fund shall be paid by the Purchasers as specified in Schedule 3 towards the maintenance of VASATHI ANANDI, prior to the execution and registration of the Sale Deed."

Further the AA relied on the decision of the Hon'ble Supreme Court in **'Pioneer Urban Land Infrastructure Ltd. & Anr. Vs. Union of India & Ors'**. A parallel perspective endorsed by the NCLT Mumbai Bench in the case of **'Innova Premises Co-operative Society Limited Vs. Marathon Nextgen Realty Limited'** was also taken note by AA.

Based on the above observations the present application was not maintainable, as the applicant will not fall within the meaning of Financial Creditor under Section 5(7) of the IBC. **Hence, the present Section 7 application was dismissed.**

Legal Maxims

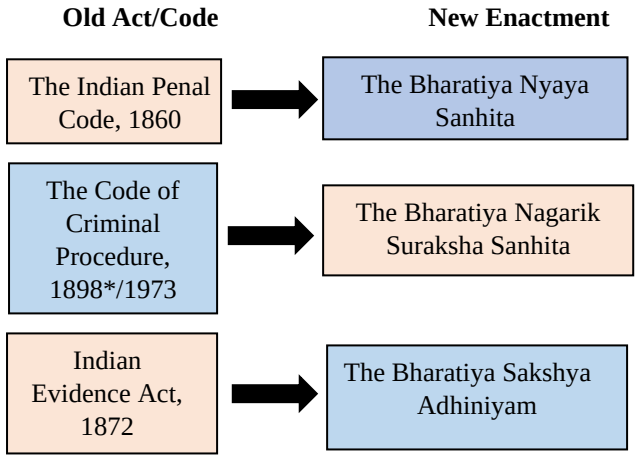
Ratio Decidendi

It is a Latin term meaning "rationale for the decision". The ratio decidendi is the essential part of a court's decision, as it explains the reasoning behind the ruling and sets out the legal principle that should guide future similar cases. It is binding on lower courts and must be followed in subsequent cases with similar facts and legal issues.

End of Colonial era Criminal Laws

CGRF Bureau

The three new criminal law bills namely the Bharatiya Nyaya Sanhita, 2023 (BNS), the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) and the Bharatiya Sakshya Adhiniyam, 2023 (BSA) received presidential assent by Smt. Draupadi Murmu on 25th December 2023. Earlier the Lok Sabha and Rajya Sabha passes these bills to replace the British-era criminal laws.



(* Repealed by the 1973 Act)

They shall come into force on such a date as the Central Government may, by notification in the Official Gazette. These laws will be implemented throughout the country on the same date and different dates may be notified for different provisions. Some of the major changes are highlighted below-

- Introduction of new offences like organized crime, terrorist act, petty organized crime, hit & run, mob lynching etc.
- Electronic FIR and trial in-absentia, terrorism has been defined and included in a separate category in the general crime law and the definition of organized crime has been widened.
- Under the Nagarik Suraksha Sanhita, electronic communication and video conferencing facilities have been adopted at various stages including at the time of inquiry, investigation, and trial.
- Certain provisions have been introduced to ensure victim-centric justice. Provisions have been introduced to fix the accountability of the police and serving of police report on the victim has been made compulsory. The victim is to be informed of the progress of the investigation within 90 days.
- Under the Bharatiya Nagarik Suraksha Sanhita, the magistrate's power to impose fines has been increased as well as the scope of declaring a proclaimed offender.
- The Bharatiya Sakshya Adhiniyam includes electronic evidence/records in the definition of 'documents' and they have been classified as primary evidence. Secondary evidence to include more documents.

Legal Maxims

Obiter Dicta

In contrast, 'obiter dicta' are statements or opinions made by a judge in a decision that are not essential to the reasoning and do not form part of the ratio decidendi. While obiter dicta may be persuasive, they are not binding on lower courts and do not have the force of law.

Humour time

An investment banker decides she needs in-house counsel, so she interviews a young lawyer. "Mr. Peterson," she says, "Would you say you're honest?" "Honest?" replies Peterson. "Let me tell you something about honesty. My father lent me Rs.50 Lakhs for my education, and I paid back every penny the minute I tried my first case." "Impressive. And what sort of case was that?" "Dad sued me for the money."

List of some Important cases for the month of December 2023

S.no	Court & Date	Name of the case	Corporate Debtor	Decision
1.	Himachal Pradesh High Court 01-12-2023	Lalan Kumar Singh v. The Hongkong and Shanghai Banking Corporation Ltd. and Ors.	GPI Textiles Ltd.	Clean Slate Principle envisaged under IBC is also binding on Equity Shareholders. After approval of Resolution Plan, Share Holder/Director/Former Director has no locus to continue Letter Patents Appeal, particularly when no leave of the NCLT had been obtained to pursue Letter patents Appeal.
2.	Madras High Court 21-11-2023	Tamilnad Mercantile Bank Ltd. v. Recovery Officer, The Regional Commissioner-II, EPFO	Sri Textile Erode Pvt. Ltd.	Once the Liquidator pays an amount to the secured creditor, the EPFO cannot issue orders prohibiting and restraining Secured Creditor from utilising the amount paid by Liquidator from sale proceeds of properties of the Corporate Debtor.
3.	Karnataka High Court 21-11-2023	Mr. Farooq Ali Khan v. Punjab National Bank	Associate Décor Ltd.	NCLAT stated that the Resolution Professional shall give notice of each meeting of CoC as per CIRP Regulation 19(2) even in case of adjournment of meeting where agenda modified. Reasons should be recorded in writing in case any reduction of notice time limit.
4.	High Court of Delhi 20-11-2023	Pooja Menghani Vs. Insolvency and Bankruptcy Board of India (IBBI) & Anr.	-	An Insolvency Professional becomes heart and brain of Company under Insolvency. Good reputation and character of a person is very important for appointment as an Insolvency Professional and the decision to determine as to whether a person is fit and proper to be appointed as Insolvency Professional is based on the subjective satisfaction of IBBI.
5.	High Court of Kerala 17-11-2023	Jeny Thankachan Vs. Union of India and Ors	Jeny Thankachan	A moratorium under Section 96 of the IBC, 2016 to come into force only after the application should be filed in accordance with statutory procedural requirements & completed without any procedural defects. It should be numbered by the Adjudicating Authority.
6.	NCLAT New Delhi 22-12-2023	Kolkata Municipal Corporation v. Bengal Shelter Housing Development Ltd. and Ors.	Barnaparichay Book Mall Pvt. Ltd.	A party who was given right of development by owner, has assigned the rights without prior approval of owner, to Corporate Debtor, such illegally transferred possession to Corporate Debtor cannot be treated as assets of Corporate Debtor and cancellation of assignment by owner does not cover under moratorium. No right and interest with regard to premises have been created in favour of the Corporate Debtor.
7.	NCLAT New Delhi 22-12-2023	Jubilee Metal Pvt. Ltd. v. Mr. Surendra Raj Gang RP of Metenere Ltd. and Anr.	Metenere Ltd	In case of Resolution Plan approved by CoC to third party as transferring shareholding of Successful Resolution Applicant against terms and conditions of Resolution plan, CoC can withdraw Resolution plan which is pending for NCLT approval and forfeit EMD/PBG. CIRP Regulation 36B(4A) does not exclude forfeiture of performance security as per conditions in RFRP.
8.	NCLAT New Delhi 21-12-2023	Jaipur Trade Expocentre Pvt. Ltd. v. Metro Jet Airways Training Pvt. Ltd. and Ors.	Metro Jet Airways Training Pvt. Ltd.	The decisions of the CoC to liquidate under Sec. 33(2) of IBC, 2016 has to be with reasons and that cannot be arbitrarily done.
9.	NCLAT New Delhi 19-12-2023	Mr. Mukesh Kumar Jain v. Navin Kumar Upadhyay and Anr.	CMYK Printech Ltd.	Once CIRP has been stayed, Resolution Professional no need to handover the charge of Corporate Debtor to Ex-management.
10.	NCLAT New Delhi 13-12-2023	Vijay Kumar Singhania v. Bank of Baroda and Anr.	Cygnus Splendid Ltd.	In absence of a record of default recorded by information utility, the application filed under Section 7 may not be admitted. It is mandatory for Financial Creditor to file the information of default with the information utility and without obtaining an authentication of default as contemplated in Regulation 21, no application under Section 7 can be filed by the Financial Creditor.

S.no	Court & Date	Name of the case	Corporate Debtor	Decision
11.	NCLAT New Delhi 08-12-2023	Real Estate Regulatory Authority v. D.B. Corp Ltd. & Anr.	AG8 Ventures Ltd.	CIRP cannot be initiated under Sec. 9 of IBC, 2016 on the basis of Barter Agreement or Transactions. RERA has locus to challenge CIRP initiation Order in Real Estate Insolvency in appeal under Sec. 61 of IBC before NCLAT
12.	NCLAT New Delhi 08-12-2023	CA Jai Narayan Gupta v. Radhasiriya Properties Pvt. Ltd	Barcle Enterprises Ltd.	Liquidator is entitled to his fee only under Sec. 34 & Liquidation Regulation 4 and Cost under Regulation 2B. No Liquidator's fee can be charged from Scheme Proponent, who has submitted the Scheme of Compromise and Arrangement under Sec. 230 of Companies Act, 2013.
13.	NCLAT New Delhi 05-Dec-23	Kairav Anil Trivedi v. State Bank of India & Anr.	Parenteral Drugs India Ltd	when resolution has been passed by CoC deciding to replace interim resolution professional (IRP), the IRP cannot question the resolution.
14.	NCLAT New Delhi 05-12-2023	Amit Kumar Pandey & Ors. v. Pardeep Kumar Sethi, RP and Ors	JMT Auto Ltd	Claim of workers employed through sub-contractor filed through sub-contractor as Operational Debt cannot be treated as workmen of Corporate Debtor. There is no difference in IBC between workers who are engaged by sub-contractor and workmen who are engaged directly by Corporate Debtor
15.	NCLAT New Delhi 05-12-2023	Paschimanchal Vidyut Vitran Nigam Ltd. v. HSA Traders	Shashi Oil & Fats Pvt. Ltd.	Successful Auction Purchaser (in Liquidation Process) was not liable to pay arrears of Electricity Dues which were dues of Corporate Debtor and electricity connection cannot be rejected on the basis of these dues.
16.	NCLAT New Delhi 05-12-2023	Ms. Amita Saurabh Bihani and Ors. v. E&G Global Estates Ltd. and Ors.	E&G Global Estates Ltd.	CIRP and avoidance applications are a separate set of proceedings, Avoidance applications can continue even after completion of CIRP, and approval of the resolution plan does not need to be put on hold. So, the Resolution Professional has the responsibility to pursue avoidance applications.
17.	NCLAT New Delhi 04-12-2023	Rakesh Ranjan v. Fanendra Harakchand Munot & Anr.	-	Request for Resolution Plan (RFRP) contains a condition for submission of Bank Guarantee along with Resolution Plan is not contrary to CIRP Regulation 36B.
18.	NCLAT New Delhi 24-11-2023	Puro Naturals JV Vs. Warana Sahakari Bank & Ors.	Shivaji Cane Processors Ltd.	NCLAT allowed the appeal for holding that Resolution Plan in question has consciously dealt with securities and personal guarantees given to the Financial Creditors including the dissenting Financial Creditors and the said clauses of the Resolution Plan do not contravene any provisions of Section 30, sub-section (2) as well as CIRP Regulations, 2016.
19.	NCLAT Chennai 23-11-2023	Mr. Jagadish Prasad Sarda Vs. Indian Bank	Sarda Agro Oils Ltd.	NCLAT dismissed the appeal against NCLT Order, it stated that there is no Resolution Plan in the offing, and the CoC had approved the Liquidation with a 100 % Voting as mandated under Section 33 of the Code. NCLAT Stated that the commercial wisdom of the CoC is to be given paramount importance for approval/rejection of a Resolution Plan.
20.	NCLAT New Delhi 17-11-2023	Mr. Sanil Prakash Sahu Vs. Kotak Mahindra Bank Ltd. and Ors	Gwalior Polypipes Ltd	The status of balance sheets as valid acknowledgment of debts needs to be examined depending upon the facts of each case while considering the mention of such non-acknowledging statements in the annexed notes or the auditor's report
21.	NCLT Hyderabad Bench 07-12-2023	State Bank of India v. Mr. Kari Venkateswarlu	Nawa Engineers and Consultants Pvt. Ltd.	The Liquidator can be removed under IBC, 2016 on any of the grounds provided under Sec. 276 of the Companies Act, 2013 even if there is no specific provision about the dismissal or removal of the liquidator under IBC, 2016.
22.	NCLT Mumbai 06-12-2023	Mudraa Lifespaces Pvt. Ltd.	Mudraa Lifespaces Pvt. Ltd.	Pre-Packaged Insolvency Resolution Process (PPIRP) is maintainable, even if the company name has been struck off from the Register of Companies (RoC), by virtue of the provisions of Companies Act, 2013 and Insolvency and Bankruptcy Code, 2016.
23.	NCLT Mumbai 05-12-2023	Telecom Regulatory Authority of India (TRAI)	Reliance Telecom Ltd.	In Telecom Insolvency an amount of Security Deposit and unspent balance of Prepaid Subscribers shall be admitted as Operational Debt other than Government dues under IBC, as

S.no	Court & Date	Name of the case	Corporate Debtor	Decision
		v. Reliance Telecom Ltd.		these dues are a nature of fine for non-maintenance of quality standards.
24.	NCLT Mumbai Bench 05-12-2023	Vinsari Fruitech Ltd. v. Effort BPO Pvt. Ltd.	Effort BPO Pvt. Ltd.	Insolvency u/s 7 of IBC cannot be initiated against the Corporate Debtor when the Transfer of loan from Principal Borrower to Corporate Debtor through assignment agreement has not been stamped as it is a void contract
25.	NCLT New Delhi Bench Court-V 04-12-2023	Willi Lease Finance Corporation v. SpiceJet Ltd.	SpiceJet Ltd.	Erstwhile Demand Notice issue u/s 8 of IBC cannot be treated as a valid Demand Notice for filing a fresh petition u/s 9 where the earlier petition was dismissed as withdrawn and the date of default and amount are also different.
26.	NCLT Guwahati Bench 30-11-2023	Chiragsala Sales Pvt. Ltd. v. Vaishno Devi Traders Pvt. Ltd.	Vaishno Devi Traders Pvt. Ltd	Amount given by Financial Creditor to Corporate Debtor by way of an investment for a Joint Venture and not towards any loan shall not be considered as a financial debt and dismissed.
27.	NCLT Hyderabad Bench 24-11-2023	Vasathi Anandi Owners Welfare Association v. Vasathi Housing Ltd.	Vasathi Housing Ltd.	Homebuyers deposited an amount in Corpus Fund towards maintenance of constructed apartments does not qualify as Financial Debt within the meaning of Section 5(8)(f) of IBC, 2016
28.	NCLT Hyderabad Bench 23-11-2023	Akash Electrotek Engineers Pvt. Ltd. v. NCC Ltd.	NCC Ltd.	The Airport Authority of India being a statutory body created under Airport Authority of India Act, 1944, does not come under the definition of Corporate Person u/s 3(7) of IBC. So, Issues pertaining to non-payment for services rendered cannot be addressed through the initiation of insolvency proceedings under IBC.
29.	NCLT Mumbai Bench 21-11-2023	IDBI Bank Ltd. v. Gupta Synthetics Ltd.	Gupta Synthetics Ltd.	NCLT stated that the Regulation 21 of Liquidation Process Regulations, 2016 provides three documents to prove security interest are alternate in nature, and such security interest can be proved by either of said evidence, and if proved by either of said evidence, it would over-ride the provisions of Section 77(3) of the Companies Act, 2013
30.	NCLT Mumbai Bench 21-11-2023	Mr. Rakesh Bothra v. Mr. Alok Kailash Saksena	Topworth Urja & Metal Ltd.	NCLT observed the Substance of a transaction is important rather than its form, and accounting entries cannot determine the character and nature of a transaction. The Applicant had advanced money from time to time and the same was repayable along with interest in the form of realisation. Hence, the NCLT disposed the IA.
31.	NCLT Mumbai Bench 21-11-2023	Pro Earth Housing Corp. Pvt. Ltd. v. Mr. Rajendra M. Ganatra & Anr	Mayurpankh Fine Builders Pvt. Ltd.	NCLT allows IA to forfeit performance guarantee, and any other money deposited by Successful Resolution Applicant in CIRP and the Resolution Professional may consider forwarding the matter to IBBI for necessary inquiry, if prima-facie any substance is found therein.
32.	NCLT Kolkata Bench 21-11-2023	Desana Impex Ltd. Vs. Brick and Mortar Reality Pvt. Ltd.	Brick and Mortar Reality Pvt. Ltd	NCLT dismissed the application for an explicit written agreement of loan is a mandatory instrument for the Financial Creditor, being a NBFC, to substantiate the nature of transactions between the lender and borrower. In this case, Financial Creditor has not been able to produce any loan agreement with the Corporate Debtor.
33.	NCLT Mumbai Bench 21-11-2023	CA Manish Sukhani v. Shri Amit Lodha & Ors.	Indsur Global Ltd.	Sharing of common infrastructure, for which the costs has been borne by the Corporate Debtor, certainly results into undue benefit having been given to the related parties at the cost of the Corporate Debtor, and such benefit certainly has an element of fraudulent intent.

Students' Corner

Basic overview of a few financial transactions under the Companies Act, 2013

Ms. V. Jothikamali
Company Secretary, SR *Srinivasan & Co.* LLP

It may be rightly said that finance is the lifeblood of every organization. This piece of article addressed to student community aims to encapsulate a few of the financial transactions which have substantial impact in the day to day functioning of a company viz., borrowings by the company, granting loans or giving guarantee or provide security in respect of loans to various parties.

At the outset, it is pertinent to note that the Board of Directors of a company is primarily vested with the powers to transact the above said transactions i.e.

- to borrow monies (Section 179 read with Section 180 of the Act)
- to grant loans or give guarantee or provide security in respect of loans – Loans (Section 185 and 186)

However, on breaching certain thresholds, all the above said transactions would require the approval from the Shareholders of a company.

Let us now understand each of the transaction a little more elaborately.

BORROWING POWERS OF A COMPANY

The Companies Act, 2013 does not prescribe any ceiling for a company with respect to its borrowing powers. However, Section 180 of the Act mandates the shareholders' approval by means of special resolution if the money to be borrowed, together with the money already borrowed by the company exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business. It may further be noted that every special resolution passed by the company in general meeting shall specify the total amount up to which monies may be borrowed by the Board of Directors.

Therefore, it is widely prevalent practice that the companies pass a resolution which is omnibus in nature and adhere to such borrowing limit. Whenever this limit is likely to be breached, the companies are required to pass a fresh resolution with enhanced limits.

Furthermore, it is worthwhile to know that section 180 which imposes restrictions on powers of the Board shall not apply to a private company vide notification dated 5th June 2015 as amended by notification dated 13th July 2017.

GRANTING LOANS OR GIVING GUARANTEE OR PROVIDING SECURITY IN RESPECT OF LOANS:

This transaction is widely addressed in two different sections i.e. Section 185 & 186 of the Act.

Section 185 i.e. Loans to directors can be studied in two parts which are tabled below:

S. No.	Section 185(1)	Section 185(2)
1.	**Parties involved:** Granting loans or giving guarantee or providing security to a) Director of a company b) Holding company c) Any partner or relative of such director d) Any firm in which any such director or relative is a partner	Granting loans or giving guarantee or providing security to '**any person in whom any of the director of the company is interested'** i.e. a) any private company of which any such director is a director or member; b) any body corporate at a general meeting of which not less than twenty-five per cent of the total voting power may be exercised or controlled by any such director, or by two or more such directors, together; or c) any body corporate, the Board of directors, managing director or manager, whereof is accustomed to act in accordance with the directions or instructions of the Board, or of any director or directors, of the lending company.
2.	**Allowed/Not Allowed:** The Act does not permit to grant loan or give guarantee or provide security to	The Act permits to grant loan or give guarantee or provide security to above mentioned parties subject to conditions prescribed below.

S. No.	Section 185(1)	Section 185(2)
	above mentioned parties.	
3.	**Condition stipulated under the Act:** The Act totally prohibits the above said transactions to the above said parties.	The Company can transact the above said business subject to a) Passing of special resolution in general meeting b) the loans are utilised by the borrowing company for its principal business activities. *The explanatory statement attached in the notice of the meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact.*

No limit is prescribed under Section 185 of the Act.

However, it is noted that the above tabled provisions shall not apply in the following circumstances.

1. Any loan to a managing or whole-time director as a part of the conditions of service extended by the company to all its employees; or pursuant to any scheme approved by the members by a special resolution.
2. A company which in the ordinary course of its business provides loans or gives guarantees or securities for the due repayment of any loan and in respect of such loans an interest is charged as stipulated in section 185(3).
3. any loan made/guarantee given or security provided by a holding company to its **wholly owned subsidiary company.**
4. Any guarantee given or security provided by a holding company in respect of loan made by any bank or financial institution to its **subsidiary company:**

Further, it is to be noted that the loans mentioned under (3) and (4) are required to be utilised by the subsidiary company for its principal business activities.

It is also important to note that Section 185 as discussed above is exempted to private company only on fulfilling all the conditions given below:

1. No other body corporate has invested in the share capital of a company.
2. If the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid-up share capital or fifty crore rupees, whichever is lower.
3. Such a company has no default in repayment of borrowings subsisting at the time of making transactions under section 180.

SECTION 186 of the Act deals with granting loans or giving guarantee or providing security in respect of loans to another set of parties who are not dealt under Section 185. This section deals with

- loan given to any person or other body corporate or
- any guarantee given or security provided in connection with a loan to any other body corporate or person or
- acquisition by way of subscription, purchase or otherwise, the securities of any other body corporate.

It is to be noted that the section explains person does not include any individual who is in the employment of the company.

Is there any limit prescribed under this section?

Yes, the section stipulates that no company shall directly or indirectly engage in any transaction mentioned above exceeding sixty per cent of its paid-up share capital, free reserves and securities premium account or one hundred per cent. of its free reserves and securities premium account, whichever is more. In case of exceeding the said limit, special resolution (prior approval) shall be passed in a general meeting.

However, the special resolution is not required, where a loan or guarantee is given or where a security has been provided by a company to its wholly owned subsidiary company or a joint venture company, or acquisition is made by a holding company, by way of subscription, purchase or otherwise of, the securities of its wholly owned subsidiary company.

Is this section applicable to private limited company?

Yes, this section is applicable to private limited company.

Thus, this piece of writing envisages to highlight the major provisions and notable differences in above discussed transactions.

IP's corner

Forms to be filed by an IP with IBBI to avoid penalties and disciplinary action

CGRF Bureau

An Insolvency Professional (IP) plays an important role in the insolvency resolution / liquidation processes of Corporates. The Insolvency and Bankruptcy Code, 2016 ("Code") obligates an IP to conduct the entire CIRP, make every endeavour to protect and preserve the value of the assets of the corporate debtor and manage its operations as a going concern. An IP exercises the powers of the Board of Directors of the corporate debtor undergoing CIRP and is required to comply with applicable laws on behalf of the corporate debtor.

In order to facilitate an IP to discharge his responsibilities effectively as envisaged by the Code, it obliges every officer of the corporate debtor to report to IP and the promoters of the corporate debtor to extend all assistance and cooperation to IP. Further, there is also an assurance of supply of essential goods and services to keep the corporate debtor as a going concern, and a moratorium on recovery, suits and proceedings against corporate debtor to ring-fence the process. Also an IP has the protection of actions taken in good faith under the Code as per Sec. 233. Ips' conduct can only be inspected / investigated by the authorities as specified under the Code, following due process of law. There is also a bar under the Code on trial of offences against an IP except on a complaint filed by the IBBI / Central Government. Thus, a whole array of statutory and legal duties and powers is vested in an IP.

Keeping in view the huge responsibilities and powers enshrined to an IP, the Code / Regulations provides for monitoring of their performance. Accordingly, it casts a duty on the IBBI and the IPA to monitor performance of IPs, and collect, maintain and disseminate information and records relating to insolvency resolution / liquidation processes.

The Code also casts obligations on IPs to forward/submit the following information and records relating to CIRP to the IBBI:

(a) all records relating to the conduct of the CIRP and the resolution plan [Section 31(3)(b) of the Code];

(b) a copy of the records of every proceeding before the Adjudicating Authority [Section 208(2)(d) of the Code]; and

(c) file various Forms, along with enclosures thereto on the electronic platform of the IBBI, as per timelines stipulated against each Form [Regulation 40B of CIRP Regulations].

It is pertinent to mention here that IBBI views the non-filing of Forms / requisite information very seriously, and in its latest Order dated 8th December 2023 it opined that-

"The purpose of the forms is to enable IPs to easily comply with the statutory obligation of submission of records relating to the conduct of CIRP and the resolution plan and copy of records of every proceeding under Section 208(2)(d) of the Code. They also facilitate the Board to effectively monitor the processes and the performance of IPs. Hence, non-filing of any of the above form leaves the Board in a blind spot where it is unable to view the progress of the processes and the professional."

(Image source: website)

In order to avoid the penalties and disciplinary action, which the IBBI / IPA may take as deemed fit under the Code or any Regulations made thereunder, it is advised that the IPs provide the requisite information and specified Forms with IBBI as per the timelines provided.

The following are the Forms which are required to be filed by an IP with IBBI, during CIRP:

Form No.	Period covered and scope	To be filed by	Timeline
(1)	(2)	(3)	(4)
IP 1	**Pre-Assignment:** This includes consent to accept assignment as IRP / RP, the details of IP and the Applicant, the details of the person which will undergo the process, terms of consent, terms of engagement, etc.	IP	Within three days of signing of Form-2 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 or Form-AA of the Regulations, as the case may be.

Form No.	Period covered and scope	To be filed by	Timeline
CIRP 1	**From Commencement of CIRP till Issue of Public Announcement:** This includes details of IRP, CD, and the Applicant; admission of application by AA; public announcement; details of suggested Authorised Representatives; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	IRP	Within seven days of making the Public Announcement under Section 13.
CIRP 2	**From Public Announcement till confirmation / replacement of IRP:** This includes details of Authorised Representative selected by IRPs for a class of creditors; taking over management of the CD; receipt and verification of claims; constitution of CoC, first meeting of CoC; confirmation / replacement of IRP; applications seeking co-operation of management (if any); expenses incurred on or by IRP; relationship of IRP with the CD, Financial Creditors and Professionals; support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	IRP	Within seven days of confirmation/ replacement of IRP under Section 22.
CIRP 3	**From Appointment of RP till issue of IM to Members of CoC:** This includes details of RP; details of registered valuers; handing over of records of CD by IRP to RP; taking over management of the CD; applications seeking co-operation of management (if any); details in IM; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of issue of IM to members of CoC under Regulation 36.
CIRP 4	**From Issue of IM till issue of RFRP:** This includes expression of interest; RFRP and modification thereof; evaluation matrix and modification thereof; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of the issue of RFRP under Regulation 36B.
CIRP 5	**From Issue of RFRP till completion of CIRP:** This includes updated list of claimants; updated CoC; details of the resolution applicants; details of resolution plans received; details of approval or rejection of resolution plans by CoC; application filed with AA for approval of resolution plan; details of resolution plan approved by the AA; initiation of liquidation, if applicable; expenses incurred on or by RP; appointment of professionals and the terms of appointment; relationship of the RP with the CD, Financial Creditors, and Professionals; support services taken from IPE; non-compliances with the provisions of the Code and other laws applicable to the CD; etc.	RP	Within seven days of the approval or rejection of the resolution plan under Section 31 or issue of liquidation order under Section 33, as the case may be, by the AA.
CIRP 6	**Event Specific:** This includes: • Filing of application in respect of preferential transaction, undervalued transaction, fraudulent transaction, and extortionate transaction; • Raising interim finance; • Commencement of insolvency resolution process	IRP / RP	

Form No.	Period covered and scope	To be filed by	Timeline
	of guarantors of the CD; • Extension of period of CIRP and exclusion of time; • Premature closure of CIRP (appeal, settlement, withdrawal, etc.); • Request for liquidation before completion of CIRP; and • Non implementation of resolution plan, as approved by the AA.		
CIRP 7	**Activity requiring filing of Form CIRP 7, if not completed by the specified date** ➢ Public announcement is not made by T+3rd day ➢ Appointment of RP is not made by T+30th day ➢ Information memorandum is not issued within 92 days from the date of public announcement ➢ RFRP is not issued within 10 days from the date of issue of information memorandum to the committee ➢ CIRP is not completed by T+180th day	IRP / RP	Within 3 days of the said date / and continue to file every 30 days, until the said activity remains incomplete.
CIRP 8	Intimating details of opinion and determination under Regulation 35A	RP	On or before the 130th day of the CIRP commencement date

 # Please note that filing of the above Forms after the due date, whether by correction, updation or otherwise, will attract a fee of Rs.500/- per Form for each calendar month of delay.

In addition, the IPs are required to file / upload the following details with IBBI:

1. A copy of public announcement in Form A
2. A copy of Invitation for EOI (Form G)
3. List of stakeholders under Regulation 13(2) (ca) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - [Refer IBBI Circular No.47 dated 24th November 2021].
4. Pay fee to IBBI as may be specified by IBBI from time to time on the professional fee earned for the services rendered by an IP [Refer Regulation 7(2)(ca) of IBBI (Insolvency Professional) Regulations, 2016].
5. Pay the following regulatory fees to IBBI as provided below or as may be specified by IBBI from time to time – [Reg 31A of CIRP Regulations].

   (i) 0.25% of the realisable value to creditors under the resolution plan approved under Section 31, where such realisable value is more than the liquidation value; and

   (ii) 1% of the cost being booked in CIRP cost in respect of hiring any professional or other services by IRP/RP for assistance in a CIRP, along with a statement in Form EA [Refer Regulation 7(2)(cb) of IBBI (Insolvency Professional) Regulations, 2016]

Forms to be filed by IPs during Liquidation Process

1. Public Announcement made in Form B
2. A copy of Public Notices of Auctions of Liquidation Assets under the IBBI (Liquidation Process) Regulations, 2016 - [Refer IBBI Circular No.44 dated 30th September 2021].
3. List of stakeholders under Regulation 31(5)(d) of IBBI (Liquidation Process) Regulations, 2016 - [Refer IBBI Circular No.46 dated 24th November 2021]
4. Reporting of liquidator's decision(s) different from the advice of Stakeholders' Consultation Committee under proviso to sub-Regulation (10) of Regulation 31A of IBBI (Liquidation Process) Regulations, 2016 - [Refer IBBI Circular No.57 dated 21st December 2022]

Disclaimer: The compliance requirements listed above are indicative and not exhaustive. IPs are requested to refer to Insolvency and Bankruptcy Code, 2016 and various Regulations thereunder as amended from time to time, for detailed compliances.

Humour time

Two lawyers were walking along negotiating a case. "Look," said one, "let's be honest with each other. "Okay, you first," replied the other. That was the end of the discussion.

"The Richest Man in Babylon" – George Samuel Clason - Book Review

S. Rajendran
Registered Insolvency Professional

Preamble

"George Samuel Clason" (1874-1957) has dealt with the important aspects of money management and achieving financial success in his famous book, "The Richest Man in Babylon" which was first published in 1926. George Samuel Clason, who served in the United States Army, has a unique style of communicating the essential lessons through a story-like narration.

About the city of Babylon

The city of Babylon on the banks of Euphrates river was once flourishing in what is today's Iraq and was one of the wealthiest cities of the ancient world because its citizens were the richest people of their time. They appreciated the value of money. They practised sound financial principles in acquiring money, keeping money and making their money earn more money.

About the book

The author highlights that "success means accomplishments as a result of our own efforts and abilities. Proper preparation is the key to our success. Our acts can be no wiser than our thoughts. Our thinking can be no wiser than our understanding."

Seven Rules

Listed below are the simple Seven Rules suggested by the author as "cure for lean purse".

1. Start saving one-tenth from your earnings – "A part of all you earn is yours to keep."
2. Control your expenditures within the nine-tenth
3. Make your investment multiply
4. Guard your savings from loss
5. Make your dwelling a profitable investment
6. Ensure a future and steady income
7. Increase your ability to earn

The principles highlighted by the author for acquisition and maximisation of wealth can be described in the following words:

- For every ₹10 earned by you ₹1 should be kept in savings and this should be followed religiously. The expenditure should be controlled within the nine rupees by clearly analysing the necessity for such expenses. In any case, the budget for expenses should not exceed the available sum of ₹9.
- The money saved should be invested wisely to bring additional streams of income. However, one must ensure that the principal is safe and it can be reclaimed whenever you require it. For this purpose, one must take the advice of those experienced in profitable handling of investments. Their wisdom will protect your investments from any untoward loss.
- One should also own his own home, which will bring lot of earnings for pleasures and gratification of desires by greatly reducing the cost of living. Borrowing for the purpose of building one's home is worth it in the long run. One should also plan against a lean purse for a later period and accordingly save for such expenses. Providing in advance for the needs of your growing age and the protection of the family helps in managing your wealth properly.
- The last remedy for a lean purse is to cultivate your own powers to study more and become wiser to become more skillful. "Men of action are favoured by the Goddess of Good Luck."

(Image source: website)

The author goes on to put in a nutshell a few pearls of wisdom. "One must pay all his debts with all promptness within his powers, not purchasing that for which he is unable to pay. He must take care of his family that they may think and speak well of him. He must make a will of record that in case the gods call him, proper and honourable division of his property be accomplished. He must have compassion upon those who are injured and smitten by misfortune and aid them within reasonable limits. He must do deeds of thoughtfulness to those dear to him."

The author adds five more laws of wealth, which are guided by the wisdom of age and experience:

- Wealth comes gladly, and in increasing quantity to any man who will save not less than one tenth

of his earnings to create an estate for his future and that of his family.

- Wealth works diligently for its owner who finds for it profitable employment and investment multiplying itself.
- Many times, wealth sticks to cautious owner, who invest it under the advice of men wise in its handling. "Better a little caution than a great regret."
- Wealth slips away from the man who invests in businesses or purposes with which he is not familiar or which are not approved by those skilled in that line.
- Wealth flees the man who would force it impossible earnings or who follows the alluring advice of tricksters and schemers or who trusts it to his own inexperience and romantic desires in investment.

It's very interesting to note that the author has done some research to find out how some of the richest persons in Babylon had disastrous past, but still they had the determination to pay their debts by way of settlement much like the restructuring process followed by banking institutions of modern times.

The author provides a deep insight into a real-life story of a camel trader who was forced to go out of Babylon for defaulting to pay his debt, returned to the city with a clear determination and plan to pay his debts. The "five tablets" on which this process has been reduced to writing demonstrate the process by which the camel trader estimates his future earnings and his expenditures, factors a saving of one-tenth of his earnings, how he will prioritise the repayment of his debts, and also proposes to settle his dues, not in full, but in proportion which is acceptable to the lenders.

Conclusion

The author extensively deals with investment decisions in a lucid conversation between a lender and an investor who has suddenly acquired a fortune. The kind of calculated risks the lender takes could easily be a lesson for bankers. On the whole, when one completes reading the book, it will surely make him wiser on wealth. "Wealth is a power. With wealth, many things are possible".

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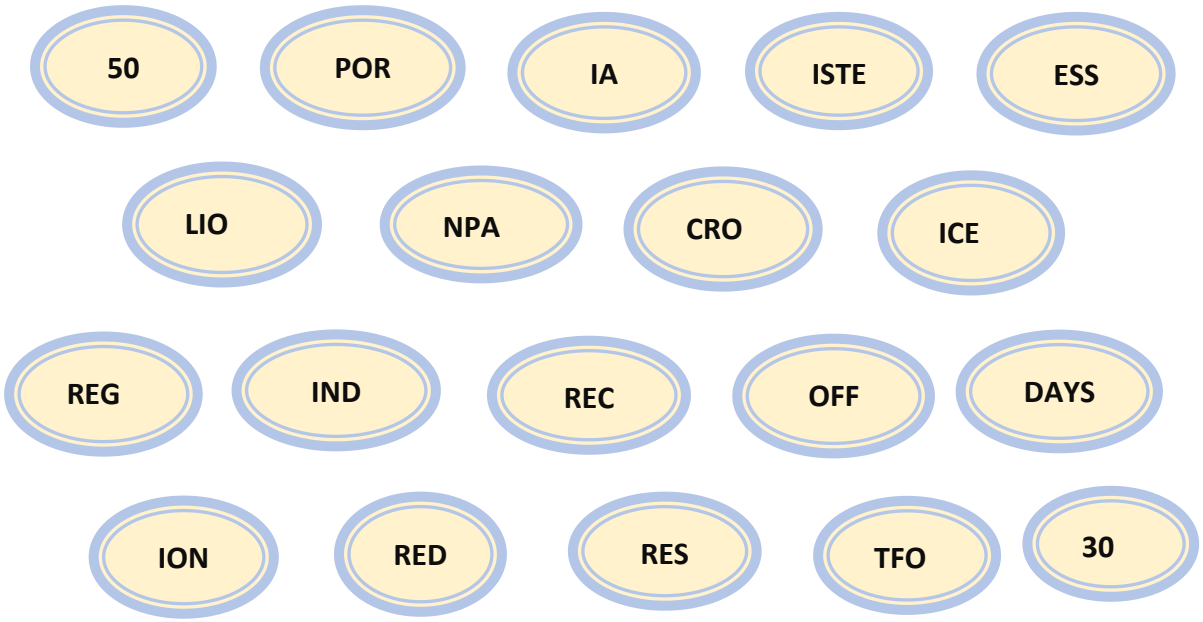
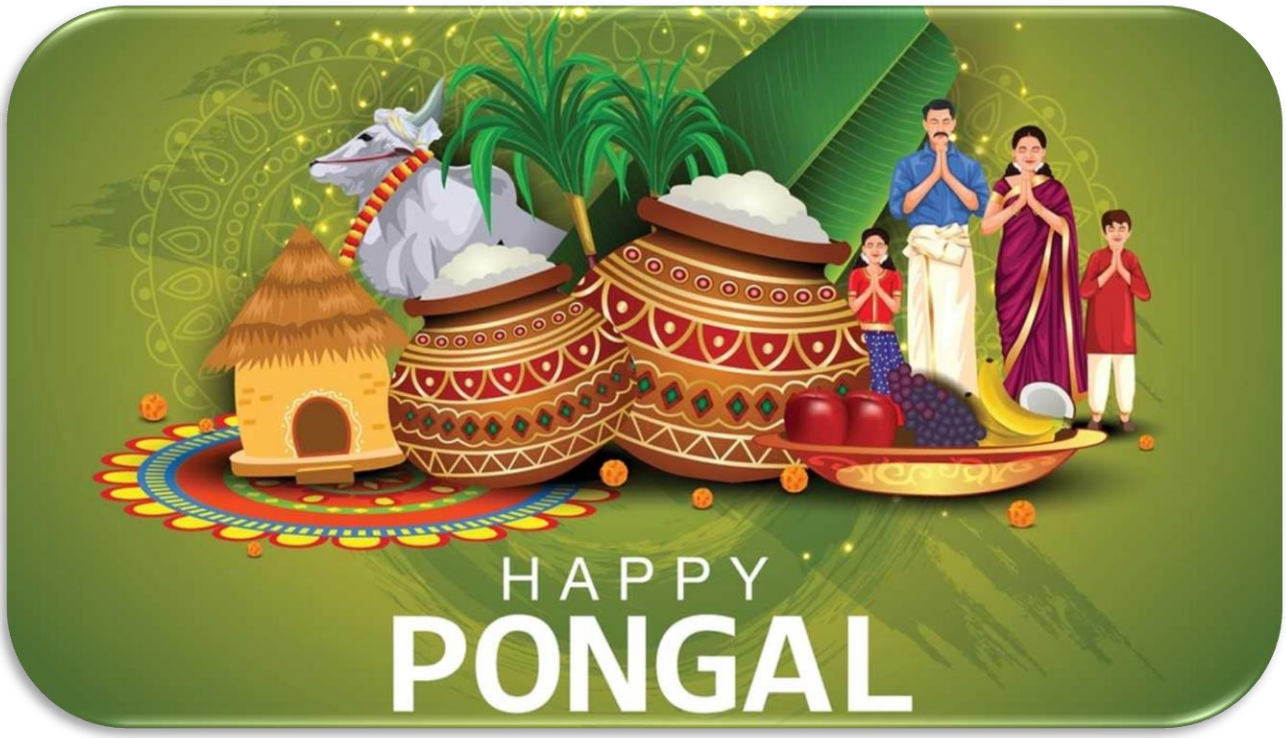
Guess the Answers!!!

CLUES	WORDS
1. A _____ is a loan or advance for which the principal or interest payment remained overdue for a period of 90 days.	
2. What is the minimum net worth required for a company to be eligible for registration as an information utility?	
3. A condition of the economy under which business is conducted at a reduced level.	
4. List of securities owned by an institution, an investment firm or a person is called _____	
5. Which is the first country to have made CSR mandatory?	
6. The books containing the minutes of the proceedings of any general meeting of a company shall be kept at its _____	
7. Every company shall hold the first Board Meeting within _____ of its incorporation.	



Answers

1) Non – Performing Asset (NPA) 2) Rs.50 crores 3) Recession 4) Portfolio 5) India 6) Registered Office 7) 30days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PONGAL


26 January 2024
India
REPUBLIC DAY

Our Services

Providing Services to the Investors / Bidders / Corporates:

- Assisting Corporates (MSME) in preparing Base Resolution Plan under Pre-Pack Scheme
- Assessing the viability of the businesses of the Corporate Debtor under CIRP
- Drafting of Resolution Plans / Settlement Plans/ Repayment /Restructuring Plans
- Implementation of Resolution Plan
- Designing viable Restructuring Schemes

Providing supporting services to IPs:

- Claims Processing
- Management of operations of the Corporate Debtor
- Section 29A verification
- Preparation of Request for Resolution Plans (RFRP) with Evaluation Matrix
- Framework for Resolution Plans
- Evaluation of Resolution Plans / Settlement Plans / Repayment Plans Scrutinizers for E-voting process

Independent Advisory Services:

- Admissibility of Claims.
- Validity of decisions taken by COC
- Powers and duties of directors under CIRP
- Resolutions Plan / Settlement Plan
- Repayment Plan by Personal Guarantors to Corporate Debtors
- Due diligence report to banks on NPA/SPA Accounts
- Issue of Notice and filing application u/s 95 of IBC – PG to CDs
- Proxy advisory services for institutional shareholders.

Registered Office:

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